

## APPELLATE CIVIL.

*Before Mr. Justice Abdur Rahim and Mr. Justice  
Kumaraswami Sastriyar.*

1917,  
July 16.

ALAGAPPA CHETTIAR AND TWO OTHERS (RESPONDENTS),  
APPELLANTS,

v.

MUTHUKUMARA CHETTIAR (PETITIONER)  
(RESPONDENT).\*

*Civil Procedure Code Act of V 1908, secs. 151 and 144—Money deposited in Court—Withdrawal by one party—Undertaking by party to repay amount—No provision in undertaking to pay interest—Application by party entitled to recover amount with interest—Power of Court to enforce undertaking—Liability for interest—*

The plaintiffs having sued to establish their right to certain money which had been paid into Court by a third party, the defendant was allowed to draw the money on an undertaking to repay it if the plaintiffs succeeded. The plaintiffs having obtained a decree,

*Held*, that the Court had inherent power to order the defendant to repay the money, and that he could be made liable for interest as he had had the wrongful use of the money.

*Rodger v. The Comptoir D'Escompte De Paris* (1871) L.R., 3 P.C.A.C., 465; *Subbarayudu v. Yerram Setti Seshasani* (1917) I.L.R., 40 Mad., 299, and *Indra Chund Bothra v. Mr. A. H. Forbes* (1917) 2 Pat., L.J., 149, referred to.

APPEAL against the decree of SRINIVASA AYYANGAR, J., in *Muthukumara v. Alagappa* (1).

The defendant obtained a decree against X and attached a sum of money belonging to X which was deposited in the District Munsif's Court at M. The plaintiffs preferred a claim petition claiming this sum under a deed of trust executed by X for the benefit of his creditors. The claim petition was dismissed; the plaintiffs then brought this suit in the Court of the District Munsif of T for a declaration that as against the defendant they were entitled to the money and applied for a

\* Letters Patent Appeal Nos. 247 and 248 of 1916.

(1) Civil Revision Petition Nos. 591 and 592 of 1915 praying the High Court to revise the order of F. H. WALLACE, the District Judge of Tanjore, in Civil Miscellaneous Appeal No. 78 of 1914, against the order of K. S. RAMASWAMI SASTRI, the District Munsif of Tirutturaippundi, in Original Petition No. 737 of 1914 in Original Suit No. 288 of 1912.

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temporary injunction restraining the defendant from drawing the money. Plaintiff's application was allowed to be dismissed on the defendant undertaking to repay the same in case of plaintiff's success in the suit. On plaintiff's success, he applied by a miscellaneous petition for repayment of the amount with interest. The lower Courts allowed the same but on revision by the defendant to the High Court, SRINIVASA AYYANGAR, J., disallowed the interest on the ground that the undertaking did not contain a covenant to pay interest. Hence this Letters Patent Appeal by the plaintiff.

*C. V. Anantakrishna Ayyar* for the appellants.

*S. Muthiah Mudaliyar* for the respondent.

The JUDGMENT of the Court was delivered by

ABDUR  
RAHIM, J.

ABDUR RAHIM, J.—In this case there was a sum of money in deposit in Court and there was a dispute as to who was entitled to that money—the appellants whose claim was based on a trust-deed, or the judgment-debtor of the respondent. The appellants filed a suit to establish their right and obtained a temporary injunction restraining the respondent from drawing the money. Thereupon the respondent, on giving an undertaking to the Court, was allowed to draw the money. The appellants succeeded in establishing their title and the only question now before us in the Letters Patent Appeal is whether the appellants are entitled to interest on the amount drawn by the respondent till the date when he paid back the amount. Mr. Justice SRINIVASA AYYANGAR has decided against the appellants' contention on the ground that the undertaking given by the respondent did not provide for the payment of interest. We do not think that this is a conclusive factor. There is no express provision in the Civil Procedure Code or any of the other Indian Acts to which we have been referred which covers the question. Section 144 of the Code provides for proper orders being passed as regards payment of interest or damages in cases of restitution. This is not exactly a case of restitution though the principle of that section has been applied to a case somewhat similar to this by a Bench of this Court in *Subbarayudu v. Yer-ram Setti Seshasani*(1). We have also been referred to a decision

(1) (1917) I.L.R., 40 Mad., 299 at p. 300.

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of the Patna High Court in *Indra Chund Bothra v. Mr. A. H. Forbes*(1). There also, though it was not a case exactly covered by section 144, the principle of that section was applied. The Privy Council has laid down the principle applicable to such cases in *Rodger v. the Comptoir D'Escompte De Paris*(2). Here the facts show that the appellants were entitled to this money and the respondent who had no title to the money obtained it from the Court by representing that he had a title. The principle therefore applies that having had wrongful use of the appellants' money, he is bound to pay interest during the time he had the use of the money.

The learned pleader for the respondent argued that the Court had no power to order the payment of the money or interest thereon in this proceeding. But the order is simply to enforce the undertaking which was given by the respondent to the Court and we have no doubt in holding that the Court had inherent power to enforce that undertaking on the faith of which the respondent obtained the money. We must allow the appeals reversing the judgment of the learned Judge and the decree will be varied in this way. The decree will provide for payment of interest by the respondent at 6 per cent from the date he drew the money from Court till the date of repayment. The respondent must bear the costs of these appeals and of the revision petitions. The memoranda of objections are dismissed.

K.R.

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(1) (1917) 2 P.L.J., 149.

(2) (1871) L.R., 3 P.C.A.C., 465 at p. 476.

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