

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of
Maluk Chand Bhugwan Das v. Mirza Ab-
dulla Beg, from the Court of the Judicial
Commissioner, Central Provinces of India ;
delivered Tuesday 10th March 1874.*

Present :

SIR JAMES W. COLVILLE.
SIR MONTAGUE E. SMITH.
SIR ROBERT P. COLLIER.

SIR LAWRENCE PEEL.

THEIR Lordships are of opinion that there are no sufficient grounds for disturbing the final order of the Officiating Judicial Commissioner of the Central Provinces in this case.

The sole question between the parties is, whether the Appellants are entitled to have execution, not only for the principal of a judgment debt recovered as long ago as 1849, but for the interest which has since accrued upon that debt. The Judicial Commissioner has stated what their Lordships have no doubt is a correct exposition of the law prevailing in the Central Provinces, viz., that interest is not recoverable by execution upon a judgment debt unless the decree contained some direction for the payment of interest.

Now the original decree is lost, and the best secondary evidence which the proceedings afford of its contents appears to their Lordships to be contained in the Roobacree of the 29th November 1855, which has been brought before them in the Supplemental Record. From the statement

of the decree in that proceeding, it would appear that it was passed for Government rupees 7,432. 14. 9, besides court costs, Government rupees 160. 8, and that it was ordered that the decree for Government rupees 644. 14. 9 should at once be executed, and that Rs. 6,787 should be paid to the Defendant in nine years by certain yearly instalments which are there stated.

Their Lordships are disposed to think that this direction for the payment of the judgment debt by instalments was a part of the original decree; but if it were contained in a separate document, that document must have been almost contemporaneous with the decree, since it appears that on the 14th August 1849, being less than two months after the date of the decree, the Plaintiffs presented a petition for execution in accordance with the terms of the arrangement for the payment of the debt by instalments. Their Lordships have not the means of knowing what were the proceedings which led up to that decree, or the reasons why a decree in a somewhat unusual form should have been made. The learned counsel for the Appellants have argued that a judgment for a debt due from a landowner to a money lender which had carried a high rate of interest, would presumably be drawn up so as to carry future interest. And no doubt this presumption would arise in the case of proceedings in the courts of the regulation provinces. It must be remembered, however, that the administration of justice in the Central Provinces was, certainly in the year 1849, of a somewhat patriarchal character. The contest seems to have been the ordinary contest between a money lender and a needy landowner, and it is impossible to say what motives may have prevailed to induce the creditor to submit to a decree which assured him at all events a very high amount of interest upon the original advance, or what reasons may

have induced the courts, which possessed a very wide discretion, to impose those terms upon him. However that may be, this roobacree certainly affords strong evidence that no direction for the payment of interest was contained in the decree.

After August 1849 there were repeated applications which seem to have been designed to keep the judgment debt alive, rather than really to execute the decree against the debtor. Those proceedings, which are of great length, have been carefully gone through by Mr. Forsyth in his opening. But the material question which arises upon them is, whether they afford any proof that this lost decree did in fact contain a direction that interest should be paid on the judgment debt.

The first proceedings in which there was a serious attempt on the part of the decree holder to realise the amount due to him by means of a sale of the real property of the judgment debtor, were those which were commenced in September 1866, and ended in the report of Mr. Crichton, the Deputy Commissioner, dated the 22nd of January 1868. In them, all the authorities seem to have come to the conclusion that in the absence of the original decree, and in the absence of proof that it directed the payment of interest, it was not proper to put up for execution any part of the villages of the Defendant, except for the liquidation of the principal money decreed. The report recommended a sale of half of one of the villages in order to realise Rs. 6,048. 2, treating that sum as all that was due. Then it seems to have occurred to the Commissioner that if that were the case, it was not necessary to sell any part of the villages of the Defendant. And this is consistent with the unwillingness that notoriously exists in non-regulation provinces to force ancestral property to an execution sale,

if by any other means the creditor can be satisfied. The Commissioner accordingly suggested that the parties should come to an agreement for the liquidation of the debt in some other way. The attempt to effect this failed. The Appellants then appealed against the order disallowing interest, and raised again the question whether interest was recoverable. His Appeal was in the first instance dismissed by the Commissioner. Afterwards that officer, who was new to the case, thought that further inquiry ought to be made whether there was any formal order disallowing the interest, and that if there were not, that the right to interest should be inquired into by the Courts. The question then came before a new Deputy Commissioner, and his decision was carried by appeal before the Commissioner. They both came to the conclusion that the original decree did contain the direction for the payment of interest, and they founded their decision almost entirely upon inferences which they drew from some of the earlier proceedings in execution, and in particular from the proceedings of 1857 and 1858.

It appears to their Lordships that those proceedings do not afford grounds from which such inferences can legitimately be drawn. The final order of 1857 was made upon an application by the judgment debtor who set up an alleged agreement between him and the judgment creditor. It was held that that had not been made out, and all that was really ordered with respect to the claim of the judgment creditor was that the judgment debtor should take steps to pay the amount due. After that, the next proceeding was a fresh application by the judgment creditor for execution in 1858. He brought in his account, which no doubt charged interest. He did not carry out that pro-

ceeding to final execution. The only order that the Court made upon it was,—“ In accordance “ with the request of decree-holder’s Gomashta ” —that is, his own agent—“ this case should be “ struck off the file without execution,” and then the proceeding ends with a statement,—“ Balance “ due, Rs. 6,714. 6. 3, plus interest at “ whatever terms or rate the same may “ have been recorded in the original decision, “ together with the above stated costs of “ execution.” Therefore there was really no adjudication as between the parties that the original decree contained a direction to pay that interest; there was no adjudication as to the amount of interest due; there was simply a statement that the party might in some future proceeding be entitled to execution for the principal sum plus any interest to which he might be entitled under the decree.

But then it is said that all these applications having taken place without any distinct dispute on the part of the debtor, until it appeared that the original decree had been lost, that interest was payable, it must be assumed that he tacitly admitted that the original decree did contain a direction for interest. Their Lordships cannot think it would be safe to draw such an inference from these proceedings. In many of them he did not appear at all. It was the ordinary case of a protracted contest between the hungry money-lender and the needy debtor, in which the latter seems to have put forward this or that excuse, but there is nothing from which a distinct admission on his part of his liabilities to pay the exorbitant interest claimed can be implied, and on the other hand, in the subsequent proceedings he distinctly disputed his liability for interest.

On the whole, therefore, their Lordships think that the evidence preponderates in favour of the

contention that the original decree did not reserve interest; that there is certainly no proof upon which the courts were justified in coming to the contrary conclusion, and that the decision of the Judicial Commissioner on this question was right. Their Lordships must therefore humbly advise her Majesty to affirm his order and dismiss this Appeal.

Their Lordships desire to add that it would have been impossible for them to allow the amount of interest claimed, calculated as it is on rests arbitrarily fixed. And this consideration affords an additional reason for not inferring from the proceedings that the debtor tacitly admitted his liability to pay interest, since that implied admission would cover the compound interest, which it seems clear to their Lordships the ordinary direction as to interest, if found in the decree, would not have justified.