

*Judgment of the Lords of the Judicial Committee of the Privy Council on the Supplemental Appeal of Rodger v. The Comptoir d'Escompte de Paris, from Hongkong; delivered 23rd January, 1871.*

Present:—

LORD CAIRNS.

SIR JAMES W. COLVILLE.

SIR JOSEPH NAPIER.

IN this case an application was made to their Lordships some time since by Petition by persons who were Appellants in the year 1869 before this tribunal, and upon whose Appeal a decree of the Court at Hongkong was reversed, and the application made by the petition was, that the Court at Hongkong might order not merely restitution of the money which had been paid under the original Judgment, but also interest upon all the sums they had paid. Their Lordships, when that petition came before them, were of opinion that a record ought to be printed; they dispensed with the printing of any cases by the parties, and they thought that when the record was printed they would be in a position to dispose of the questions raised by the petition. That question is one of considerable importance, not only to the parties in this case, but with reference to the general practice of primary Courts. It arises in this way. Upon the 3rd June, 1867, in an action of trover brought against the Petitioner by the Respondents, a verdict was given by the jury for 55,816 dollars as principal, and 2146 dollars as interest, with a further sum for costs. Thereupon, the Defendants in the action, the present Petitioners, applied to the Court at Hongkong by a rule, for a new trial or for a nonsuit. That rule was refused with costs upon the 29th June, 1867. A very few days afterwards, on the 2nd July, 1867, the present

Petitioners applied to the Court for leave to appeal, and leave was granted on the 5th July, 1867. Now in that state of things it was in the option of the Plaintiffs in the action, the bank, either to have allowed the sum which they had been awarded to remain in the hands of the present Petitioners, or to insist upon execution of the Judgment, giving security to abide by any order that Her Majesty in Council might make. The general regulation gave them that option. They had the right to execution, giving the security of the kind that I have mentioned. They were fully aware, from the application for leave to appeal which has been stated, that an appeal was about to be brought. They obtained execution of the Judgment and received the sum of money which they were awarded. Her Majesty, by Order in Council, acting upon the recommendation of their Lordships, ordered that the Judgment of the Court below should be reversed, and that a nonsuit should be entered. The order of Her Majesty did not in express terms go further, except to say, that "the Governor, Lieutenant-Governor, and Commander-in-Chief of the Island of Hongkong for the time being, and all other persons whom it may concern, are to take notice and govern themselves accordingly." But the general regulation applicable to Hongkong provided in the last sentence of the regulation of 1845, that "the Supreme Court should, in all cases of appeal to Her Majesty, her heirs and successors, conform to, execute, and carry into immediate effect such Judgment and orders as Her Majesty, her heirs and successors in her or their Privy Council, should make thereupon, upon the appeal, in such manner as any original Judgment or decree of the Supreme Court can or may be executed."

The result is this, that in the opinion of their Lordships it was in the power and it became the duty of the Court at Hongkong to do everything and to make every order which was fairly and properly consequential upon the reversal of the original Judgment by this tribunal. The Court at Hongkong has entertained no doubt that it had the power, and that it was its duty to order restitution of the principal sum that was paid over, and all the costs that were paid over under the decree.

But it has held the opinion that it had not the power to order any payment of interest upon any part of the sum paid over by the present Petitioners to the Respondents. The question which their Lordships have to consider is, whether the Court at Hongkong had or had not that power to order payment of the interest, and if so, whether in this case it was or was not proper to exercise that power?

Now, their Lordships are of opinion that one of the first and highest duties of all Courts is to take care that the act of the Court does no injury to any of the suitors, and when the expression "the act of the Court" is used, it does not mean merely the act of the Primary Court, or of any intermediate Court of Appeal, but the act of the Court as a whole, from the lowest Court which entertains jurisdiction over the matter up to the highest Court which finally disposes of the case. It is the duty of the aggregate of those tribunals, if I may use the expression, to take care that no act of the Court in the course of the whole of the proceedings does an injury to the suitors in the Court.

It is contended, on the part of the Respondents here, that the principal sum being restored to the present Petitioner, he has no right to recover from them any interest. It is obvious that, if that is so, injury, and very grave injury, will be done to the Petitioner. He will by reason of an act of the Court have paid a sum which it is now ascertained he was ordered to pay by mistake and wrongfully. He will recover that sum after the lapse of a considerable time, but he will recover it without the ordinary fruits which are derived from the enjoyment of money. On the other hand, those fruits will have been enjoyed, or may have been enjoyed, by the person who by mistake and by wrong obtained possession of the money under a Judgment which has been reversed. So far, therefore, as principle is concerned, their Lordships have no doubt or hesitation in saying that injustice will be done to the Petitioner, and that the perfect judicial determination which it must be the object of all Courts to arrive at, will not have been arrived at unless the person who has had his money improperly taken from him has the money restored to him, with interest during the time that the money has been withheld.

It is said, however, that there is no authority for ordering the payment of interest. The cases of writs of error which have been referred to can hardly be considered as precedents for a case of the present kind. The proceeding upon them was of a highly technical character. It was a matter of great rarity for a writ of error not to suspend execution in any case where execution had not actually taken place before the writ of error was brought. Restitution no doubt was ordered, and it may well be that under the term restitution, in the case of a money payment, interest was not given by the Court which carried the restitution into effect. But whether that be so or not, their Lordships do not think it necessary to inquire further into that matter. Upon proceedings which are much more analogous to the present, undoubtedly interest has been given. One case has been mentioned, in the House of Lords, the case of *Blake v. Mowatt*, in which money, which had been ordered to be paid under a decree,—money consisting itself of principal and interest, that decree having been reversed in the House of Lords,—was ordered by the Court below to be restored, together with interest upon the capital sum. It probably would be found that that by no means is a solitary case in the practice of the House of Lords. Their Lordships have reason to believe that the habit of the Courts in India, when there has been a reversal in this country, and when money has been ordered in India to be paid back in consequence of that reversal, is to order the payment of interest. Their Lordships, therefore, so far as any precedents applicable to the case are concerned, believe that the precedents will be found to be in favour of a restitution of the money with interest. They are quite satisfied that this practice is in accordance with what is the true principle to be applied to the case, and with what is the justice of the case, and they think that is pre-eminently so in a case in which the money in the first instance was ordered to be paid by the Defendants in the action, with interest, during the time that the money had been in the Defendants' possession after the conversion of the goods.

Their Lordships therefore consider that it will be their duty on this petition humbly to report to Her Majesty that the Court below, in addi-

tion to ordering the repayment of the principal, should have ordered the payment of interest; and their Lordships further think that interest should be calculated not merely upon what was the original principal sum but upon the whole sum paid by way of principal and interest by the Defendant in the action to the Plaintiffs. Their Lordships can see no sound ground for making a distinction in that gross payment between the principal and the interest. There, however, their Lordships would stop. They do not consider that interest should be paid upon the costs, because it has never been, in any proceeding that their Lordships are aware of, the habit in ordering the refunding of costs paid under a decree, to order that refunding with interest, and there may be obvious reasons applicable to the case of costs differing from the reasons which applied to gross payment of another description.

Their Lordships further consider that the present petition having raised a point which was one of some novelty, upon which, perhaps not unnaturally, the learned Judge of the Court below entertained a doubt as to what his precise powers were, and a trifling expense only having been incurred by the form in which the case has been brought before their Lordships, their Lordships will do right in not saying anything as to the costs of this application, but leaving each party to bear his own costs.

