

(1880) 06 CAL CK 0001

Calcutta High Court

Case No: None

Almas Banee and
Others

APPELLANT

Vs

Mahomed Ruja and
Others

RESPONDENT

Date of Decision: June 10, 1880

Citation: (1881) ILR (Cal) 239

Hon'ble Judges: Prinsep, J; Morris, J

Bench: Division Bench

Judgement

Morris, J.

This is a case referred by the Sudder Munsif of Sudharam, u/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.

2. 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.

3. 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.

4. The Munsif states as his opinion, that "the parties never intended that the day of repayment should be in the month of Magh. By "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."

5. 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.

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