

civil Court. If, on the other hand, this view is not correct, the result would seem to be that there is no limit of time within which the defendant might not forcibly re-occupy the land and assert the continuance of his tenancy. Such a state of things would lead to great insecurity in the occupancy of land by tenants holding under the landholder in good faith and in ignorance of the dispossessed tenant's claim, and to the substitution of irregular and violent methods of recovering possession for the methods which the Legislature has provided for a dispossessed tenant's benefit. We do not think that a construction of section 96(e) of the Rent Act which involves these consequences can be correct. We think that the lower appellate Court and Mr. Justice Blair have rightly construed the section, and we dismiss this appeal with costs.

Appeal dismissed.

PRIVY COUNCIL.

MICHAEL MACAULIFFE, PLAINTIFF-APPELLANT, AND CHARLES WILSON,
DEFENDANT-RESPONDENT.

On Appeal from the High Court for the North-Western Provinces.

False representation alleged against vendor by purchaser. Inducement not proved. Shareholder buying shares from a Director of the Company.

To maintain a suit for damages upon a false representation alleged by purchaser against vendor, it must be established that the plaintiff was induced by the misrepresentation to enter into the contract.

Shares in a Banking Company which shortly afterwards went into liquidation, were sold by a Director to the plaintiff, a shareholder. The latter now sued the vendor, alleging inducement to buy the shares by the vendor's false representations as to the state of the Bank's affairs.

Both the Courts below concurred in finding that oral representations as to the latter alleged to have been made by the defendant to the plaintiff were not proved. Those Courts, however, had concurred in finding that the defendant, though he was not responsible for false balance-sheets issued before 1890,

1899

DALIP RAI
v.
DEOKI RAI.

P. C.
1898
June
17th, 21st
and 22nd.
November
26th.

Present:—LORDE WATSON, HOBHOUSE, and DAVEY and SIR R. COUCH.

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

was well aware of the falseness of the one issued for the half-year ending on the 30th June 1890. The Judicial Committee saw no reason for interfering with these concurrent findings.

The plaintiff, in this appeal, relied on the issue of the false balance-sheet of 1890, the issue of a false report by the Directors, and a wrongful payment of dividend, for the period above mentioned, acts in which the defendant had taken part; these acts, as a series, constituting false representations, the Bank having in fact been insolvent at the time.

But it was not shown by the evidence that the plaintiff had been induced to buy the shares, which he had contracted to buy in two sets, one in September the other later on in 1890, by any of the representations so made; regard being had to the dates, respectively, and to his own knowledge. The dismissal of the suit was, therefore, maintained.

APPEAL from a decree *C. Wilson v. M. Macauliffe* (1) (1st August 1895) of the High Court, reversing a decree (31st July 1893) of the Subordinate Judge of Dehra Dun.

The plaintiff-appellant sued the defendant-respondent on the 15th April 1893 for damages, the alleged consequence of the defendant's false representations. The claim was for Rs. 20,950; the price of shares, with Rs. 1,670, interest thereon, in the Himalaya Bank, a bank limited by shares, registered and carrying on business until 1891, when it failed, at Masuri. In 1890 the plaintiff, who already held shares in the Bank, purchased one hundred shares, at Rs. 110 a share, on the 10th September in that year, and forty-seven more on the 27th November following. The bank stopped payment on the 8th July 1891 and went into liquidation.

The plaintiff alleged that he had been induced to buy by the false representations of the vendor, who was then a Director of the Company, and had misrepresented to him the state of the bank's affairs.

The question raised, and decided on this appeal in the negative was, whether the plaintiff had been induced to buy by the defendant's falsely representing to him that the bank was sound.

The facts are stated in their Lordships' judgment.

1898

 MICHAEL
 MACAULIFFE
 v.
 CHARLES
 WILSON.

The plaintiff's grounds were that he had been induced to buy the defendant's shares, on the faith in his statements, made both as a director and as a private person, to the purport that the bank was earning profits and had a large reserve fund. The plaintiff alleged that the defendant, having with his co-directors issued half-yearly reports and balance-sheets, had with them issued a balance-sheet and report for the half-year ending on June 30th 1890, which he knew to be false, and that on the strength of these last, when laid before the shareholders, a dividend was declared and paid, though the bank was insolvent.

