

Judgment of the Lords of the Judicial Committee of the Privy Council on the Appeal of Doorga Purshad Roy Chowdry v. Tara Purshad Roy Chowdry, and by Revivor (after their decease) of Shamapurshad Roy Chowdry and others v. Hurropurshad Roy Chowdry and another, from Bengal; delivered 29th March, 1865.

Present :

LORD KINGSDOWN.
LORD JUSTICE KNIGHT BRUCE.
LORD JUSTICE TURNER.

SIR LAWRENCE PEEL.
SIR JAMES W. COLVILLE.

THE facts of this case, so far as it is necessary to refer to them, lie in a narrow compass.

In the year 1821, Doorga Purshad, claiming to be entitled to the estate of his uncle, instituted a suit against Shama Purshad Nundy, a debtor to the uncle's estate, for recovering the sum of 23,024 rupees principal and interest due upon a bond. Pending this suit and in the year 1827, Tara Purshad, the original Respondent, sued Doorga Purshad for recovering one-half of the estate of the uncle, to which he (Tara Purshad) claimed to be entitled.

In the year 1829, there was a compromise of the suit instituted by Tara Purshad against Doorga Purshad, under which compromise Tara Purshad became entitled to a 6 anna share of the debt due from Shama Purshad Nundy. Subsequently to this compromise, and on the 27th July, 1829, Doorga Purshad obtained a decree in the Provincial Court

against Shama Purshad Nundy for the amount of the principal and interest due upon the bond. From this Decree Shama Purshad Nundy appealed to the Sudder Court, and pending this Appeal, and in the year 1831, there was a compromise of this suit also, which was effected by deeds dated the 16th May, 1831. The terms of this compromise were, that Shama Purshad should pay 24,217 rupees 12 annas 17 gundas at the end of three years without interest, and that, in default of payment, Doorga Purshad should be at liberty to proceed and realize the amount. This compromise was, it appears, made without the privity of Tara Purshad, and the payment stipulated to be made by Shama Purshad Nundy at the end of the three years was not made by him.

In this state of circumstances, Tara Purshad, in the month of March 1835, instituted another suit against Doorga Purshad, seeking to recover from him his (Tara Purshad's) 6 anna share of Shama Purshad Nundy's bond debt, and of the interest upon it up to the time of the commencement of the proceedings against Shama Purshad Nundy in the year 1821; and by his plaint in this suit Tara Purshad reserved to himself the right to bring another suit for his share of the interest on the bond debt from the last-mentioned date up to the date of the Decree of the 27th July, 1829, which Doorga Purshad had obtained as above mentioned.

This suit was carried through the Courts in India up to the Court of Sudder Dewanny Adawlut, and ultimately by a Decree of that Court dated the 15th April, 1841, Doorga Purshad was decreed to pay to Tara Purshad the entire amount of principal and interest for which his suit was brought. From this Decree of the Sudder Court, Doorga Purshad appealed to Her Majesty, and upon this Appeal being heard before this Committee in July 1849, the Committee reported to Her Majesty that the Decree of the Sudder Court ought to be reversed, and that it ought to be declared that Doorga Purshad was liable to Tara Purshad for a 6 anna share of what he, Doorga Purshad, had received, or might thereafter receive, and of what, if anything, he might at any time after the 16th May, 1834 (being the expiration of the time limited by the deeds of compromise of the 16th May, 1831), with-

out his wilful default, have recovered or received from Shama Purshad Nundy, for or in respect of the sum of 24,217 rupees 12 annas 17 gundas, and the interest thereon, payable by Shama Purshad Nundy under the Decree of the 27th July, 1829, and the compromise of the 16th May, 1831, and that the case ought to be referred back to the Court of Sudder Dewanny Adawlut, to ascertain, carry out, and enforce the rights and liabilities of the parties as above declared, and that Tara Purshad should be at liberty to apply in the cause of Doorga Purshad against Shama Purshad Nundy for leave to enforce the Decree in that cause as he might be advised for the recovery of his 6 anna share of the said 24,217 rupees 12 annas 17 gundas, and interest, in so far as the same had not been already recovered. By an Order of Her Majesty in Council, bearing date the 18th July, 1849, this report was approved, and it was ordered that the Decree of the Sudder Court of the 15th April, 1841, should be, and the same was thereby reversed, and that it be declared and done as in the Report more fully set forth and recommended, and that the same be duly and punctually obeyed, complied with, and carried into execution.

