

1897  
 BARLOW  
 v.  
 GOBINDR AM.

There must be a reasonable probability of purchasers being deceived. There is not in this case in my opinion such a reasonable probability of deception; therefore there is no infringement of any right to which the plaintiffs may be entitled. The result is, the suit must be dismissed with costs on scale No. 2.

Attorneys for the plaintiffs: Messrs. *Watkins and Co.*

Attorney for the defendants: Mr. *Chick.*

S. C. B.

## APPELLATE CIVIL.

*Before Mr. Justice Beverley and Mr. Justice Ameer Ali.*

1897  
 February 2.

LATIFUNNESSA (DEFENDANT) v. DHAN KUNWAR AND OTHERS  
 (PLAINTIFFS.)<sup>\*</sup>

*Limitation Act (XV of 1877), Schedule II, Art. 132—Suit for money lent on mortgage—Cause of Action—Bond, Construction of.*

In a mortgage bond, dated 14th June 1876, it was stipulated that the money advanced should be repaid "in the month of Jeyth 1289 Fusli, being a period of six years." The last day of Jeyth 1289 answered to the 1st June 1882, and the period of six years from the date of the bond ended on the 14th June 1882. In a suit brought upon the bond on the 12th June 1894,

*Held*, (AMEER ALI, J., *dubitante*) that the money sued for became due on the 14th June 1882, and the suit was in time.

*Rungo Bujaji v. Babuji* (1); *Almas Banea v. Mahomed Bujja* (2) and *Gnanasammunda Pandaram v. Palaniyandi Pillai* (3) referred to by Beverley, J.

THIS was a suit to recover Rs. 21,392, principal and interest due upon a mortgage-bond, dated the 8th Asar 1283 Fusli (14th June 1876). The portions of the bond to which reference is necessary for the purposes of this report are as follows:—

"The entire amount covered by the *zuripeshgi* lease and the bonds mentioned above has been found by calculation to amount to Co.'s Rs. 10,500 due to the *liccadars* by the declarant, and at present I have taken for my necessary expenses the sum of Co.'s Rs. 1,500 from the said *liccadars* through Syed Shah Ali Hossein, my husband and *ammolkhtar*, and have executed

<sup>\*</sup> Appeal from Original Decree No. 103 of 1895, against the decree of K. S. M. Fakhoruddin Hossein, Subordinate Judge of Patna, dated the 13th of December 1894.

(1) I. L. R., 6 Bom., 83.

(2) I. L. R., 6 Calc., 239.

(3) I. L. R., 17 Mad., 61.

a consolidated bond in respect of the former and present debts to the value of Co.'s Rs. 12,000 (half of which is Co.'s Rs. 6,000) bearing interest at the rate of 8 annas per cent. per mensem, stipulating to repay the same in the month of Jeyth 1289 Fusli, being a period of six years, in favour of Mussamat Dhan Kunwar, wife of Bhikari Sahu, and Khedu Sahu aforesaid, \* \* \*

1897

LATIFUN-  
NESSA  
v.  
DHAN  
KUNWAR.

"I do hereby declare and give in writing that I the declarant and my heirs shall pay to the aforesaid *mahajan* the interest of the sum of Rs. 12,000 mentioned above amounting to Rs. 720 for 12 months year by year in the month of Jeyth up to the end of lease. For this I the declarant and my heirs have not nor shall have any objection whatever. I shall repay the aforesaid amount of principal of the loan to the aforesaid *mahajans* within the prescribed time without any objection."

The month of Jeyth 1289 Fusli, ended on the 1st June 1882, but the period of six years mentioned in the above extract ended on the 14th June 1882. The present suit was brought on the 12th June 1894. The defendant's plea of limitation, based on the date first given, was overruled by the lower Court.

The defendant appealed to the High Court.

Mr. O. Gregory, Moulvie Mahomed Yusuf, Babu Saligram Singh and Moulvie Mahomad Mustafa Khan for the appellants.

Babu Dasarathi Sanyal and Babu Debendra Chandra Mullick for the respondent.

The following judgments were delivered by the High Court (BEVERLEY and AMBER ALL, JJ.) :—

BEVERLEY, J.—This is a suit upon a mortgage bond, and the only question raised in this appeal is whether or not the suit was instituted within twelve years from the date on which the money sued for became due.