The defendant denied the representations attributed to him personally by the plaintiff. But did not deny that he knew that the last-mentioned balance-sheet was false. He asserted that, before the period to which it related, the accounts had been made up by a manager whom he and his co-directors, trusted; *Queen-Empress v. Moss and others* (1). The plaintiff had known, he urged, that there were rumours current as to the real state of the bank at the time when he bought; and that he had bought the shares at his own risk, after making enquiries. The issues were whether the defendant by fraud or false representation, induced the plaintiff to enter into the contract in question, and to what damages he was entitled.

The Subordinate Judge found as a fact that false balance-sheets had been issued since 1886; but he found that there was no evidence to show that the defendant had been a party to the fraud and misrepresentation prior to the issue of the balance-sheet relating to the half-year ending on June 30th 1890. The judge doubted not that the latter was known by the defendant to be false at the time, and that he well knew of the unsecured debts due to the bank, and knew that the liabilities exceeded the assets. It was necessary for the plaintiff to establish fraud, and nothing short of it; *Derry v. Peak* (2). But, in dealing with his shares, a Director of a Company was in a position not, in-itself, different from that of other shareholders as regarded sales. *Gilbert, in re*

(1) (1893) I. L. R., 16 All., 88. (2) (1869) L. R., 14 Ap. Ca., 337.

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

The National Provincial Marine Insurance Company (1). The oral misrepresentations charged had not been proved. The judgment concluded in favour of the plaintiff for a reason apart from the fraud on which the case was founded. The reason was that the defendant had, when asked about the purchase of shares, mentioned a person whom he believed to be willing to sell some. This the Judge regarded as a fiction to bring on the sale of his own shares, and thereupon decreed the claim for Rs. 18,055.

The High Court (KNOX, Officiating C. J., and AIKMAN, J.) reversed the decision of the Subordinate Judge, and dismissed the suit. The ground of decision below had been taken in contravention of the wellknown rule, referred to in *Abdul Hossein Zenail Abadin v. Turner* (2) that a charge of fraud must be substantially proved as laid; and that ground was also insufficient in itself. On the findings of the Subordinate Judge the suit should have been dismissed.

There was the authority of *Le Lievre v. Gould* (3) for holding that negligence does not of itself constitute fraud. Distinguishing the present case from the *Leeds Building and Investment Company v. Shepherd* (4) the O. C. J. added:—"I have most carefully and anxiously considered all the evidence bearing on the question, and in my opinion there is no warrant for a finding that the negligence, great as it was, amounted to evidence of fraud. There remains the balance-sheet for the half-year ending 30th June 1890, which we have found was false to appellant's knowledge, and was directly issued by him. The question which arises for consideration in connection with this balance-sheet is whether it was in any way a material inducement which led to the purchase of the shares by the respondent. It could not have led to the purchase made by him of 100 shares on the 10th September 1890, for, according to his own statement, it was not till October 1890 that he received it, and he himself allows, that it in no way induced him to make the

(1) (1870) L. R., Sch. Ap. 559.

(2) (1887) I. L. R., 11 Bom., 620.

(3) (1893) L. R., 1 Q. B., 491.

(4) (1887) L. R., 36 Ch. D., 787.

“purchase. But he alleges that the publication of the balance sheet of the half-year ending the 30th June 1890, was one of the considerations that led him to purchase the remaining 47 shares. It becomes therefore necessary to look at the evidence which bears on the sale of these 47 shares. In a letter dated 3rd October 1890, we find the proposal made by the respondent to buy 47 more shares in the bank from the appellant at the same price, provided that money could be lent him by the Himalaya Bank at 8 per cent. On the 3rd November 1890, the transaction reached a further stage, and respondent asked the appellant to deposit with the Manager of the Mussoorie Bank the scrip for these 47 shares. From this it is evident that the negotiations for the purchase of the 47 shares had been completed by the time the letter was written.”