In the mean time, pending this Appeal to Her Majesty, and on the 3rd December, 1842, Tara Purshad instituted a further suit against Doorga Purshad to recover the sum of 4,593 rupees 12 annas 9 pice, the interest upon his 6 anna share of the sum secured by the bond from the year 1821, when the proceedings against Shama Purshad Nundy were commenced, up to the 27th of July, 1829, when the Decree against him was made, being the interest for which by the plaint in his original suit he had reserved to himself the right to sue. This suit was heard before the Principal Sudder Ameen on the 11th of August, 1843, and by his Decree of that date he dismissed the suit; but, upon an Appeal by Tara Purshad to the Judge of the Zillah Court, the decision of the Sudder Ameen was reversed, and Doorga Purshad was ordered to pay to the Respondent the 4,593 rupees 12 annas 9 pice, with interest at 12 per cent. per annum, from the time of the commencement of the suit, and with the costs in both Courts; and upon a special Appeal by Doorga Purshad to the Court of Sudder Dewanny Adawlut

that Court dismissed the Appeal with costs. In consequence of these Decrees Doorga Purshad was compelled to pay to Tara Purshad the sum of 11,127 rupees 15 annas 3 pice, which he accordingly paid as follows:—8,200 rupees 7 annas 3 pice on the 28th April, 1848, and 2,927 rupees 8 annas on the 4th August, 1857.

Several attempts appear to have been made by Doorga Purshad after Her Majesty's Order in Council arrived in India to obtain a review of the Decrees made against him in the last-mentioned suit, and to have those Decrees considered in connection with Her Majesty's Order in Council, but he failed in these attempts, and thereupon on the 17th of August, 1857, he instituted against Tara Purshad the suit out of which the Appeal before us has arisen. By his plaint in this suit he has sought to recover the sum of 23,294 rupees 9 annas 16 $\frac{1}{2}$ pice, being the amount of the sums paid by him to Tara Purshad, and of the sums which he has paid for his own costs of the proceedings taken against him, with interest on such sums respectively from the respective times of the payment thereof at 12 per cent. per annum. Tara Purshad, by his answer to the plaint, has insisted that the decision of the Judge of the Zillah Court in his favour in the further suit brought by him, having been affirmed on Appeal by the Sudder Court, became final and could not be set aside by a new suit, and he has relied upon Section 16, Regulation 3 of 1793, as a bar to the suit. On the 29th June, 1858, the cause was heard before the Principal Sudder Ameen, and was by that officer dismissed with costs. From this decision Doorga Purshad appealed to the Sudder Court, but that Court by its Decree dated the 9th May, 1859, affirmed the decision of the Principal Sudder Ameen. The Appeal now before us is from the Decree of the Sudder Court of the 9th May, 1859, and from the Decree of the Zillah Court of the 29th June, 1858. There is no Appeal before us from either of the Decrees made in the further suit instituted by Tara Purshad against Doorga Purshad, their Lordships having, in consequence of delay on the part of Doorga Purshad, refused an application made by him for leave to appeal from those Decrees. Doorga Purshad and Tara Purshad have both died pending this Appeal,

and the Appeal has been revived, and is now in force between their representatives.

