

APPELLATE CIVIL.

Before Mr. Justice Markby and Mr. Justice Mitter.

MAHTAB CHUNDER BAHADOOR, MAHARAJAH OF BURDWAN,
(JUDGMENT-DEBTOR) v. RAM LALL MOOKERJEE (DECREE-
HOLDER).*

1877
Dec. 7.

Execution of Decree—Interest on Costs.

Where a decree gives interest upon the principal sum recovered only, and no mention is made as to interest on costs, the successful party is not entitled to such interest.

THE facts of the case so far as they are material to this report are as follows:—On the 21st June, 1876, the Judge of Burdwan passed a decree against the Maharajah of Burdwan, ordering him to pay the decree-holder (the respondent) a certain claim which had been proved against him, together with interest at 5 per cent. and costs.

The decree-holder executed his decree for costs and interest, whereupon the Maharajah made an objection to the payment of interest on the costs, on the ground that the decree was silent as to that point.

The Subordinate Judge overruled the objection, and the Maharajah thereupon preferred the present appeal.

Baboo Jugadanund Mookerjee (with him Baboos Chunder Madhub Ghose and Bussunt Coomar Ghose), for the appellant, contended that the Court below was in error in awarding interest on costs when the decree was silent on the subject; and cited: *Mosoodun Lal v. Bheekaree Singh* (1), *Ulfutunnissa v. Mohan Lal Sukal* (2), *Ameeroonissa Khatoon v. Meer Mahomet Mozaffir Hossain Chowdry* (3), *Sadasiva Pillai v. Ramalinga Pillai* (4), *Rajah Leelanund Singh v. Maharajah Joy Mungul Singh* (5).

* Miscellaneous Regular Appeal, No. 209 of 1877, against the order of the Subordinate Judge of Zilla Hooghly, dated the 11th of May, 1877.

(1) 6 W. R., F. B., Mis. Rul., 109.

(3) 18 W. R., 103.

(2) 6 B. L. R., App., 33.

(4) L. R., 2 I. A., 219.

(5) 15 W. R., 335.

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Baboo *Shamlall Mitter*, for the respondent, argued, that the Subordinate Judge rightly overruled the objection that was made as to the nonpayment of interest on costs, and quoted *Digamburree Dabee v. Nundgopal Banerjee and Jugodumb Dabea* (1), *Kirkland v. Modee Pestonjee Khoorsedjee* (2), per Knight Bruce, V. C., as authorities showing that interest had been allowed on costs; and *Rajah Lelanund Singh v. Maharajah Luckmissur Singh Bahadoor* (3) as analogous to such decision.

The judgment of the Court, delivered by Mitter, J., so far as it is material to this report, was as follows:—

MITTER, J.—In this case two objections have been raised before us in appeal: *First*, that the judgment of the lower Court is wrong in allowing interest upon costs when the decree does not expressly award it. *Secondly*, that the lower Court was not right in awarding interest upon the principal sum decreed after the 18th September, 1876, when the judgment-debtor deposited the money due from him in the Collector's office, and that at any rate the lower Court should not have awarded interest after the date when the Collector of Burdwan by a roobocary informed the Court that he had no objection to pay the money deposited to the decree-holder.

As regards the first question, although it seems that the practice of the Court was not uniform for some time upon this matter, the later decisions establish that this Court has refused to allow interest upon costs in cases where the decree is silent about it. Of these latter cases *Ulfutunnissa v. Mohan Lal Sukal* (4) and *Ameroonissa Khatoon v. Meer Mahomet Mozaffir Hossein Chowdry* (5) are clearly in point. We think that these decisions are in accordance with the principle laid down in the Full Bench decision (6). Following these decisions, we therefore think that the judgment of the lower Court upon this point is not right. The judgment-creditor is not entitled to interest upon the costs awarded in the decree.

(1) 1 W. R., Mis. Ap., 1.

(2) 3 Moore's I. A., 227.

(3) 13 *Ib.*, 490.

(4) 6 B. L. R., App., 33.

(5) 18 W. R., 103.

(6) 6 W. R., F. R., Mis. Rul., 109.

The learned Judge then proceeded to consider the other objection, which is not material to this report.

MARKBY, J.—I concur.

Appeal dismissed.

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ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

HEMENDRO COOMAR MULLICK, SON OF ROOPLALL MULLICK (PLAINTIFF) *v.* RAJENDROLALL MOONSHEE AND ANOTHER (DEFENDANTS).

1878

Jan'y. 28 and
Feb'y. 11.

Joint Contractors, Suit against—Res Judicata—Contract Act (IX of 1872) s. 43.

A suit in which a decree has been obtained against one of several joint makers of a promissory note, is a bar to a subsequent suit against the others. The effect of s. 43 of the Contract Act is not to create a joint and several liability in such a case. That section merely prohibits the defendant in such a suit pleading in abatement, and thus places the liability arising from the breach of a joint contract and the liability arising from a tort on the same footing.

The rule laid down in the case of *King v. Hoare* (1), and *Brinsmead v. Harrison* (2), is one of principle, not merely of procedure.

APPEAL from a decision of Kennedy, J., dated the 20th of August 1877. The suit was brought to recover the sum of Rs. 1,000, with interest at 12 per cent. per annum, due on a promissory note payable on demand, made in Calcutta by one Gourhurry Shaw, in his name and in the names of his partners, the defendants, on the 28th of November 1873. The plaintiff, on the 2nd September 1874, brought a suit against the two present defendants and Gourhurry Shaw on the promissory note, and in that suit the defendants did not appear. The suit was heard as an undefended suit, and the plaintiff obtained a decree against the defendant Gourhurry alone for the whole amount of the note, the decree ordering that the suit should be withdrawn as against the two present defendants with liberty

(1) 13 M. & W., 494, 505.

(2) L. R., 7 C. P., 547.