

referred to, and the other decision in *Zuhoor Hossein v. Mussamut Syedun* (1), and also the expression of opinion of Kemp

1873

CH. WHIRY
GOLUCK
CHUNDER
v.
CH. HOWDRY
GUNGA
NARAIN.

(1) Before Mr. Justice Norman and Mr. Justice E. Jackson.

The 19th February 1869.

ZUHOOR HOSSEIN AND OTHERS
(JUDGMENT-DEBTORS) v. MUSSAMUT
SYEDUN (DECREE-HOLDER).*

Decree, Amendment of—Power of correcting Error in,

Mr. R. E. Twidale for the appellants.
Mr. C. Gregory and Munshee Mahomed Yusuff for the respondent.

THE judgment of the Court was delivered by

NORMAN, J.—In this case the decree was originally passed on the 9th of December 1865. By that decree it was declared that the defendants should pay Rs. 3,265 in respect of wasilat of the year 1267 (1860) with interest, to the Hindu plaintiffs, and that the defendants should pay certain other plaintiffs' wasilat at Rs. 1,575 annually, after deducting the Government revenue, from the year 1268 (1861) to the date of possession. The decree did not proceed to give to the Mahomedan plaintiffs interest on the amount of wasilat awarded from the date of the decree. The defendants appealed to the High Court against the decision of the Principal Sudder Ameen, and that appeal was dismissed. They have since presented an appeal to Her Majesty in Council, which bears date the 12th of March 1867, but the papers have not been transmitted to England. On the 15th of June 1865, the Mahomedan plaintiffs presented a petition to the Principal Sudder Ameen, applying for an amendment of the judgment

on the ground that interest on the wasilat awarded to them had not been included in the decree, and that this was a mistake. The defendants objected to the rectification of the mistake. The Subordinate Judge, after hearing the defendant's objection, considered that it was perfectly legal and proper that the plaintiffs should be entitled to interest on the wasilat awarded to them from the date of the decree.

It is objected in special appeal that this decision was erroneous, inasmuch as the application to the Principal Sudder Ameen was not presented within the period of 90 days from the date of the original decree, and was therefore out of time under s. 377, Act VIII of 1859. We think, however, that merely adding to the decree an order that the decree was to bear interest from its date, was not an act done by way of review of judgment, because it does not appear that the Principal Sudder Ameen was altering, or called upon to alter, anything upon which the decree was passed: it was merely correcting a mistake by adding that to the decree which was already an incident to the then present right to recover the amount of the decree, being that, in respect of any forbearance to enforce the decree, pending the appeal or on default of immediate payment, the amount decreed shall bear interest. We think the Principal Sudder Ameen was right in treating it as a mistake which it was within his power to correct. If the proceedings had gone home, and we had found ourselves in any difficulty in securing to the defendant the power of objecting to the decree in the amended form

*Miscellaneous Regular Appeal, No. 517 of 1868, from an order of the Subordinate Judge of Bhaugulpore, dated the 29th August 1868.

1873

and Glover, JJ. in this very case, *Chowdhry Goluck Chunder v. Chowdhry Gunga Narain* (1), for a Division Bench to hold that

CHOWDHRY
GOLUCK
CHUNDER
v.
CHOWDHRY
GUNGA
NARAIN.

because the application was so late that the Privy Council might have heard the appeal, we should have felt the difficulty in saying that the amendment could be allowed. In the present case the appellant has failed to show that any injustice was done him by the allowance of the amendment which, as appears to us, was simply in furtherance of the decree. The appeal is dismissed with costs.

(1) *Before Mr. Justice Kemp and Mr. Justice Glover.*

The 23rd May 1872.

CHOWDHRY GOLUCK CHUNDER
AND OTHERS (JUDGMENT-DEBTORS) v.
CHOWDHRY GUNGA NARAIN AND
OTHERS (DECREE-HOLDERS).*

Decree, Amendment of—Power to amend.

Baboo *Doorga Mohun Doss* for the appellants.

Baboo *Aushootosh Dhur* for the respondents.

THE judgment of the Court was delivered by

GLOVER, J.—The judgment-debtor is the appellant in this case. He sued a certain number of defendants amongst whom are the present judgment-creditors. The case was decided in favor of the plaintiff against certain defendants, and as against Gunga Narain Masunt and Urdhub Narain, the judgment was that they had been improperly made defendants, and that the plaintiff should pay their costs. The case was appealed to the High Court, and the judgment of the Court below was affirmed. The former

defendants thus become judgment-creditors applied to take out execution and to get their costs when it was objected that they were barred by limitation, more than three years having elapsed from the date of the decree. The Judge considered that the time should count from the date of the decree of the High Court, and that therefore their application for execution was in time. Without going into the question whether or not the Judge was right on that point, although as a matter of fact, we are inclined to think that he was right, we think there is a *prima facie* objection to the judgment-creditors' claim. They say that the judgment of the Court below awarded their costs as against the party who brought the suit. Now as a matter of fact, although there is a remark in the judgment to the effect that these two persons have been improperly made defendants, and that they ought to have their costs from the plaintiff, still in the decree there is no such recital; it merely gives the plaintiff costs as against all the defendants.

It is contended by Baboo Aushootosh Dhur for these defendants that we ought to read the judgment and decree together, and if we can be reasonably certain that it was the intention of the Judge to award costs to the respondents, that we ought to give them such costs.

In the first place it is an extremely dangerous principle to allow any interpolation to be made in the wording of a decree, or to attach any meaning to the words of a decree which cannot be fairly and plainly

* Miscellaneous Regular Appeal, No. 116 of 1872, from an order of the Judge of Midnapore, dated the 9th February 1872.