

*Judgment of the Lords of the Judicial Committee
of the Privy Council on the Appeal of Gopee
Kissen Gossamee v. Brindabun Chunder Sircar
and another, from the High Court of Judicature
at Fort William, in Bengal; delivered 10th
December 1872.*

Present :

SIR JAMES W. COLVILE.

SIR BARNES PEACOCK.

SIR MONTAGUE E. SMITH.

SIR ROBERT P. COLLIER.

THEIR Lordships cannot but regret that the litigation to which the former order of Her Majesty might reasonably have been expected to put an end, has been prolonged by the proceedings which have led to the present Appeals.

Their Lordships are first called upon to construe the order of Her Majesty of the 7th August 1869 in respect of what may be termed the principal sum thereby awarded. The words of the order are that the Plaintiff is to have judgment for his moiety, with interest at the full legal rate, and the costs of the proceedings in the Court below. The first question is, What is meant by his moiety? Upon that point their Lordships entertain no doubt that the order intended to give to the Plaintiff the moiety claimed by him of the large sum of Rupees 69,000 odd, which he alleged to be due for principal and arrears of interest equal to the principal upon the kurarnamah and bond. That that was what the Plaintiff was suing for is shown by his plaint and by the account in the nature of particulars of demand which is annexed to the

plaint. We therefore start with a decretal order, awarding to the Plaintiff Rs. 34,865. 6. 7. as the principal sum recoverable in the suit.

Their Lordships may observe with reference to the question whether the kurarnamah carried interest, which the Respondents have tried to raise on the present occasion, that it would be impossible for their Lordships, whatever view they might entertain, to go behind the former order, and to allow any matter concluded by that order to be re-argued on this Appeal. Nor does there seem to be any reason to doubt but that it was properly decided on the former Appeal that the kurarnamah did bear interest.

Her Majesty's order, then, awards Rs. 34,865. 6. 7. with legal interest, that is, interest at the Court rate of 12 per cent. And looking to the course of the Courts in India, their Lordships are of opinion that it was the intention of the order to give that sum with interest at that rate from the date of the institution of the suit up to realization.

The question then arises whether, in the account which was taken by the Appellant as the foundation for his proceeding in execution, and which is embodied in the petition for execution, he was warranted in making a rest at the date of the order of the Principal Sudder Ameen, which originally dismissed the suit, and in assuming that inasmuch as that sum with interest ought then to have been awarded to him with costs, interest should run upon the consolidated sum from that date. Their Lordships are of opinion that, notwithstanding the passage which has been cited from Mr. Macperson's book, they are not warranted in giving that interpretation to the present order, considering the terms in which it is expressed. They have the benefit of being assisted on this occasion by Sir Barnes Peacock, who has had so much experience in the High Court in administering the present code of procedure. And although the Appellate Court might have the power, if it thought fit, to make

such an order as it is suggested would have been made according to the former practice, it is now, we understand, quite as common to give, on appeal, merely a decree for the principal sum awarded, with interest from the commencement of the suit to the realization of the sum. And, in the absence of any special directions, it cannot be presumed that there was an intention to make an order *nunc pro tunc*, which would have the effect of making a rest at the date of the decree of the Court of first instance and of giving compound interest awarded from that date.

Their Lordships therefore think that upon that point the petition of the Appellant sought for too much. In other respects they are with him, and they are with him upon the principal question which has led to these Appeals.

The order which their Lordships propose humbly to recommend Her Majesty to make will be the following: "Declare that the Appellant, under the order of Her Majesty of the 7th August 1869, was entitled to the sum of Rs. 34,865. 6. 7. with interest at 12 per cent. from the commencement of the suit to the date of Her Majesty's order, with the costs in the Courts below. Also declare that he is entitled to interest at the rate of 12 per cent. on that consolidated sum from the date of the order to the date of realization; and declare that he is further entitled to the sum of Rs. 3,289. 2. 4. for the costs of the former Appeal, and also to the costs in the Indian Courts incurred in the proceedings for execution, and to the costs of this Appeal. And let the cause be remanded to the High Court, with directions to cause execution to issue accordingly." Their Lordships have not thought fit to recommend that the Appellant should be allowed interest on the costs of the former Appeal, since they understand that, according to practice, costs given here do not carry interest unless the contrary is expressed in the order.

With regard to the Cross-appeal of the Re-

spondents Brindabun Chunder Chowdhry and Sreesh Chunder Sircar Chowdhry, their Lordships will humbly report to Her Majesty that their Appeal ought to be dismissed, with costs.