

## PRIVY COUNCIL.

GURU PROSANNA LAHIRI

v.

JOTINDRA MOHAN LAHIRI.

P. C.\*  
1907Nov. 4;  
Dec. 2.

[On appeal from the High Court at Fort William in Bengal.]

*Contribution, suit for—Decree for mesne profits—Shareholders in estate—Payments made by the various parties at various times on decree—Reciprocal rights and obligations towards each other on such payments—Calculation of interest on such portion of decree as from time to time remained unpaid—Adjustment of accounts so as to equalize rights and liabilities according to proportionate shares in estate.*

The appellants and respondent were jointly liable under a decree for mesne profits of a share in an estate of which share they had for many years been in wrongful possession. On 3rd April 1882 the amount of the decree was finally ascertained as Rs. 85,795 with interest at 6 per cent. from 12th May 1879 until realization. The liability under the decree was finally extinguished by payments made at different times by the various parties extending down to 17th September 1889 during all which time interest was running on so much of the decreed amount as for the time being remained unsatisfied. In a suit for contribution between the parties disputes arose as to their reciprocal rights and obligations towards each other having regard to the amounts of their several contributions, the times at which they had been made, and the different proportions of their interests in the other shares in the estate itself; and when the suit came on appeal to the Privy Council those shares had been ascertained, but their Lordships remitted the suit to the High Court to retake certain accounts and give consequential relief thereon:—

*Held*, that what ought to be taken as the amount representing the total debt to be discharged was not the actual sum received by the decree-holder in satisfaction of the decree, *viz.*, Rs. 1,25,826; nor a sum arrived at on the footing that the principal and interest had all been paid on the same day, *viz.*, 17th September 1889 which amounted to Rs. 1,39,059; but an amount arrived at by crediting interest at the same rate on each amount paid, in favour of the party on whose behalf it was paid, from the date of payment until the final satisfaction of the decree, *viz.*, Rs. 1,48,873 and that sum was the amount which was to be divided amongst the parties in proportion to their several interests in the property. The burden to be borne was made heavier to all by reason of the length of time over which the liquidation was protracted, while the rights of individuals were equalized by the allowance of interest on their contributions from the time they were made. The account should be taken on the above footing and the amounts of

\* Present: LORD ROBERTSON, LORD COLLINS, and SIR ARTHUR WILSON.

their several contributions set off against their several liabilities so adjusted. This having been in effect done by the High Court the appeal was dismissed.

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APPEAL under clause 39 of the Letters Patent of the High Court, 1865, from a judgment and decree (August 29th 1904) of a Division Bench of the High Court at Calcutta, on a remand to that Court by an order (March 28th 1904) of His Majesty in Council.

The representatives of the defendants were the appellants to His Majesty in Council.

The facts leading to this appeal are fully set out in the report of the case of *Jotindra Mohun Lahiri v. Guru Prosunno Lahiri* before the Privy Council in I. L. R. 31 Calc. 597, and in the judgment in that case which preceded the above-mentioned order in Council.

In compliance with the directions in that order the High Court (BRETT and ASUTOSH MOOKERJEE JJ.) took an account on the principles laid down in the order, and found a balance due in favour of the plaintiff. The judgment appealed from was as follows:—

“This appeal has been remitted to this Court by their Lordships of the Privy Council with the following order:—

“The High Court is hereby directed to take the account between the parties on the principle of computing interest on the total principal of the judgment debt to the date of final extinguishment without regard to the sums from time to time paid on account, and then crediting interest at the same rate on each amount paid, in favour of the party on whose behalf it was paid, from the date of payment to the date of final satisfaction of the decree.”

“The original judgment debt, as it appears from the decree, was Rs. 85,795 with interest thereon at 6 per cent. per annum from 12th May 1879 till realization. The order passed on 3rd April 1882 merely amended a clerical error in the decree and did not in any way affect the provisions as to interest.

“Interest calculated at 6 per cent. per annum on the date from the 12th May up to the 17th September 1889, that is to say for 10 years 4 months and 5 days, amounts to Rs. 53,264. This added to the principal gives a total of Rs. 1,39,059.

“We have now to credit interest at the same rate on each amount paid in favour of the party on whose behalf it was paid from the date of payment until the final satisfaction of the decree on 17th September 1889. We have made this calculations, and the results are shown in the schedule attached to the decree. These show that the plaintiff is entitled to credit for the sum of Rs. 51,295, the defendant No. 1 entitled to credit for Rs. 62,010, the defendant No. 2 to credit for Rs. 23,596, and Kanaktara's share to credit for Rs. 11,973. This last

mentioned sum must be divided into two equal shares, one of which will be credited to the plaintiff, and the others to the defendant No. 1. The half share is Rs. 5,986. The effect of these transfers is that the amount for which the plaintiff is entitled to credit is increased to Rs. 57,281, and the amount for which the defendant No. 1 is entitled to credit is increased to Rs. 67,996. These three sums standing to the credit of the plaintiff, defendant No. 1, and defendant No. 2 respectively, added together give a total of Rs. 1,48,873.

