

Baboo *Ramesh Chandra Mitter* contended that the respondents were entitled to the costs of translation and printing as they were costs incurred in the Court in this country—*Mussamat Umatal Fatima v. Azhur Ali* (1) and *Saroda Prasad Mullick v. Lachimpat Sing Dugar* (2). The decree was

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v.  
LOPEZ.

(1) *Before Mr. Justice Ainslie and Mr. Justice Paul.*

*The 20th May 1872.*

MUSSAMAT UMATUL FATIMA  
AND OTHERS v. AZHUR ALI.\*

Baboo Ram Charan Mitter for the petitioner (decree-holder).

*The 13th April, 1871.*

Munshi Mahomed Yusaff for the appellants.

Mr. R. E. Twidale and Baboo Chandra Madhab Ghose for the respondent.

THE judgment of the Court was delivered by

AINSLIE, J.—In this case the decree of the Privy Council reverses the decrees of the three Courts in India with costs in each Court; it also dismisses the suit with costs, and specifies the sum of £490 10s. 10d. sterling as the costs of the appeal to the Privy Council. The question is whether this sum of £490 10s. 10d. includes the costs of translation, &c., incurred in this Court. We do not entertain any doubt that the costs assessed in England were only the costs incurred before the Privy Council, and that they do not include the costs of translation, &c., incurred in this country. The terms of the decree are ample to cover all costs incurred in any stage of the suit, and the Court below rightly overruled the appellant's objection.

There has been a cross-appeal on the part of the respondent for interest on costs; but we are of opinion that, as no interest has been provided for in the decree of the Privy Council, it cannot be allowed now by this Court.

The appeal is dismissed with costs. The cross-appeal is also dismissed.

(2) *Before Mr. Justice Markby.*

SARODA PRASAD MULLICK (APPELLANT TO THE PRIVY COUNCIL), v. LACHMIPAT SING DUGAR AND OTHERS (RESPONDENTS).

MARKBY, J.—As this application now stands, it prays that the Court will send the order of Her Majesty in Council, together with the usual certificate of the costs of translation and preparation of the paper-book of the Privy Council appeal, to the lower Court for execution in the usual course. The order in Council directs that the decree of this Court of the 26th March 1868 and the order of the 10th July 1868 be and the same should be reversed with £238 16s. 6d. sterling costs, and that the decree of the Principal Sudder Ameen of Dinagapore of the 11th April 1867 should be affirmed with costs.

Now it appears to me, looking to that order of Her Majesty, that, upon the face of it, the only costs of the appeal to Her Majesty to which the appellant is entitled is the sum therein specifically named as the costs of such appeal. It is true that the report of the Privy Council, upon which the order is founded, advised Her Majesty that the decree of this Court should be reversed "with costs." But those words do not occur in the order of her Majesty, as neither do the subsequent words contained in the report of the Privy Council, that the decree of the Principal Sudder Ameen should be affirmed with costs in India. But even if I were at liberty to decide this matter upon the report of the Privy Council, and not upon the order in Council (which I do not think I should be at liberty to do), still, looking at the report of the Privy Council, it seems to me that all the costs to which the appellant is entitled in the Privy Council appeal is the sura I have mentioned, because the report of the Privy Council goes on to say:—"In case your Majesty should be pleased to approve of this report, and to dismiss the

\* Miscellaneous Special Appeal, No. 6 of 1871, from an order of the Judge of Patna, dated the 21st December 1870, affirming an order of the Subordinate Judge of that district, dated the 10th September 1870.

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with all costs in the Courts below. The decree-holder was also entitled to interest on such costs—*Haradhun Sandyal v. Rash Monee Dassia* (1). *Mosoodun Lall v. Bheekaree Singh* (2) is distinguishable.

Mr. *Twidale* in reply cited *Onraet v. Sankar Dutt Sing* (3)

The judgment of the Court was delivered by

BAYLEY, J.—We think there can be no doubt whatever in this case. The order of the Privy Council was in these terms (*reads.*)

Three objections have been taken in this appeal: *firstly*, that the costs of translation and printing should not have been allowed to the decree-holder;

appeal, then their Lordships do direct that there be paid by the respondents to the appellant the sum of £238 10s. 6d. sterling for the costs thereof." And where an order of a Court directs generally in the first instance that costs should be paid and then afterwards specifies a particular sum in respect of those costs, then, on ordinary principles of construction, I should say that those specified costs comprise all the costs to which the party will be entitled.

But the doubt arises in this way, in almost all the appeals which go to the Privy Council, there are costs incurred here for translating and preparing the record for transmission to England; and I am informed, and as far as I can discover correctly informed, that it never has been the practice of the Privy Council to make any order in specific terms as to these costs, and that whenever a specific sum is allowed by the Privy Council as costs of appeal, that is considered to cover the costs of appeal in England only, and that it has always been assumed that an order drawn in this form covers the costs here, though they are not mentioned; and of course if so, the applicant is entitled to them, as this Court has no discretion to disallow any costs allowed by the Privy Council. Now, I feel bound to say that it seems to me to be by no means a matter of course that, because the costs are allowed which are incurred in England, the costs for translating and preparing the record for transmission to England should be allowed also. It has been constantly the subject of remark, both here and in England, that the records which are transmitted by us are unnecessarily long; but this Court has very little power over that matter, as we are compelled to transmit in some shape

or other all such documents, except merely formal documents, as the parties require. We have, however, made rules for the express purpose of enabling the Privy Council to judge whether the record transmitted is open to this complaint, and whether costs which are unnecessary have been incurred in this respect. But these rules will be wholly ineffectual if it continue to be assumed as a matter of course that all decrees of the Privy Council, which give a specific sum for costs, give by implication the costs here also. But having said this, because it appears to me desirable to draw attention to the matter, I do not think I should be justified in disallowing these costs. I think it has been too long the practice of this Court to allow them in all cases for me now to adopt a different rule, and I should be the more unwilling to disallow the costs of this case, because having seen the paper, and having formed an opinion as far as I could, it seems to me that it is not probable that the Privy Council would have thought it necessary to deprive the appellant of these costs, their Lordships having allowed the general costs. I can see nothing at all in this record to suggest that there was any unnecessary expense incurred here. Therefore, upon the whole, I think I ought to allow this application to be granted. Possibly, had there been apparent extravagance and waste in the preparation of the record for transmission to England, I should have referred the parties to the Privy Council for an order on this subject.