The O. C. J. added that, although the plaintiff had said that in purchasing these shares he was influenced by the report for the half-year ending on the 30th June 1890, it was impossible to accept his statement. The proposal to buy the shares, and the acceptance of the proposal, must have taken place before the 31st October 1890, although payment was delayed. The issue of the balance-sheet could in no way have operated on the defendant's mind to induce him to make the purchase.

The judgment then dealt with the payment of the dividend at 10 per cent. advertised in a newspaper of the 24th July 1890, and showed that this also could not have had effect to lead the plaintiff to enter into the transaction.

After referring to the principles stated in *Smith v. Thadwick* (1), and in *Gerhardt v. Bates* (2), the O. C. J. added:—“All this admits of no question; but my difficulty is in believing that the issue of the balance-sheets, reports, and advertisement of dividend did, or any one of them did, induce the plaintiff to purchase the shares. In fact my finding is that it did not. After fully considering all the evidence, I am satisfied that the

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

(1) (1882) L. R., 20 Ch. D. 27. (2) (1853) 2 El. and B., 476; L. J., 22 Q.
B., 304.

1898

MICHAEL
MACAULIFFEv.
CHARLES
WILSON.

“respondent purchased the shares as being in his eyes a speculation which would probably be a profitable one. While it is our duty to relieve persons who have been deceived by false representations, it is equally our duty, as pointed out by Lord Justice Turner in *Jennings v. Broughton* (1) to be careful that in ‘our anxiety to correct frauds,’ we do not enable persons who have joined with others in speculation ‘to convert their speculations into certainties at the expense of those with whom they have joined.’ This would, in my opinion be the effect of giving the relief for which he asks.”

The rest of the judgment dealt with an argument of counsel that in the present case the appellant stood to the plaintiff, in a confidential relation, as a director, having special knowledge. A full report of that part of the judgment is given in the I. L. R., 18 All., 56.

AIKMAN, J., in concurring, after referring to *Scott v. Dixon* (2) said:—“It appears that a balance-sheet and report for the half-year ending 30th June 1890, were published, and to this publication the defendant was a party. There is no doubt that that balance sheet and report were false and misleading, and had it been shown that this balance-sheet and report were inducements which led the plaintiff to purchase the shares from the defendant, I think plaintiff would have been entitled to recover. But this balance-sheet and report did not reach the plaintiff until he had bought the first parcel of 100 shares, and engaged to buy the remaining 47 shares; he cannot therefore rely on any misrepresentations therein contained; as to previous balance-sheets, it has not been proved that the appellant Wilson had any part in publishing them. It is true that he was a Director from 1885, but up to 1890, when the Manager Moss went away on leave, the Directors appear to have taken no active part in the management of the bank, everything being left to Moss. In thus acting Wilson and his fellow-Directors were most culpably

(1) (1854) 5 DeG. Mac. and G., 126.

(2) (1859) 29 L. J., Exch., 62; in note, Q. B. Hil. T. 1859.

“negligent ; but as is shown in the case of *Le Lievre v. Gould*, (1) “mere negligence is not sufficient to establish fraud. Although “it is not set forth in his plaint, the plaintiff in his evidence “refers to a copy of *The Pioneer* which was received by him “on the 25th or 26th July 1890, that is, before the purchase of his “shares. In that *Pioneer* the payment of a 10 per cent. dividend “on the bank shares was advertised. I do not, however, think “that this would entitle the plaintiff to recover in an action for “deceit, unless it was shown that the defendant intended by this “advertisement to get his shares sold. That has not been made “out to my satisfaction. The defendant is not shown to have “advertised his shares for sale, or to have taken any active “steps to dispose of them, and when the bank failed he owned “98. The impression which I derive from the perusal of the “evidence is, that it was Macauliffe who expressed a wish to “purchase the shares, not the defendant who offered them for “sale. Much argument was addressed to us with a view of “showing that the defendant as Director of the Bank stood in a “fiduciary relation to the plaintiff, and that his mere silence as “to the state of the Bank was sufficient to render him liable in “an action for deceit. As to this I think the conclusion arrived “at by the learned Subordinate Judge is correct, and that the “case he refers to, *i. e.*, *Gilbert's case*, (2) is an authority for “the view which he took.”