The sole question to be considered upon this Appeal is, whether Doorga Purshad was entitled to recover in the suit instituted by him against Tara Purshad, the sums which had been recovered by Tara Purshad from him under the Decrees in the suit which Tara Purshad had instituted against him; and in considering this question, it must be assumed that at the times when those Decrees were made, Tara Purshad was rightfully entitled to recover the sums which were payable under them, there not being, as has been mentioned, any Appeal from those Decrees. Tara Purshad insisted in the Courts in India, and his representatives have insisted in the argument before us, that Doorga Purshad was not entitled to recover these sums for two reasons: first, that his right to recover them is precluded by section 16, Regulation 3, of 1793; and, secondly, that, independently of that provision in the Regulations, money which has been paid under a Decree or Judgment of a Court of competent jurisdiction cannot be recovered in a new suit or action so long as the Decree or Judgment under which it has been recovered is subsisting and in force. Upon the first of these points their Lordships have felt but little doubt. Section 16, Regulation 3 of 1793, is in these terms:—"The Zillah and City Courts are prohibited from entertaining any cause which, from the production of a former Decree or the records of the Court, shall appear to have been heard and determined by any former Judge, or any Superintendent of a Court having competent jurisdiction. If any doubt should arise respecting the competency of the former jurisdiction, the Judges are to report the circumstances to the Sudder Dewanny Adawlut, and wait the instructions of that Court." Their Lordships think that this provision applies only to cases in which the question to be determined in the cause is the same question as has been already heard and determined, and not to cases like the present in which new circumstances have intervened, and altered the nature and character of the question to be determined. The intent of the resolution, as it seems to their Lordships, is only to prevent the re-trial of the same question, and it is obvious that there is an essential difference between the question whether

Tara Purshad was entitled to recover against Doorga Purshad before the order of Her Majesty in Council was pronounced, and the question whether after that order was pronounced he was entitled to hold the money which he had previously recovered.

Upon the second point their Lordships have felt more difficulty. There is no doubt that according to the law of this country—and their Lordships see no reason for holding that it is otherwise in India—money recovered under a Decree or Judgment cannot be recovered back in a fresh suit or action whilst the Decree or Judgment under which it was recovered remains in force; but this rule of law rests, as their Lordships apprehend, upon this ground, that the original Decree or Judgment must be taken to be subsisting and valid until it has been reversed or superseded by some ulterior proceeding. If it has been so reversed or superseded the money recovered under it ought certainly to be refunded, and, as their Lordships conceive, is recoverable either by summary process or by a new suit or action. The true question, therefore, in such cases is, whether the Decree or Judgment under which the money was originally recovered has been reversed or superseded; and applying this test to the present case, their Lordships are of opinion that the Decrees obtained by Tara Purshad against Doorga Purshad were superseded by the Order of Her Majesty in Council pronounced in the year 1849. It was plainly intended by that Order that all the rights and liabilities of the parties should be dealt with under it, and it would be in contravention of the Order to permit the Decrees obtained by Tara Purshad pending the Appeal on which it was made to interfere with this purpose. Moreover, the Decrees now under Appeal rest on precisely the same cause of suit as the original Decree which was reversed by the Order of Her Majesty in Council. The plaint in the case on which the original Decree was recovered describes the interest recovered by the Decrees under appeal as part of the same cause of suit, separated only for the convenience of Tara Purshad, and the Decrees under appeal therefore were mere subordinate and dependent Decrees, and their Lordships do not think that these Decrees can be held to have remained in force when the Decree on which they were dependent had been reversed.

That the Court of Sudder Dewanny Adawlut has not, as their Lordships think it might have done, dealt with the Decrees now under appeal as falling within the direction given to that Court by Her Majesty's Order in Council, to ascertain, carry out, and enforce the rights and liabilities of the parties, does not in their Lordships' opinion vary the case. This provision in Her Majesty's Order in Council gave power to the Court of Sudder Dewanny Adawlut to deal summarily with the rights and liabilities of the parties, but it could not in their Lordships' opinion take away any rights which the law would give to Doorga Purshad independently of that power. For these reasons their Lordships are of opinion that the Decrees appealed from ought to be reversed, and that the sums of rupees 8,200 : 7 : 3 and rupees 2,927 : 8 paid under them ought, so far as the assets of Tara Purshad will extend, to be repaid by the now Respondents to the Appellant, with interest at 12 per cent. from the respective times when such sums were respectively paid, and that the now Respondents ought also, so far as Tara Purshad's assets will extend, to pay the costs of this Appeal; but under the circumstances of the case, and having regard to the delay on the part of Doorga Purshad, their Lordships do not think that his representatives are entitled to recover the costs incurred by him in the course of the proceedings taken against him by Tara Purshad. Their Lordships, therefore, will humbly recommend Her Majesty to make an Order upon this Appeal to the effect which we have mentioned.