(1) 2 W. R., Mis., 21.

(2) 6 W. R., Mis., 109.

(3) 5 B. L. R., App., 60.

secondly, that no interest should have been allowed on those costs; and, thirdly, that no interest should have been allowed on the sum of £276. 12s. 2d. allowed as costs by the Privy Council.

The Full Bench decision of *Mosoodun Lall v. Bhekarée Sing* (1) has been very much relied upon by the appellant to show that we should not go beyond the terms of the decree, and it is contended that as there is nothing in the decree specified to show that the charges for translation or printing are to be calculated as costs of these Courts, or that any interest was awarded either on those charges or on the £276 12s. 2d. awarded as costs by the Privy Council, none of these items should have been allowed.

Now it is quite clear that what is affirmed by the Privy Council is the decree of the Zilla Court of Bhaugulpore dated the 9th February 1865 with costs in the Courts below. The "Courts below" included also the High Court. In the High Court the cost of translation and printing had to be undergone. It was a cost actually incurred and necessary to be incurred by the parties, and therefore the terms of the decree of the Privy Council in this case clearly include the charges for translation and printing as costs in the Courts below.

The only cases in which the question of translation and of printing being included as costs had been before this Court are one heard by Markby, J., sitting in the Privy Council Department on the 20th May 1872 (2), and one by Ainslie and Paul, JJ. (3). In both the cases the result of the orders passed is that the charges for translation and printing should be allowed as costs. Under these circumstances it seems to me that the first ground of appeal must fail.

As regards the second objection it appears that the decree of the Zilla Court, which is the decree affirmed by the Privy Council and which has now to be executed, gives interest on the costs incurred. Now the charges for translation and printing are also costs incurred. The money has been actually expended by the parties, and as the decree provides for interest on the costs, the decree-holder should not lose the interest on such costs.

As regards the third objection, viz., as to the interest on the £276 awarded as principal costs by the Privy Council in England, it is clear from the terms of the order of the Privy Council that a distinction is drawn between the costs allowed by that tribunal and the costs incurred in the Courts below. It seems to have been the intention of the Privy Council to make the £276 12s. 2d. a part of their own order for costs. No provision is there made for any interest on that sum, and we therefore think that no interest ought to be allowed on that sum.

The result of our order, therefore, is that the order of the lower Court is

(1) 6 W. R., Mis., 109.

(3) *Mussamat Umatul Fatima v. Ashur*

(2) *Saroda Prasad Mullick v. Lachmipat Ali*, ante, p. 23.

*Sing, Dugar*, ante p. 23.

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affirmed except in so far as it awards interest on the £276 12s. 2d. awarded as costs by the Privy Council,

Under the circumstances we think that each party should bear his own costs of this appeal.

*Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Bayley*

1872  
July 9.

BOCHA GOPE CHOWDHRY (PLAINTIFF) v. BRAJAGABIND DAS  
(DEFENDANT).\*

*Suit against the Surety of a Nazir for Damagas—Act VIII of 1859, s. 223.*

The surety of a Nazir who had entered into the usual bond of indemnity with the Collector of the district against all losses caused by the Nazir during the tenure of his office, was held not liable, at the suit of a person whose property had been misappropriated by the Nazir, to make good any loss sustained by such person.

In a suit in which Gopal Krishna was plaintiff, and Bocha Gope was defendant, Gopal Krishna caused fifteen buffaloes of Bocha Gope to be attached before judgment. A decree was passed in favor of Gopal Krishna. In execution of this decree, ten of these buffaloes were sold. Bocha Gope then brought a suit against Gopal Krishna for recovery of the value of the five buffaloes and their five young ones, alleging that they had been misappropriated by Gopal Krishna. The Munsif passed a decree in favor of Bocha Gope, but on appeal the Subordinate Judge reversed the decree, and held that no suit lay against Gopal, and that Bocha Gope should have brought his suit against the Nazir, who was responsible under s. 233, Act VIII of 1859. Bocha Gope then instituted a suit against the Nazir, Thakur Das, and obtained an *ex parte* decree. Bocha Gope then applied for execution of this decree, but found it impossible to realize anything from Thakur Das. Hence this suit was instituted by Bocha Gope against Brajagabind, the surety of the Nazir, and the Collector of Sylhet (on behalf of the Government), for recovery of the value of the five buffaloes and their five young ones misappropriated by the Nazir.

The defendant Brajagabind set up (*inter alia*) that he was only liable to the Government, and not to the plaintiff, for any loss caused by the act of the Nazir.

The bond under which Brajagabind became a surety for the Nazir contained the following clause:—

“If he (the Nazir) appropriates to himself the *tehbil* or any money pertaining to the office of Nazir, or otherwise causes loss or becomes liable to Government for any sum, then neither I nor my heir will object to pay the appropriated money, and the loss incurred will be recovered by sale of the property pledged.”

\* Special Appeal, No. 294 of 1872, from a decree of the Judge of Sylhet, dated the 9th October 1871, reversing a decree of the Subordinate Judge of that district, dated the 21st June 1871.