On this appeal, Mr. *J. D. Mayne* for the appellant, argued that there was error in the judgments below, both in fact and in law. The judges had regarded the contract to buy the forty-seven shares as concluded before the balance-sheet for the half-year ending on June 30th 1890 was issued in the October following. But in fact the contract was not completed until December 1890. The High Court had also erred in its inference as to the false representation, and had not given due weight and effect to the cumulative statements in the false documents, followed by the dividend paid though not earned. Regarding the balance-sheets issued

1898

 MICHAEL
 MACAULIFFE
 v.
 CHARLES
 WILSON.

(1) (1893) L. R., 1 Q. B., 491.

(2) (1870) L. R., 5 Sch. Ap. 559.

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

before 1890, there had been a fraudulent use of them as a basis for the later misrepresentation in the issue of the balance-sheet above specified. However, there having been actual false representation found against the defendant, there was also error in the High Court's not having held him responsible for it to the plaintiff, who in buying *more shares*, had acted upon it:—this act, the buying more shares, having been the natural and proximate result of the belief which the defendant had brought about. The true view was that the defendant had made a fraudulent representation with intent to make the plaintiff believe in the soundness of the bank, with the result of his having been induced to buy the defendants' shares;—no remote result from what he was led to believe. This should have been held to support the suit. Where a fraudulent representation was made, though not made solely to the person who had acted upon it to his detriment, if made with intent to produce the false impression acted upon in a way that was reasonable, probable, and natural, then the author of that misrepresentation should be held responsible in damages to the person deceived. Therefore, there was error in the judgment in its absolving the defendant from liability on the ground that the aim, or object, of the false representation was not so much to induce any purchase of shares as to keep up the bank. And it was another mistake in the judgment to relieve the defendant from liability on the ground that the plaintiff had chosen the investment as a speculation of his own, voluntarily undertaking the risk, with knowledge of the state of affairs.

The following cases were referred to in connection with the relation between fraudulent misrepresentation and consequential damage, as cause and effect—*Peek v. Gurney* (1), *Scott v. Dixon* (2), *Bedford v. Bagshaw* (3), *Barry v. Crosskey* (4), *Clarke v. Dickson* (5), *Smith v. Chadwick* (6).

(1) (1873) L. R., 6 Ap. Ca., H. L., 377.

(2) (1859) 29 L. J., Exch., 62 in note.

(3) (1859) 29 L. J., Exch., 59.

(4) (1861) 2 J. and H., 23.

(5) (1859) 6 C. B., N. S., 453;
28 L. J., C. P., 453.(6) (1882) L. R., 20 Ch. Div.,
443. In Appeal (1884) 9
Ap. Ca., 187.

Mr. H. H. Asquith, Q. C., Mr. W. H. Upjohn, Q. C., and Mr. J. Roskill, for the respondent. The right to recover on the alleged fraudulent misrepresentation had not been made out by the evidence. In order to maintain a suit founded upon a false representation it was essential that the plaintiff should have been induced thereby to act, to his detriment. The balance-sheets from 1886 were false, but, except for the one issued in October 1890, the respondent had been found by the Courts below not to be responsible. The evidence was referred to at length to show that the Court below was right in finding that, though this balance sheet was false and the report also, they were not inducements, in fact, leading the plaintiff into the transaction; as he had, in fact, bought the first parcel of shares, and had engaged to buy the remaining forty-seven, before either of these documents had reached him. The case for the defence rested on the facts established by the evidence. But, in regard to the law, it was also contended on behalf of the respondent, that too wide a range of consequential damage had been suggested by the counsel for the appellant for cases of false representation. There must be a limit in respect of what would be legally included among the consequences entitling a person to sue on the ground of false representation made. If here the immediate object of its being made was to keep up the bank, then the sale of shares by a director was only an indirect, and remote, consequence. If the direct aim and intention in issuing the false balance-sheet was to make the shareholders declare a dividend, it did not follow that this false representation would support this suit. Reliance was placed on what was said in the judgment of Lord Cairns in *Peck v. Gurney* (1). If a representation has been made for a purpose different from the result which is alleged as the ground of damages, responsibility only attaches where the damages are proximate. In this case they were too remote. *Barry v. Crosskey* (2) was also cited. The injury to support a suit must have been the immediate, not the remote, consequence

