

period necessary for the establishment of an easement, provided such an easement as the plaintiff claims can be acquired. But he has held that no such right can be gained by prescription, inasmuch as this cornice which projects over the defendant's house is not necessary for the protection of the plaintiff's property, but has been constructed on the plaintiff's house merely for the purpose of ornamentation. He says in his judgment: "One fundamental principle of the right to an easement is that it confers some benefit on the person who claims the easement, and does not serve merely a purpose of ornamentation." The plaintiff now appeals against this order of the Subordinate Judge.

We have given this case our best consideration, and, on the whole, we see no reason to interfere with the order of the Subordinate Judge dismissing the plaintiff's appeal to him, and we think that he has laid down the law as to easements perfectly [505] correctly. We find in the Indian Easements Act (Act V of 1882), which, of course, is not in force, in this province, but which we think may be referred to as an authority on the subject as to what an easement in India is, it is laid down that "an easement is a right which the owner or occupier of certain land possesses, as such, for the *beneficial enjoyment* of that land to do and continue to do something," and so on. Then, we find it laid down in *Gale on Easements*, 7th edition, page 6, that "an easement is a privilege without profit, which the owner of one neighbouring tenement hath of another, existing in respect of their several tenements by which the servient owner is obliged to suffer or not to do something on his own land, for *advantage* of the dominant owner." Thus, it appears from these authorities that there can be no prescriptive right to a projection which has been erected merely for the purpose of ornamentation.

We find this also laid down in the case of *John George Bagram v. Khettranath Karformah* (1), in which Chief Justice Peacock has pointed out that there is no prescriptive right to anything which is "a mere matter of delight and not a matter of necessity." In these circumstances we think that this case has been rightly decided. The plaintiff's cornice, which no doubt projected over the defendant's land for some time, is not a subject with regard to which an easement can be acquired by the plaintiff. The defendant has clearly a right to the enjoyment of his land *usque ad cælum* unless the plaintiff can establish a prescriptive right to project his cornice over it. In our opinion he cannot successfully do so, and this appeal must be dismissed with costs.

\* Appeal dismissed.

30 C. 506 (=7 C. W. N. 437.)

[506] APPELLATE CIVIL.

RADHARAMAN MUNSHI v. SURNOMOYI DEBI.\* [17th March, 1903.]

*Interest—Mesne profits, interest on—Civil Procedure Code (Act XIV of 1882) s. 211.*

Regard being had to the provisions of s. 211 of the Civil Procedure Code (Act XIV of 1882) in the ascertainment of mesne profits due to the decreeholder, he is entitled to receive interest, year by year, on the amount found to be due.

*Hurro Durga Chowdhry v. Surrut Sundari Debi* (2) distinguished.

\* Appeal from Order No. 100 of 1902, against the order of Jogendra Chandar Moulik, Additional Subordinate Judge of Pubna and Bogra, dated Nov. 26, 1901. \*

(1) (1869) 3 B. L. R. (O. C.) 18, 47.

(2) (1881) I. L. R. 8 Cal. 332; L. R. 9 I. A. 1.

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APPEAL by Radha Raman Munshi, decree-holder.

On the 4th May 1901 the decree-holder applied to the Additional Subordinate Judge of Pubna and Bogra for the appointment of a commissioner to deliver possession of the land in respect of which he obtained a decree against Surnomoyi Debi and others and to ascertain mesne profits. A commissioner was appointed, who submitted his report on the 9th August 1901. Both the decree-holder and the judgment-debtors objected to the commissioner's report on various grounds. The learned Additional Subordinate Judge, having disposed of all the objections as to mesne profits, observed as follows:—

"Lastly, it is contended on behalf of the decree-holder that interest should be allowed year by year on the yearly profits as part of the *wasiat*. But having regard to the number of years for which mesne profits are claimed, and to other circumstances of the case, I decline to award interest year by year on the yearly profits, before the ascertainment of the exact amount thereof. I will, however, allow interest at 6 per cent. per annum from this date."

Against this order disallowing interest on the mesne profits of each year, the decree-holder appealed to the High Court.

Babu Golap Chander Sarkar for the appellant.

Babu Taruck Chunder Chuckerbutty for the respondent.

PRINSEP AND STEPHEN, JJ. The question raised in this appeal is whether, in the ascertainment of mesne profits due to the [507] decree-holder, appellant, he was entitled to receive interest, year by year, on the amount found to be due.

The Subordinate Judge has refused to give him interest on such a calculation, and has given interest only on the amount actually ascertained and embodied in the decree. The case of *Hurro Durga Chowdhurani v. Surut Sundari Debi* (1) has been cited by the learned pleader for the respondent as authority for this order. On the other hand, the learned pleader for the appellant draws our attention to section 211 of the Code of 1882, which was enacted after the judgment of their Lordships of the Privy Council, in the case just mentioned, in which mesne profits are defined to mean "those profits which the person in wrongful possession of such property actually received or might with ordinary diligence have received therefrom, together with interest on such profits." We find that the previous Code of 1877 for the first time defined mesne profits and that, in that definition the last words, *viz.*, "together with interest on such profits," did not appear, and it was in accordance with the terms of that Code that the judgment of their Lordships of the Privy Council was pronounced. It seems to us that these words, which have since been embodied in this definition, should receive some express meaning. They clearly do not refer to interest due after the ascertainment of the amount of the mesne profits due under the decree, because the Courts have been given a discretion to award interest separately on the amount so ascertained. The words, therefore, seem to us to contemplate that interest should form a separate item in the calculation of the amount due as mesne profits, and in this view, we modify the order of the Subordinate Judge and direct that he allow interest at the rate of twelve per cent. per annum, year by year, on the profits before the ascertainment of the actual amount of such mesne profits under the decree. We observe that the Subordinate Judge has given interest on the amount so ascertained regarding which no appeal has been made.

(1) (1881) I. L. R. 8 Cal. 332 ; L. R. 9 I. A. 1.