

Before Mr. Justice Bayley and Mr. Justice Ainslie.

1872  
July 2.

MADAN THAKUR (PLAINTIFF) v. FELIX LOPEZ AND ANOTHER (DEFENDANTS).\*

*Decree of the Privy Council—Costs for Translation and Printing—Interest.*

When on appeal to the Privy Council it was ordered that the decree of the High Court be reversed with £276 12s. 2d. costs, and that the decree of the Zilla Court be affirmed with costs in the Courts below, in execution of the decree it was held that the decree-holder was entitled to the costs of translation and printing incurred by him for transmission of the record to the Privy Council and that he was entitled to interests upon those costs, but not to interest upon the said £276-12-2 (1).

The defendant (respondent) in this case had obtained a decree in the Privy Council against the plaintiff, which was as follows :

“It is ordered that the said decree of the High Court of Judicature at Fort William in Bengal of the 28th November 1865 be and the same is hereby reversed with £276 12s. 2d. costs, and that the judgment or decree of the Zilla Court of Bhaugulpore of the 9th February 1865 be affirmed with costs in the Courts below.”

He applied to the Subordinate Judge of Bhaugulpore to be allowed the costs of translation and printing incurred by him for transmission of the record to the Privy Council; he also claimed interest thereon and on the amount of costs mentioned in the decree of the Privy Council. The plaintiff (appellant) objected to the allowance of the costs of translation and printing and interest as not being covered by the decree of the Privy Council,

The Subordinate Judge held that the respondent was entitled to recover the amount of costs incurred by him for translation and printing, with interest thereon, and also interest on the amount of the decree of the Privy Council.

The plaintiff appealed to the High Court,

Mr. Twidale for the appellant.

Baboo Bamesh Chandra Mitter and Srinath Banerjee for the respondent.

Mr. Twidale contended that costs incurred in India, if not expressly allowed by the decree of the Privy Council, could not be allowed in execution. The Court executing a decree could not go beyond the terms of the decree. No interest could be allowed on such costs as it was uncertain from what date and at what rate such interest would be payable. As the decree of the Privy Council had not allowed interest, the Courts here could not allow it. To do so would be going beyond the terms of the decree—*Mosoodun Lall v. Bheekaree Singh* (2).

\* Miscellaneous Regular Appeal, No. 81 of 1872, from an order of the Subordinate Judge of Bhaugulpore, dated the 13th January 1872.

(1) See *Rajah Lilanand Sing v. Maharaja Luckimpur Sing Bahadur*, 5 B. L. R., 605. (2) 6 W. R., Mis. 109.

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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MADAN  
THAKUR  
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.