"This sum, it is to be observed, differs substantially from the sum arrived at under the directions of their Lordships by adding interest to the original judgment-debt from the date of decree up to the date of realization. This amount has already been shown to be Rs. 1,39,059.

"These two sums again differ from the amount which was actually paid into Court in satisfaction of the judgment debt. This sum is arrived at by adding together all the payments made by the different parties in satisfaction of the decree, and amounts to Rs. 1,25,866.

"The difficulty now presents itself of following the further instructions of their Lordships and taking an account of this footing. In order to prepare any account it is first necessary to remove the discrepancy between the total sum arrived at by adding the total interest to the judgment-debt and that arrived at by adding to each payment interest at the same rate from the date thereof up to date of final satisfaction of the decree, otherwise it is impossible to prepare any account. The most equitable method of removing the discrepancy would appear to be to debit to the different parties sums out of the excess of the latter over the former in proportion to their respective shares in the estate. The difference is Rs. 9,814 and the proportionate share debitable to the plaintiff is Rs. 3,159, that debitable to the defendant No. 1, Rs. 4,692 and that debitable to defendant No. 2 is Rs. 1,963. The result of these deductions is that the amount standing to the credit of the plaintiff is reduced to Rs. 54,122; that to the credit of defendant No. 1 to Rs. 63,304 and that to the credit of defendant No. 2 to Rs. 21,633.

"Out of the total liability of Rs. 1,39,059 the plaintiff's share is Rs. 33,896, defendant No. 1's share is Rs. 55,624, defendant No. 2's share is Rs. 27,811 and Kanaktara's share Rs. 21,728. This last must be divided into two equal halves of Rs. 10,864 each, and each half transferred to the shares of the plaintiff and defendant No. 1, respectively. The result is, the plaintiff's liability is Rs. 44,760, the liability of defendant No. 1 is Rs. 66,488, and defendant No. 2's liability is Rs. 27,811.

"If the amounts as determined above as standing to the credit of each of the parties be set off against these sums, it will be found that the plaintiff has made an excess payment of Rs. 9,362, the amount standing to the credit of defendant No. 1 falls short of his liability by Rs. 3,184, and the amount to the credit of defendant No. 2 falls short of his liability by Rs. 6,178.

"The plaintiff will therefore be entitled to a decree for Rs. 3,184 against defendant No. 1 and for Rs. 6,178 against defendant No. 2. The plaintiff will also recover interest on these sums from the defendants at 6 per cent. per annum from the date of suit up to the date of realization. Plaintiff will also

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recover costs in this and the Lower Court from each of the defendants in proportion to the amounts decreed against them."

On this appeal,

*Jardine K. C.* and *C. W. Arathoon*, for the appellants, contended that the High Court had wrongly re-taken the account directed by the order of His Majesty in Council. The calculation of what was due under the decree should have been started from 3rd April 1882 and not from 12th May 1879, and calculating from that date the amount would be Rs. 1,24,148 and not Rs. 1,39,059 the amount on which the High Court calculation had proceeded. The sum of Rs. 740 should have been excluded from the amount of the payments with which the respondent was credited as that amount was not actually paid by him. The High Court should not have debited against the payments with which the appellants were credited the portions of the sum of Rs. 9,814 (Rs. 4,692 and Rs. 1,963 respectively) which they appeared to have considered were debitable to them in proportion to their respective shares, and their so debiting them was not in accordance with the direction in the order in Council. That amount (Rs. 9,814) became due in the accounts by the respondent's laches, and should have been deducted from the amount credited to the respondent. On a proper construction of the judgment of their Lordships of the Privy Council, and in accordance with the directions of the order in Council, the first appellant should be absolved from all liability, and the second appellant would not be liable for more than Rs. 1,232.

*Cowell* and *DeGruyther*, for the respondent, contended that the High Court had rightly carried out the directions of the order in Council. There was no direction in that order to vary the items with which the respondent was debited or credited. He was credited with interest from 12th May 1879 and all the parties were liable for it; and he gave credit for the Rs. 740 and all parties got the benefit of it. The mode in which the High Court had dealt with the sum of Rs. 9,814 was in accordance with the principle laid down in the order in Council. The appellants were credited with compound interest in respect of all payments made by them prior to 17th September 1889, but the respondent was only credited with accumulated simple

interest on that date. The Rs. 9,814 represented the total of interest upon interest, and should in any case be distributed rateably according to the shares of the parties. To debit that sum to the respondent would be contrary to the principle laid down in the order in Council, which was that the appellants should have the advantage of interest in respect of payments made earlier than those of the respondent; they were credited with larger sums for interest than the respondent in proportion to their shares in the estate, and so far as those sums were increased by being interest on interest, that is, by sums which included the Rs. 9,814, by so much their advantage was enhanced. The decree for the respective amounts against the appellants made by the High Court was, it was submitted, correct.

*Jardine K. C.* replied.

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The judgment of their Lordships was delivered by

LORD COLLINS. The history of this long and complicated litigation, which has now, it is to be hoped, reached its ultimate stage, is compendiously stated in the judgment of this Board delivered by Sir Arthur Wilson on 23rd March 1904, which is appended to this case, and only a very brief statement is necessary to make the particular point that now arises for discussion intelligible.

