
(1878) 06 CAL CK 0033

Calcutta High Court

Case No: None

Khajah Ahsanoollah

APPELLANT

Vs

Kajee Aftabooddeen

RESPONDENT

Date of Decision: June 19, 1878

Citation: (1879) ILR (Cal) 594

Hon'ble Judges: Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Maclean, J.

The only question arising in this appeal which requires a separate decision is, whether the plaintiff is entitled to any interest, and if so, from what date. The subordinate Judge has refused to allow interest prior to determination of the rent, and he supports his refusal by a decision of this Court, dated the 15th July 1868, in *Raj Mohun Neogee v. Aunund Chunder Chowdry* (10 W.R. 166).

2. We think that that decision is not in accordance with the principles laid down in the Full Bench decision in *Doyamoyee Chowdrainee v. Bholanath Ghose* (B.L.R.Sup. Vol., 592; S.C., 6 W.R., Act X, Rul., 77). There the principle laid down is, that the non-payment of the rent at the enhanced rate constitute the case of action, or, in other words, an arrear of rent, liable for interest, does not depend upon the date of decree, but upon the date upon which it became due.

3. When a tenant is called upon by notice to pay an enhanced rate of rent, he has more than one course open to him. He can take the initiative, and complain of excessive demand of rent, or he can contest his liability to pay what is asked for in answer to a suit; but whichever course he adopts, and whatever the result of his contention, the rent adjudged to be due is none the less an arrear if not paid when due. The amount of rent is fixed by the notice, and if the tenant neither pays that amount at the appointed time, nor succeeds in showing that it is an unjust demand, he is properly liable for the consequences of his failure to pay in due time--namely, for interest.

4. We therefore consider the Subordinate Judge's decision erroneous, and decree this appeal with proportionate costs. The plaintiff is entitled to interest at 12 per cent. on the instalments of rent as they fell due up to this date, and we allow interest at 6 per cent. on the amount of this decree till realization.