

APPELLATE CIVIL.

Before Mr. Justice Morris and Mr. Justice Prinsep.

ALMAS BANEE AND OTHERS (PLAINTIFFS) v. MAHOMED RUJA AND
OTHERS (DEFENDANTS).*

1880
June 10.

Limitation Act (XV of 1877), s. 25 ; sched. ii, art. 66—Bond.

Where a bond, by its terms, stated that money advanced should be repaid on the 30th Pous 1283 B. S., and it so happened that, in the year 1283, the month of Pous consisted only of twenty-nine days (the 29th Pous, answering to the 12th January 1877), *held*, that a suit brought on the 13th January 1880 was in time.

THIS was a reference made to the High Court under s. 617 of Act X of 1877.

The plaintiff brought a suit on the 1st Magh 1286, B. S. (corresponding with 13th January 1880) to recover a sum of money advanced to the defendant, and secured by a bond dated the 16th Kartic 1283 B. S., the due date of repayment of the advance under the bond being stated to be the 30th Pous 1283 B. S.

It so happened that, in the year 1283 B. S., the month of Pous consisted only of twenty-nine days, the last day of the month corresponding with the 12th January 1877.

The plaintiff contended that, as there was no 30th Pous in the year 1283, his suit was in time if brought on the 1st Magh 1283.

The defendant contended, that the suit was barred by limitation, it not having been brought on or before the 29th Pous 1283, corresponding with 12th January 1877.

The Munsif held, that the parties evidently intended that the bond should be payable on the last day of the month of Pous 1283, irrespective of the number of days the month should consist of, and that, therefore, the suit was barred; but, at the request of the plaintiff, he referred the case for the opinion of the High Court.

* Civil Reference, No. 6 of 1880, from Baboo Karunamoy Banerjee, B. L., Sudder Munsif of Sudharam, in the District of Noakhally, dated the 26th February 1880.

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The opinion of the Court (MORRIS and PRINSEP, JJ.) was as follows :—

MORRIS, J.—This is a case referred by the Sudder Munsif of Sudharam, under s. 617 of the Code of Civil Procedure, raising the question of the date of payment fixed in a bond as governing the application of the law of limitation.

The date for payment of the money due under the bond is entered in it as the 30th Pous 1283. The month of Pous varies, sometimes containing twenty-nine and sometimes thirty days. In the year 1283 the month of Pous contained only twenty-nine days, and the 29th, or the last day of Pous, corresponded with the 12th January 1877.

The present suit, to realize the money due on this bond, was brought on the 13th of January 1880, and the point submitted to us is, whether the suit has been brought within three years from the date on which the money became payable.

The Munsif states as his opinion, that “the parties never intended that the day of repayment should be in the month of Magh. By ৩০ পৌষ (30th Pous) the parties, according to the custom of the country, evidently intended the last day of the month of Pous 1283, irrespective of the number of days the month should consist of.”

This is, no doubt, one mode of interpreting this term of the contract. At the same time we think that, when the bond, by its terms, gives expressly thirty days from the commencement of Pous as the limit of payment, the period of limitation applicable to a suit brought to enforce payment should be reckoned from such thirtieth day. Both parties, at the time of execution of the bond, understood that there were thirty days in Pous of that year, and so made the thirtieth day the limit day of the term of payment. There is nothing in their conduct, or in the terms of the agreement, from which it can be inferred that they intended the 29th of Pous to be the limit. We are not aware that the custom of the country is as stated by the lower Court, nor does it appear that it was established in evidence in the present case. Consequently, the present contention of the obligor is, in our opinion, in direct opposition to this the original understanding between the parties. The obligor, as it seems to us, wishes to

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.

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PRIVY COUNCIL.

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

P. C.*
1880
March 5.

[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.