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which transmits the decree to the Collector. But the learned advocate for the decree-holder attempted to support the order of the Subordinate Judge on another ground referring to the proceedings taken on the objection of the 29th of May, 1897. His contention was that the representatives of the deceased judgment-debtor having taken their objection and having failed to prosecute it could not be further heard on the same ground. In our opinion this contention is not sound and is disposed of under the ruling in the case of *Dhonkal Singh v. Phalkar Singh* (1), in which it was distinctly laid down that where an application for execution has been simply struck off without any order adverse to the right on the merits, that application might be renewed again and again till judicially decided adversely to the applicant. The same principle applies to an objection raised by a judgment-debtor to the execution of the decree. We do not think that the fact that between the application of the 29th of May, 1897, and the 20th of July, 1897, execution was transferred to the Collector is in any way material here. We allow this appeal. We set aside the order of the Subordinate Judge, and we direct him now to take up and judicially determine the objections taken by the representatives of the deceased judgment-debtor on the 20th of July, 1897. The appellants are entitled to their costs.

Appeal decreed.

Before Mr. Justice Burkitt and Mr. Justice Dillon.

PHUL CHAND (DECREE-HOLDER) v. SHANKAR SARUP AND OTHERS
(JUDGMENT-DEBTORS).*

Civil Procedure Code, section 583—Restitution of benefit obtained under a decree subsequently reversed on appeal—Interest allowable on amount so recovered.

Where, in consequence of a decree having been reversed on appeal, the decree-holder is entitled to recover under section 583 of the Code of Civil Procedure any sum which before such decree was reversed he had been obliged

* First Appeal No. 1 of 1898, from an order of Pandit Rai Inder Narain, Subordinate Judge of Meerut, dated the 25th September 1897.

to pay in execution of that decree, such decree-holder is entitled also to receive interest on the amount so recoverable. *Rodger v. The Comptoir D'Escompte de Paris* (1), *Jaswant Singh v. Dip Singh* (2), *Ram Sahai v. The Bank of Bengal* (3), *Bhagwan Singh v. Ummatul Hasnain* (4), *Ayayayyar v. Shastram Ayyar* (5) and *Hatti Prasad v. Chatarpal Duba* (6) referred to. *Mewa Kuar v. Banarsi Prasad* (7) dissented from.

IN this case the respondents brought a suit against the appellant and obtained a decree from the Court of the Subordinate Judge of Meerut. The appellant appealed from this decree to the High Court, but before his appeal was decided the respondents took out execution of their decree and realized the whole amount thereof. Subsequently the respondents' decree was set aside by the High Court, the suit being dismissed. The appellant then applied to the Court of the Subordinate Judge for a refund of the amount realized by the respondents under their decree which had been set aside by the High Court, together with interest upon the amount so realized. The Subordinate Judge allowed the application except so far as related to the claim for interest. Against this disallowance of interest the applicant appealed to the High Court.

Mr. *Abdul Raof*, for the appellant.

Babu *Jogindro Nath Chaudhri* and Babu *Durga Charan Banerji*, for the respondents.

BURKITT and DILLON JJ.—In this case it appears that on suit by the plaintiffs respondents against the appellant a decree was given against the latter for payment of a sum of money. The defendant paid that money into Court, and it was drawn from the Court by the plaintiffs. Subsequently on appeal to this Court the decree in favour of the plaintiffs was reversed and their suit was dismissed.

The present proceeding is an application by the successful defendant appellant under section 583 of the Code of Civil Procedure, for restitution to him, with interest, of the sum

(1) L. R., 3 P. C., 465.

(2) I. L. R., 7 All., 432.

(3) I. L. R., 8 All., 262.

(4) I. L. R., 18 All., 262.

(5) I. L. R., 9 Mad., 506.

(6) Weekly Notes, 1888, p. 287.

(7) Weekly Notes, 1897, p. 76.

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paid by him into Court under the decree, and drawn out by the plaintiffs respondents.

The only question to be decided is whether the applicant is entitled to interest on his money during the time it was in the hands of the plaintiffs respondents. On that point there have been some conflicting rulings in this Court. We would refer to the cases of *Jaswant Singh v. Dip Singh* (1), *Ram Sahai v. The Bank of Bengal* (2), *Bhagwan Singh v. Ummatul Hasnain* (3), *Mewa Kuar v. Banarsi Prasad* (4), *Hatti Prasad v. Chattarpal Dube* (5), and there is also the case of *Ayya-vayyar v. Shastram Ayyar* (6). In our opinion, however, the case before us is concluded by the authority of their Lordships of the Privy Council in the case of *Rodger v. The Comptoir D'Escompte de Paris* (7). We especially refer to the observations of Lord Cairns made therein, which are set forth and explained at length in *Jaswant Singh v. Dip Singh* (1). It appears to us that the view of their Lordships in that case cannot have been brought to the notice of the Benches of this Court which held that interest could not be awarded under section 583. In all the other cases there is a distinct mention of that case, and it is cited as the authority for awarding interest. Following the authority of their Lordships in that case, we allow this appeal. We set aside the order of the lower Court, and we direct that interest at the rate of six per cent. per annum be allowed on the sum which has been ordered to be restored to the appellant here. The appellant is entitled to his costs in this Court.

Appeal decreed.

(1) I. L. R., 7 All., 432.

(2) I. L. R., 8 All., 262.

(3) I. L. R., 18 All., 262.

(4) Weekly Notes, 1897, p. 76.

(5) Weekly Notes, 1888, p. 287.

(6) I. L. R., 9 Mad., 506.

(7) L. R., 3 P. C. 465.