1898

 MICHAEL
 MACAULIFFER
 v.
 CHARLES
 WILSON.

(1) (1873) L. R., 6 Ap. Ca., H. L., 377. (2) (1861) 2 J. and H., 23.

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

of the misrepresentation, which, in the case where a third person, to whom it had not been directly addressed, had acted upon it, must have been such that the act was within the defendant's intention, or contemplation. This had not been shown in the present case.

Mr. *J. D. Mayne*, in reply, argued that the limit of consequences was in the degree of probability attending the act relied on as being a probable consequence of the fraudulent misrepresentation. The limit was to be regarded as dependent upon how far the act may have been a natural consequence.

Afterwards, on the 26th November 1898, their Lordships' judgment was delivered by SIR R. COUCH.

The appellant in this case became a shareholder in the Himalaya Bank in 1886, several years before the transactions which are the subject of this appeal. This respondent had become a director of the bank in 1885, and continued to be one until it stopped payment on the 8th July 1891 and went into liquidation. On the 16th of May 1893 the appellant brought a suit against the respondent, alleging in his plaint that the respondent strongly advised him to buy shares in the bank as a good investment, and said the bank had a large reserve fund; was on a thoroughly sound footing, and that the directors had declared and paid the usual dividend of 10 per cent.; that the respondent had been for years a director of the bank, and for years, certainly since 1887, had issued or permitted the issue of false half-yearly reports and had issued false balance-sheets that alleged the existence of a reserve fund of Rs. 70,000 in 1885, and that every half-year the sum of Rs. 5,000 had been added to the reserve fund, whereas no reserve fund ever existed; that the balance-sheets purported to show that each half-year a profit of about 19 per cent. on the capital had been made, whereas no profit had been made; that in July 1890 the respondent issued a balance-sheet and subsequently issued a directors' report, both of which he knew to be false; that on the 28th of August 1890 the appellant on the faith of the false statements of the respondent, made both as a

director and as a private individual, was induced to purchase 100 shares for which he paid Rs. 11,000 on the 10th of September 1890; that on the 31st of October 1890 the false report and balance-sheet for the half-year ending the 30th of June 1890 was laid before the shareholders and the *ad interim* dividend of 10 per cent. declared and paid on the 1st of August 1890, was on that day confirmed, the respondent using the appellant's proxy for that purpose; that about the end of November 1890, by reason of the false representations made by the respondent, the appellant was induced to purchase 47 more shares for which he paid Rs. 5,170 on or about the 27th of November 1890. The respondent pleaded that he did not induce the appellant to make the purchases, and did not make any false statement or misrepresentation. The suit was heard by the Subordinate Judge of Dehra Dun who on the 31st July 1893 made a decree in favour of the appellant. On appeal to the High Court for the North-Western Provinces this decree was reversed and the suit was dismissed. Although the Courts differed in the result, they were agreed as to some of the facts in the case, and as their Lordships will treat concurrent findings of facts as binding upon the parties it is unnecessary to consider the evidence which is only applicable to them. Both Courts have found that the balance-sheets issued since 1887 were false. But they agree that the respondent is not responsible for them. The High Court say there is not sufficient evidence to show that the balance-sheets issued previous to that of 1890 were false to his knowledge. The Subordinate Judge found expressly that he was not responsible for those balance-sheets. They were prepared by Moss, the Manager of the bank, who was absent in Australia when that for the half-year ending on 30th June 1890 was prepared. It was indeed admitted by Mr. Mayne who appeared for the appellant, that previous to April 1890 the directors were acting upon representations made to them by Moss. The important part of the case is the issuing of the balance-sheet and report for the last half-year and declaring and paying the dividend on the 1st of August. Both

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

1898

 MICHAEL
MACAULIFFE

 v.
CHARLES
WILSON.

