

*Judgment of the Lords of the Judicial Committee  
of the Privy Council on the Appeal of  
Guru Prasanna Lahiri and others v.  
Jotindra Mohun Lahiri, from the High  
Court of Judicature at Fort William in  
Bengal; delivered the 2nd December 1907.*

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Present at the Hearing :

LORD ROBERTSON.

LORD COLLINS.

SIR ARTHUR WILSON.

*[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.

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. 85795, 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.

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—

- (1) That which represents the actual sum which was received by the decree holder in satisfaction of his decree, viz., Rs. 125,826.
- (2) 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. 139,059.
- (3) 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. 148,873.

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.

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. 139,059. They have then ascertained the difference between that figure and No. 3, viz., Rs. 148,873 at Rs. 9814, 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.

