

1873
 THE BOMBAY
 BURMAH
 TRADING
 CORPORATION
 LIMITED
 v.
 MIRZA
 MAHOMEDALI
 SHERAGEE.

of the thing to the plaintiff, the plaintiff do reimburse the defendants the charges of bringing the timber to Rangoon? I think not. It must also be borne in mind that the difference between the value of timber at Tonghoo and at Rangoon is not simply made up of the charges incurred in the transport of it, but depends in a large degree upon the wider market at Rangoon and the facility of sale. The defendants having, as is shown above, at their own risk removed the timber from Tonghoo to the place where the suit was afterwards tried, I think the plaintiff is entitled to insist upon the delivery of it to him, and in default of delivery to recover the value of it; and although I quite assent to the proposition of the learned Advocate-General that it is not the business of the Civil Court to inflict punishment on defendants, taking motives into consideration, I must say that we have had sufficient experience of timber suits from Rangoon, and in particular enough is disclosed in the facts of the present case, to make it no matter of regret that the defendants should be made liable to pay heavy damages.

I think therefore that this appeal must be dismissed with costs.

Appeal dismissed.

Before Mr. Justice Glover and Mr. Justice Mitter.

BISTOO CHUNDER BANERJEE (PLAINTIFF) v. NITHORE MONEE DABEE AND ANOTHER (DEFENDANTS).*

Suit for Contribution—Interest—Act XXXII of 1839 (1).

In suits for contribution it is in the discretion of the Court to allow or refuse interest on the amount claimed, whether there has been a written demand for it or not.

(1) "Upon all debts or sums certain payable at a certain time or otherwise, the Court before which such debts or sums may be recovered, may, if it shall think fit, allow interest to the creditor at a rate not exceeding the current rate of interest from the time when such debts or sums certain were payable, if such debt or sums be payable by virtue of some written instrument at a certain time, or if payable otherwise, then from the time when demand of payment shall have been made in writing, so as such demand shall give notice to the debt or that interest will be claimed from the date of such demand until the term of payment; provided that interest shall be payable in all cases in which it is now payable by law."

* Special Appeal, No. 615 of 1872, from a decree of the Subordinate Judge of East Burdwan, dated the 30th November 1871, affirming the decree of the Munsif of that district, dated the 15th December 1870.

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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.

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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. Bekary Loll* (1) and *Lulleet Biswas v. Prosonomoyee Dossee* (2). The

(1) Marsh. Rep., 239.

Baboo *Umbika Churn Bose* for the

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

respondent.

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

The judgment of the Court was delivered by

The 1st February 1872.

Suit for Contribution—Interest.

Baboo *Bunghsee Dhur Sein* for the appellant.

JACKSON, J.—This was a suit for contribution. Two objections 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 district, dated the 28th June 1870.