The bond is dated the 8th Assar 1283 Fusli, corresponding with the 14th June 1876, and the suit was instituted on the 12th June 1894. The question turns upon the construction of the document as to what was the date upon which the money became payable. The stipulation in the bond was to repay the money "in the month of Jeyth 1289 Fusli, being a period of six years." The period of six years from the date of execution of the bond would carry us to the 14th June 1882, and the plaintiff contends that *that* should be regarded as the due date irrespective of all mention of the month of Jeyth 1289 Fusli. The defendant on the other hand pleads that the debtor bound himself to repay the

1897  
 LATIFUN-  
 NESSA  
 v.  
 DHAN  
 KUNWAR.

money on or before the 29th Jeyth 1289 Fusli (there being only twenty-nine days in the month of Jeyth in that year) which corresponded with 1st of June 1882, and that consequently this suit is barred.

The lower Court has held that the plaintiff's contention is correct, and accordingly the defendant has appealed.

The deed having been executed on the 8th Assar 1283, it is not improbable that it had been drafted some days previously, that is to say, in the month of Jeyth 1283, and that when the stipulation was inserted in the deed to the effect that the money would be repayable in six years, it was thought that that period would expire in the month of Jeyth 1289. The question before us is whether the parties intended that the money should be repaid six years after the execution of the bond, without reference to any particular date, or whether it was intended that the money should be repaid in Jeyth 1289, it being casually mentioned that that month was within the period of six years from the date of the execution of the deed. I am of opinion that the former is the more liberal and proper construction to place upon the deed, that is to say, that the debtor was to have a period of full six years from the date of the execution of the deed within which to repay the money. This was the view taken by the Bombay High Court in a precisely similar case, *i.e.*, the case of *Rungo Bujaji v. Babaji* (1). That a liberal construction should be given in cases of doubt such as the present was also held in the case of *Almas Bane v. Mahomed Ruja* (2) decided by this Court, in which it was held that in consequence of the mention of the 30th Pous in a deed it was intended that the debtor should have full thirty days in that month within which to repay the money, although as a matter of fact there were only twenty-nine days in that particular month of Pous. That decision was followed by the Madras High Court in the case of *Gnanasammanda Pandaram v. Palaniyandi Pillai* (3). Upon these authorities, and also upon the ground that in construing acts of limitation the Court is bound to give them a liberal interpretation, I am of opinion that the decision of the lower Court is correct, and that this appeal must be dismissed with costs.

(1) I. L. R., 6 Bom., 83.

(2) I. L. R., 6 Calc., 239.

(3) I. L. R., 17 Mad., 61.

AMEER ALI, J.—I must say that the point is by no means clear to my mind. Section 25 of the Limitation Act does not apply to a case like this, and I am not prepared to follow the ruling of the Bombay High Court. The question is one of intention. What was the intention of the parties with regard to the document which is before us? Whether the intention was to make the repayment in Jeyth 1289, or was it to be made within six years from the time of the execution of the document? There are indications in the document that Jeyth 1289 was to be taken as the time for the repayment of the loan, and the suits that were brought by the plaintiff also give grounds, as contended for by the defendant's pleader, for the view that the time for repayment was fixed in Jeyth 1289. But although I have a doubt on the question before us, my doubt is not so strong as to justify my differing from the view taken by my learned colleague. I therefore concur in dismissing the appeal with costs.

S. C. C.

*Appeal dismissed.**Before Mr. Justice Beverley and Mr. Justice Ameer Ali.*

BAIJU LAL PARBATIA AND OTHERS (PLAINTIFFS) v. BULAK  
LAL PATHUK (DEFENDANT).\*

*Parties — Parties to suit — Persons having the same interest in one cause —  
Civil Procedure Code (Act XIV of 1882), sections 26 and 30.*

In a suit for the removal of masonry structures raised by one member of a community of Hindu priests upon a certain platform, on which every member of the community had individual right to perform religious rites, praying also for a declaration and injunction in connection with such removal, the plaintiffs were seven persons claiming relief as the *panch* or committee representing the whole community, and also in their individual capacity. It was found by the Court that the plaintiffs did not constitute the *panch*, and that they did not in that character represent the community :

*Held*, that section 26 of the Civil Procedure Code (1882) was only an enabling section ; it allowed the plaintiffs to bring a joint action ; and should not be read as though all persons of the community *must* be joined as plaintiffs.

*Held*, also, that section 30 of the Code is an enabling section and did not debar the plaintiffs from suing *in their own right* in this case.

THE plaintiffs in this case alleged that they were members of a

\* Appeal from Appellate Decree No. 660 of 1895, against the decree of H. Holmwood, Esq., District Judge of Gya, dated the 17th of December 1894, reversing the decree of Babu Tej Chunder Mookerjee, Munsif of Gya, dated the 22nd of June 1894.

1897

LATIFUN-  
NESSA  
v.  
DHAN  
KUNWAR.

1897

*February 4.*