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BISTOO CHUNDER BANERJEE v. NITHORE MONEE DABEE.

ONE Mohamayah Dabee obtained a decree against Rakhal Doss Mookerjee, Bhuggobutty Churn Chatterjee, and Nobotarinee Dabee. Rakhal Doss Mookerjee paid the whole amount of the decree, and sold his right of action to recover the two-thirds thereof from Bhuggobutty Churn and Nobotarinee to Bistoo Chunder Banerjee. Bhuggobutty Churn died, leaving a daughter named Nithore Monee. This suit was instituted by Bistoo Chunder against Nithore Monee and Nobotarinee for recovery of the two-thirds of the amount paid in satisfaction of the decree obtained by Mohamayah, with interest thereon from the date of payment.

The defendants contended that the plaintiff was not entitled to the interest claimed by him.

The Munsif held that, as no notice had been given under Act XXXII of 1839, and as the plaintiff had allowed a period of five years to elapse before the institution of the suit, he was not entitled to recover interest from the defendants. He accordingly passed a decree in favor of the plaintiff for the amount of the principal only.

On appeal the Subordinate Judge confirmed the decree of the lower Court.

The plaintiff appealed to the High Court.

Baboo *Umbika Churn Banerjee* for the appellant contended that, in a suit for contribution, no written demand for interest was necessary under Act XXXII of 1839, and that the plaintiff was entitled to interest—*Golam Ahmed Shah* v. *Behary Loll* (1) and *Lulleet Biswas* v. *Prosonomoyee Dossee* (2). The

(1) Marsh. Rep., 239.

(2) *Before Mr. Justice L. S. Jackson and Mr. Justice Glover.*

Baboo *Umbika Churn Bose* for the respondent.

LULLEET BISWAS (ONE OF THE DEFENDANTS) *v.* PROSONOMOYEE DOSSEE (PLAINTIFF) & ANOTHER (DEFENDANT).*

The 1st February 1872.

Suit for Contribution—Interest.

Baboo *Bunghsee Dhur Sein* for the appellant.

The judgment of the Court was delivered by

JACKSON, J.—This was a suit for contribution. Two objection were raised in special appeal; the one being that interest has been allowed, although no demand had been made; the second is

* Special Appeal No. 1057 of 1871, from a decree of the Additional Judge of Jessore, dated the 20th May 1871, reversing a decree of the Sudder Munsif of that distsict, dated the 28th June 1870.

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mere fact of there being delay in the institution of the suit is not sufficient to disentitle the plaintiff to recover interest.

Baboo *Grish Chunder Mookerjee* for the respondent was not called upon.

The judgment of the Court was delivered by.

GLOVER, J.—The plaintiff in this suit was the purchaser of a right of-action in a contribution suit against certain parties. He brought the suit and was successful in getting a decree against the defendants for certain sums to be paid by them severally. The present special appeal is preferred on the subject of interest. The Subordinate Judge refused interest on two grounds : first, because by Act XXXII of 1839 no interest could be allowed, inasmuch as no written demand had been served on the debtor ; and, secondly, because the decree-holder had allowd five years to elapse before making this demand for interest.

The first reason given by the Subordinate Judge is no doubt wrong, Act XXXII of 1839 not applying to contribution suits. This point has been ruled in the case of *Golam Ahmed Shah* v. *Behary Loll* (1) and in the case of *Lulleet Biswas* v. *Prosonomoyee Dossee* (2) But the Judge has given another

that the separate liabilites of the defendants have not been set out in the decree. On the first point, the respondent adduces as authority the case of *Golam Ahmed Shah* v. *Behary Loll* (*a*), which shows that it is usual to allow interest in such cases, because such interest was accustomed to be given by the common law before the passing of the interest law.

As to the extent of the shares, the respondent has no objection to the modification of the decree of the Court below in that particular. The defendant's liability, therefore, will be according to the shares stated, that is to say, the present special appellant and the joint owners with him of the six annas share, will be declared liable for their six annas, and the other defendant for his four annas share.

This is an alteration of the decree which might well have been made by the lower Appellate Court on application to it for that purpose, and, therefore, I think the respondent should get his costs of this Court.

GLOVER, J.—I concur.

(1) Marsh. Rep., 239.

(2) *Ante*, p. 353.

(*a*) Marsh. Rep., 239

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reason which we consider a reasonable one, namely, that the decree-holder slept over his rights for no less than five years before making his demand for contribution, and we do not see any error in law which would justify our interfering with his order. There was no contract between the parties to pay interest, and there is no rule of law by which, in the absence of such contract, an award of interest is made compulsory. It was within the discretion of the Court below either to give or to whithhold interest, and there is no ground for our interfering with his order.

The special appeal is dismissed with costs.

Appeal dismissed.

ORIGINAL CIVIL.

Before Sir Richard Couch, Kt., Chief Justice, and Mr. Justice Pontifex.

1872 *Dec.* 12.
1873 *Feby.* 28.

PURSON CHUND GOLACHA (PLAINTIFF) *v.* KAJOORAM AND ANOTHER (DEFENDANTS).

Second New Trial—Small Cause Court.

It is competent to the Judge of the Calcutta Small Cause Court to grant a second new trial of the same case.

THE defendant having obtained judgment in his favor in a suit in the Small Cause Court, the plaintiff obtained a new trial. Judgment was again given in favor of the defendant. The plaintiff again obtained a rule absolute for a new trial, but subject to the opinion of the High Court on the question "Whether it is competent to the Judges of this (the Small Cause) Court to grant a second new trial on the same case."

Mr. *Woodroffe* and Mr. *Phillips* for the plaintiff.

Mr. *Jackson* for the defendants.

Mr. *Phillips*.—The plaintiff has obtained a rule absolute for a new trial. Under these circumstances I do not know who ought to begin.