

APPELLATE CIVIL.

1881
May 9th*Before Mr. Justice Straight and Mr. Justice Tyrrell.*

RAM NANDAN RAI (JUDGMENT-DEBTOR) v. LAL DHAR RAI (DECREE-HOLDER)*

Decree for payment of money "in accordance with written statement"—Construction of decree—Interest.

A decree for money directed that its amount should be payable "according to the terms of the judgment-debtor's written statement." In his written statement the judgment-debtor had promised to pay interest on the judgment-debt if the same were not discharged by a certain day. *Held*, having regard to the decision of the Full Bench in *Debi Charan v. Purbhu Din* (1), that, the judgment-debtor having failed to discharge the judgment-debt by such day, he was bound by the terms of the decree to pay interest on its amount.

THE judgment-debtor in this case applied for the refund of interest on the amount of the decree, which he alleged the decree-holder had unduly recovered in execution of the decree, inasmuch as the decree did not direct that interest should be payable on its amount. The decree directed that its amount should be paid "according to the terms" of the judgment-debtor's "written statement" in the suit in which the decree was made. In that written statement the judgment-debtor had, amongst other things, promised to pay interest on the judgment-debt, if it were not discharged by a particular day. The Court executing the decree disallowed the application, and its order was affirmed by the lower appellate Court on appeal by the judgment-debtor. The judgment-debtor thereupon appealed to the High Court.

The *Senior Government Pleader* (*Lala Juala Prasad*), for the appellant.

Lala Lalta Prasad, for the respondent.

The judgment of the Court (STRAIGHT, J. and TYRRELL, J.) was delivered by

STRAIGHT, J.—Having regard to the decision of the Full Bench in *Debi Charan v. Purbhu Din* (1), we think that the view taken by the lower Courts must be upheld. The decretal order

* Second Appeal, No. 76 of 1880, from an order of J. W. Power, Esq., Judge of Ghazipur, dated the 2nd September, 1880, affirming an order of Maulvi Ezid Bakhsh, Munsif of Korantadih, dated the 2nd September, 1880.

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directed the judgment-debtor, appellant, to pay the amount decreed "according to the terms of his written statement;" and in that written statement he had undertaken, if the judgment-debt was not discharged by a particular day, to pay interest upon it. This is all he has now been held bound to do. The appeal is dismissed with costs.

1881
 August 12.

CRIMINAL JURISDICTION.

Before Mr. Justice Straight.

EMPRESS OF INDIA v. IDU BEG.

Murder—Culpable homicide not amounting to murder—Causing death by rash or negligent act—Grievous hurt—Act XLV of 1860 (Penal Code), ss. 299, 300, 302, 304A, 325.

Where a person struck another a blow which caused death, without any intention of causing death, or of causing such bodily injury as was likely to cause death, or the knowledge that he was likely by such act to cause death, but with the intention of causing grievous hurt, held that the offence of which such person was guilty was not the offence of causing death by a rash act, but the offence of voluntarily causing grievous hurt.

Nidarmarti Nagabhusanam (1); *Queen v. Pemkoer* (2); *Queen v. Man* (3); *Empress v. Ketabdi Mundul* (4); *Empress v. Fox* (5); and *Empress v. O'Brien* (6) followed.

The offences of murder, culpable homicide not amounting to murder, and causing death by a rash or negligent act distinguished.

THE facts of this case are sufficiently stated for the purposes of this report in the order of the High Court.

STRAIGHT, J.—The record in this case was called for by me on a perusal of the Sessions Statement of the Judge of Cawnpore for the month of June, 1881. The accused, Idu Beg, was convicted upon the 8th June last, under s. 304A of the Penal Code, for having caused the death of his wife Chulki, and was sentenced to four months' rigorous imprisonment. The short circumstances out of which the charge arose are as follows:—On the 10th May last the accused, while engaged in a verbal wrangle with his wife, struck her a blow on the left side with great force, the result of which was that she vomited and bled from the nose, and within little more than an

(1) 7 Mad. H. C. R. 119.

(2) N.-W. P. H. C. Rep., 1873, p. 38.

(3) N.-W. P. H. C. Rep., 1873, p. 235.

(4) I. L. R., 4 Calc., 764.

(5) I. L. R., 2 All., 522.

(6) I. L. R., 2 All. 766.