Dec. 2.

In 1882 the parties to this appeal had become liable jointly for the payment of a sum which had been decreed to be paid by them for mesne profits of a certain share in an estate, of which share they had for many years been in wrongful possession. The amount for which the decree was made was finally ascertained on 3rd April 1882 as Rs. 85,795, upon which sum interest at six per cent. from the 12th May 1879 was payable until realization. The shares in the estate of the parties to this action were liable to be seized in execution under the decree. The liability under this decree was finally extinguished by payments made at different times by the various parties to this suit extending down to 17th September 1889, during all which time interest was running on so much of the decreed amount as for the time being remained unsatisfied.

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After the liability to the decree-holders had been thus satisfied, a dispute which has led to much litigation arose between the contributors as to their reciprocal rights and obligations towards each other, having regard to the amounts of their several contributions, the times at which they had been made and the different proportions of their interests in the other shares in the estate itself. This litigation was carried up to the High Court at Calcutta, and from thence to this Board, who remitted it to the High Court with directions as to certain accounts to be taken and the consequent relief to be given. The High Court accordingly took accounts and made a decree finding a certain balance payable to the plaintiff, the now respondent. Against that decree the other parties or their representatives, by leave of the High Court, now appeal. They take exception to two mistakes, as they allege, of fact—

- (a) That the account has been taken and interest, calculated from too early a date, viz., from the 12th May 1879 instead of from the 3rd April 1882.
- (b) That a sum of Rs. 740 should not have been credited to the respondent.

Their Lordships are of opinion that both these objections, which go to fact only and not to principle, fail, for the reasons given by the respondent. The appellants further contended that the Court below have not correctly followed out the directions of this Board in the manner in which they have adjusted the shares and obligations of the parties *inter se* upon the accounts so taken. As pointed out in Sir Arthur Wilson's judgment, the inequality which it was sought to remedy by the accounts directed was that which arose by reason of the fact that the payments which stopped *pro tanto* the running of interest on the decretal amount operated for the benefit of those who had not paid them as well as of those who had. The provision that, in taking the account interest should be allowed on the sums paid from the date of payment, adjusted *inter se* the inequality thus arising between the contributors, and from an account so taken it was possible to assess the exact proportion which each contributor had in fact borne in discharging the common burden. This being ascertained, the amount in fact contributed had to be

compared with the share of the common obligation properly falling to him in virtue of his proportionate interest in the estate. The shares in the estate of each of the contributors were not in controversy, and the only figure open to discussion would now be what ought to be taken as the figure representing the total debt to be discharged, for this is what had to be distributed among the contributors and borne by them in proportion to their interests. Three different figures have been suggested in the discussion—

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(i) That which represents the actual sum which was received by the decree-holder in satisfaction of his decree, viz., Rs. 1,25,826.

(ii) The sum arrived at under the order of the Privy Council, on the footing that the principal and interest had all been paid on the same day, viz., the 17th September 1889, which amounted to Rs. 1,39,059.

(iii) The sum arrived at as the result of the other account directed by the Privy Council, viz., "crediting interest at the same rate on each amount paid in favour of the party on whose behalf it was paid from the date of payment until the final satisfaction of the decree," viz., Rs. 1,48,873.

Of these figures the first, though it shows the total sum actually received by the decree-holder, ignores the relative positions of the contributors towards each other in view of the fact that the debt was wiped out at the times and in the amounts of the several contributions from time to time made by the debtors; it does not translate into figures the separate and aggregate cost to the contributors at which the debt was wiped out. The second represents only a notional state of facts, and cannot be taken as affording a true total for division according to interests.

It seems to their Lordships that the third figure is that which should be taken as representing between the parties the whole burden which is to be divided among them in proportion to their several interests in the property. The burden to be borne was made heavier to all by reason of the length of time over which the liquidation was protracted, while the rights of individuals are equalised by the allowance of interest on their contributions from the time they were made.

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Thus we have in this figure the total aggregate cost at which *inter se* the common debt was liquidated, and this therefore is the burden to be assumed among them in properly adjusted shares.

In their Lordships' opinion, therefore, the account should be taken on this footing, and the amounts of their several contributions already ascertained set off against their several liabilities so adjusted. This is in effect what has been done by the learned Judges below, though they have arrived at their result by a somewhat longer process.

Having first in the prescribed method ascertained the amounts contributed by each party to the liquidation, they have in the first instance measured each contributor's share of the burden by treating it as an aliquot part of the second of the above figures, viz., Rs. 1,39,059. They have then ascertained the difference between that figure and No. 3, viz., Rs. 1,48,873 at Rs. 9,814, and having divided this sum in proper proportions, have added an aliquot part to the burden falling upon each contributor under the former calculation.

Having thus ascertained the share of the burden and the amount contributed by each, they have decreed the consequential relief.

Their Lordships will therefore humbly advise His Majesty that the decree of the High Court should be affirmed.

The appellants will pay the costs of this appeal.

*Appeal dismissed.*

Solicitors for the appellants: *T. L. Wilson & Co*

Solicitors for the respondent: *Barrow, Rogers & Nevill.*

J. V. W.