Court have found that the verbal representations alleged to have been made by the respondent were not proved. The evidence of appellant of these representations has not been believed by either of the Courts. The case of the appellant must therefore rest upon what was done after April 1890.

It appears in the minutes of a meeting of the directors of the bank on the 10th of July 1890, of which the respondent was chairman, that the directors had gone through the accounts of the bank and that the state of its affairs had become known to them. In the minutes of a meeting on the 16th of the same month, the respondent being the chairman, it is stated that "the half-yearly balance-sheets ending 30th June 1890 having been duly approved of, it was decided to declare the usual *ad interim* dividend of 10 per cent. per annum, and that the usual notice be inserted in the newspapers." And both Courts have found that the respondent knew that balance-sheet to be false.

With regard to the 100 shares bought on the 10th September 1890, the material question is whether the appellant in buying them was acting upon a representation contained in the balance-sheet ending on the 30th June 1890, or made by the declaration of the *ad interim* dividend, and was thereby induced to buy those shares. *Barry v. Croskey*, (1) *Peck v. Gurney*, (2). The appellant was examined as a witness in support of his case, and in considering the value of his evidence it should be observed that as regards the verbal representations said to have been made by the respondent, neither of the Courts below has believed his evidence. He said, "On 10th September I bought 100 shares at Rs. 110 each. I produce the scrip. I subsequently bought more scrip in the end of November—47 shares at the same price, from the defendant. The scrip is in the possession of the Mussoorie Bank. In purchasing these I was influenced by the consideration mentioned before by the half-yearly report for the half-year ending 30th June 1890, Exhibit B, dated 31st October 1890." In cross-examination being questioned as to a

(1) 2 J. and H., 23.

(2) L. R., 6 E. and I. A., 412.

1898

MICHAEL
MACAULIFFEv.
CHARLES
WILSON.

letter of his to the respondent of the 17th September 1891 in which he said—" You signed the directors' report for the half-year ending 30th June 1890, declaring a dividend at the rate of 10 per cent. per annum, and stating that the net profits were Rs. 19½ per cent. and a fraction. By this report the public were deceived as to the state of the bank, and I myself was led to buy 147 more shares from you" and asked why he was led by the balance-sheet of the 30th June 1890 to purchase 147 shares, he answered :— "The No. 147 was a mistake for 47, and the mistake of writing "147 was a clerical error The balance-sheet of 30th "June 1890 did not influence me in buying the shares." In the printed record before their Lordships there is between "the" and "shares" the words "(paper torn)". It is not necessary to quote the whole of his evidence on this matter. In their Lordships' opinion the effect of it is that he was not induced to purchase the 100 shares by the balance-sheet of the 30th June 1890 or the declaration of the *ad interim* dividend.

As to the 47 shares the case is different. The evidence relating to that purchase is mainly documentary. It appears in the appellant's deposition that before the 5th September 1890 there had been a negotiation for the purchase of the 100 shares, and on that day the appellant wrote to the respondent—"I have sold those 100 shares to Wright & Co. "and they pay transfer charges, and I have also sold 200 "other shares to our friend at Sialkot, so if Moss" (the Manager of the Bank) "will lend me Rs. 10,000, we can do a "large business." On the 3rd October he wrote another letter to the respondent in which, after speaking about the payment for the 100 shares, he said :—"I suppose Mr. Moss has returned by "this. Have you asked him at what rate he can lend me "money, say Rs. 5,000? If he lends it at 8 per cent., I will buy "46 more shares in the Himalaya Bank from you at the same price." On the 20th November he wrote to the respondent :—"I "do not understand that I only receive dividends on the 47 shares "from the 1st of January 1891. It is only two months since I

1898

MICHAEL
MACAULIFFE
v.
CHARLES
WILSON.

