

evade, by this plea of limitation, the payment of a just debt and to act contrary to the expressed intentions of the parties at the time of entering into the contract.

Accordingly we are of opinion that this suit is not barred by limitation.

1880

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ALMAS  
BANEE  
v.  
MAHOMED  
RUJA.

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PRIVY COUNCIL.

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GOURCHANDRA RAI (DEFENDANT) v. PROTAPCHANDRA DASS  
(PLAINTIFF).

P. C.\*  
1880  
March 5.

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[On Appeal from the High Court at Fort William in Bengal.]

*Principal and Surety—Giving Time—Interest paid in advance—Discharge of Surety—Accommodation Acceptor—Contract (Act IX of 1872), s. 135.*

The drawer of hundis paid advance interest to the holder to obtain time, which he did obtain, for payment after due date. *Held*, that the liability of an accommodation acceptor of the hundis depended on whether he knew of and consented to this arrangement.

*Held* on the merits, that he knew of, and consented to, advance interest being taken.

APPEAL from a decree of a Divisional Bench of the High Court of Bengal, dated 16th May 1878, reversing, so far as it affected this appellant, a decree of the Subordinate Judge of Dacca, dated 14th September 1876.

The facts of the case and judgment appealed from are reported in the Indian Law Reports, 4 Calc., 132.

Mr. *Cowie*, Q. C., and Mr. *Doyne*, for the appellant, argued, that the plaintiff had failed to prove that such an assent had been obtained from the surety as was contemplated in the proviso contained in the 135th section of the Indian Contract Act, 1872, which was the law governing this case, and that, therefore, the surety had been discharged.

Mr. *Leith*, Q. C., and Mr. *Graham*, for the respondent, were not called upon.

Their Lordships' judgment was delivered by

SIR J. W. COLVILLE.—Accepting the facts found by both the

\* *Present*:—SIR J. W. COLVILLE, SIR B. PRACOCK, SIR M. E. SMITH, and SIR R. P. COLLIER.

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GOUR-  
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DASS.

Courts in India, their Lordships agree with the High Court that the liability of the appellant, as accommodation acceptor of the hundis, depends on the answer to be given to the question whether he knew of, and consented to, the advance interest being taken. The High Court has answered the question in the affirmative, and their Lordships entirely agree in that conclusion. Monohur Laha's evidence alone is sufficient to establish the fact that the defendant did know of, and consent to, the payment of the advance interest; and he was a witness called by the appellant. Nor do their Lordships think that the testimony of the witnesses adduced by the plaintiff is, though exceptions may be taken to parts of it, altogether inconsistent, as has been argued, with that of Monohur Laha. That which relates to a conversation between the plaintiff and defendant in the billiard-room of the former, upon which there was no cross-examination, is quite consistent with all that Monohur Laha has deposed to. Again, the probabilities of the case appear to their Lordships to be all in favor of the conclusion of the High Court. Pogose, the drawer of the hundis and the party primarily liable upon them, was absent from his place of business; his affairs were evidently in a very shaky condition; and although it was possible that when he came back again he might be able to make some arrangement for the payment of the hundis, he had no present means of meeting them. In these circumstances it is hardly conceivable that the plaintiff would enter into a transaction, the effect of which would be to relieve the only solvent party from liability upon the hundis. On the other hand, it was much to the interest of the defendant to take the chance of the re-establishment of Pogose's credit, and therefore to assent to such an arrangement as was actually made.

Their Lordships, therefore, will humbly advise Her Majesty to affirm the judgment of the High Court, and to dismiss this appeal with costs.

*Appeal dismissed.*

Agent for the appellant: Mr. *T. L. Wilson.*

Agents for the respondent: Messrs. *Watkins and Lattey.*