

*Before Mr. Justice Miller and Mr. Justice Maclean.*

1878  
June 19.

KHAJAH AHSANOULLAH (PLAINTIFF) *v.* KAJEE AFTABOOD-  
DEEN (DEFENDANT).\*

*Rent, Enhancement of—Interest—Arrears of Rent.*

In a suit in which a decree is given for arrears of rent at an enhanced rate, interest is to be allowed not only from the date of the decree, but from the time the rent became due.

THIS was a suit for arrears of rent at an enhanced rate for the year 1279 (1872). The lower Court gave the plaintiff a decree, and the only question material to this report was from what date the plaintiff was entitled to recover interest. The lower Court, referring to *Raj Mohun Neogee v. Anund Chunder Chowdry* (1), held, that the plaintiff was not entitled to interest while the suit was pending, but only from the date of the decree.

From this decision the plaintiff appealed.

Mr. *H. Bell*, Baboo *Chunder Madhub Ghose*, Baboo *Doorga Mohun Dass*, and Baboo *Mohini Mohun Roy* for the appellant.

Baboo *Sreenath Doss* and Moonshee *Serajul Islam* for the respondent.

The judgment of the Court on this point was delivered by

MACLEAN, J. (MITTER, J., concurring).—The only question arising in this appeal which requires a separate decision is, whether the plaintiff is entitled to any interest, and if so, from what date. The Subordinate Judge has refused to allow interest prior to determination of the rent, and he supports his refusal by a decision of this Court, dated 15th July 1868, in *Raj Mohun Neogee v. Anund Chunder Chowdry* (1).

\* Regular Appeal, No. 11 of 1877, against the decree of Baboo Kali Doss Dutt, Roy Bahadur, Second Subordinate Judge of Zilla Tipperah, dated the 4th of November 1876.

(1) 10 W. R., 166.

We think that that decision is not in accordance with the principles laid down in the Full Bench decision in *Doyamoyee Chowdrainee v. Bholanath Ghose* (1). There the principle laid down is, that the non-payment of the rent at the enhanced rate constitutes the cause of action, or, in other words, an arrear of rent, liable for interest, does not depend upon the date of decree, but upon the date upon which it became due.

When a tenant is called upon by notice to pay an enhanced rate of rent, he has more than one course open to him. He can take the initiative, and complain of excessive demand of rent, or he can contest his liability to pay what is asked for in answer to a suit; but whichever course he adopts, and whatever the result of his contention, the rent adjudged to be due is none the less an arrear if not paid when due. The amount of rent is fixed by the notice, and if the tenant neither pays that amount at the appointed time, nor succeeds in showing that it is an unjust demand, he is properly liable for the consequences of his failure to pay in due time,—namely, for interest.

We therefore consider the Subordinate Judge's decision erroneous, and decree this appeal with proportionate costs. The plaintiff is entitled to interest at 12 per cent. on the instalments of rent as they fell due up to this date, and we allow interest at 6 per cent. on the amount of this decree till realization.

*Appeal allowed.*

*Before Mr. Justice Miller and Mr. Justice Maclean.*

KRISHNA KISHORE SHAHA (DEFENDANT) v. BIRESHUR  
MOZOOMDAR (PLAINTIFF).\*

*Small Cause Court, Mofussil, Jurisdiction of—Act XI of 1865, s. 6, cl. 4—Beng. Act VIII of 1869, s. 104—Act X of 1859, s. 23, cl. 2—Special Appeal—Act XXIII of 1861, s. 27.*

The plaintiff, the holder of a patni taluk, by an arrangement with the defendants, his zemindars, paid the Government revenue and the road-cess

(1) B. L. R., Sup. Vol., 592; S. C., 6 W. R., Act X Rnl., 77.

Special Appeal, No. 2061 of 1877, against the decree of Baboo Nund Coomar Bose, Rai Bahadur, Second Subordinate Judge of Zilla Rajshahye, dated the 25th of June 1877, reversing the decree of Baboo Kaylash Chunder Mookerjee, Sudder Munsif of that District, dated the 15th of September 1876.

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KHARAJAH  
ASHANULLAH  
v.  
KAJEE  
AFTABOOD-  
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