"bought the 100 shares from you without any such under-
"standing, and as the dividends for the current half-year will
"not be paid till March or April I cannot consent to any such
"condition of the purchase of the 47 shares as you now propose,
"nor should I have gone to so much trouble in raising a loan for
"their purchase if you had said that was what you meant. I
"explained to you that I could only buy Himalaya shares
"on favourable terms. The bank has now a very bad name as
"evidenced by the large extra security required by the Mussoorie
"Bank and by other indications also."

He does not notice the half-yearly balance-sheet, which he said in his deposition he received in October, or the *ad interim* dividend, as having induced him to buy the shares. And on the 27th November he wrote:—"You state that I am to draw dividends for the current half-year, so the matter is settled between us."

A more important letter is one which the appellant wrote to the respondent on the 11th March 1891. It is as follows:—

"Dear Wilson,—What are the strange rumours which I hear again respecting the Himalaya Bank? I heard things against it last year, but they were denied by you and the other directors, and so I myself was led not to believe them. At the same time you sold me a large number of shares at less than the market price. *Capital* has, I am told, a very damaging paragraph against the Himalaya Bank in which it is stated that its paper is being hawked about in the streets of Calcutta. I do not know what all this means."

"Of course I know very well last year that the Bank had become exceedingly unpopular and had lost numerous constituents under Mr. Greenway's management; but I was hoping that it would come round after Mr. Moss' return."

"Banks generally go to grief, and indeed can only go to grief either by speculation or by large bad debts. Now I do not think that there is anybody robbing the Himalaya Bank, and its operations being necessarily on a small scale, I have not heard nor can I conceive that it has had any serious losses, and I do not understand the rumours I hear except in so far as that the Bank's business is not good at present."

"I would request the favour of your enlightening me and giving me your advice as to whether I ought to sell out, and if so, at what rate? You were quite right in selling, and I cannot blame you if the worst comes to the worst; but I think you ought to give me your candid advice now that matters appear to have become serious."

This letter is not consistent with the Appellant having been induced to buy either the 100, or the 47, shares by the half-yearly balance-sheet of June 1890 or the publication of the *ad interim* dividend. Their Lordships think that if he had been so induced there would have been some allusion in it to them.

It has been seen that his evidence about the verbal representation was not believed by the Courts below, and their Lordships cannot consider his evidence where he says that in purchasing the 47 shares he was influenced by the half-yearly report dated 31st October 1890 as sufficient proof of it, or infer it from his knowledge of the reports. In their opinion he has failed to prove that, in buying the shares, he acted upon or was induced by any false representation for which the respondent is liable, and they will humbly advise Her Majesty to affirm the decree of the High Court and dismiss the appeal. The costs of it will be paid by the appellant.

Appeal dismissed.

Solicitors for the Appellant :—*Messrs. Pyke and Parrott.*

Solicitors for the Respondent :—*Messrs. Rooke and Sons.*

MUHAMMAD SIDDIQ KHAN AND OTHERS AND MUHAMMAD NASIR
ULLAH KHAN AND OTHERS.

On appeal from the High Court for the North-Western Provinces.

Contract construed as to interest claimed on part of purchase money left unpaid by arrangement Tender.

By an agreement between vendor and vendee part of the purchase money was retained by the latter, but not as a mere deposit by the vendor. The money was to be retained as security, that the property sold should be cleared of incumbrances and a good title made.

The vendee was not liable for interest unless he should refuse, or omit, to pay the money so retained when the vendor should have shown readiness to clear off the incumbrances. Till then the vendee was not bound to pay or to tender to the vendor the money retained.

APPEAL from a decree (11th June 1895,) of the High Court modifying a decree (30th June, 1893) of the Subordinate Judge of Meerut.

Present :—Lords HOBHOUSE, MACNAGHTEN, and MORRIS, and SIR R. COUGH.

1898

MICHAEL
MACAULIFFE

v.
CHARLES
WILSON.

P. C.
1898

November
18th.
December
10th.