

*Judgment of the Lords of the Judicial Committee of
the Privy Council on the Appeal of Aga Syed,
Abdool Hossein and Lennaine vs. Snaddet, from
the Court of the Recorder of Moulmein; delivered
28th June, 1869.*

Present:

SIR JAMES W. COLVILLE.

LORD JUSTICE SELWYN.

LORD JUSTICE GIFFARD.

SIR LAWRENCE PEEL.

THEIR LORDSHIPS in this case are of opinion that the Court below has proceeded on a misapprehension of the effect of the Regulation on which the Judgment of that Court appears to have been founded.

That Regulation is in these terms:—"All questions regarding the amount of any meane profits which by the terms of the Decree may have been reserved for adjustment in the execution of the Decree, or of any meane profits or interest which may be payable in respect of the subject-matter of a Suit between the date of the Suit and execution of the Decree, as well as questions relating to sums alleged to have been paid in discharge or satisfaction of the Decree or the like, and any other questions arising between the parties to the Suit in which the Decree was passed, and relating to the execution of the Decree, shall be determined by order of the Court executing the Decree, and not by separate suit, and the order passed by the Court shall be open to appeal."

The Decree in this case on which the Judgment in the Court below was founded is in these terms:—"This Appeal having been this day heard and debated"—and so on—"the Court orders and

“decrees that the decision in this case, dated 1st
“May, 1861, be revised, and decrees to Appellant,
“Yacoob Ally, the ninety-five logs of timber claimed
“by the Respondent, A. Lenaine, in the original
“suits, together with his own (Yacoob Ally, Appel-
“lant’s) costs and fees in all three Courts.”

That Decree is against Lenaine alone, and its effect is, in point of fact, simply to direct restitution by him of the particular logs. The present Plaintiff is a Suit, not only against Lenaine, but also against Snadden, who was the purchaser from Lenaine, and who was no party to the original Suit, no party to the original Decree, and not in any sense bound as a party. The object of this Suit is not restitution of the logs, therefore not an execution of the Decree at all; but its object is to recover damages for a tort alleged to have been done both by Lenaine and by Snadden.

That being so, their Lordships are clearly of opinion that the Regulation has no application to such a case. It has no application as against Snadden, because Snadden was no party to the original Suit. It has no application further, because it cannot be said that proceeding for a tort is any method of executing this Decree.

Their Lordships do not think it necessary for them in the present state of these proceedings to go further than this. Of course, when the matter goes back, every ground of defence, excepting this particular one, will be open to the parties; but their Lordships are clearly of opinion that there has been a miscarriage in this respect, and therefore the Decree of the Court below must be reversed and discharged, and the Appellant must have his costs of the Appeal, and so their Lordships will advise Her Majesty.



