APPELLATE CIVIL.

Before Mr. Justice Muttusámi Ayyar and Mr. Justice Brandt.

MACKENZIE AND OTHERS (PLAINTIFFS), APPELLANTS,

and

TIRUVENGADATHÁN AND ANOTHER (DEFENDANTS), RESPONDENTS.*

1886. Feb. 15, 23.

Limitation Act, s. 20—Part-payment of principal of debt—Endorsement of cheque by debtor.

Where the only evidence in the handwriting of the debtor of the part-payment of the principal of a debt was the endorsement of a cheque to the creditor:

Held, that such endorsement did not satisfy the conditions of s. 20 of the Indian Limitation Act so as to give rise to a new period of limitation from the date of such endorsement.

APPEAL from the decree of Parker, J., in civil suit No. 214 of 1885.

The Advocate-General (Hon. Mr. *Shephard*) for appellants.

Anandácharlu and *Sundaram Sastri* for respondents.

The facts of this case appear sufficiently from the judgment of the Court (Muttusámi Ayyar and Brandt, JJ.).

JUDGMENT.—On the 6th September 1881 the respondents (B. Tiruvengadathán Chetti and G. Venkaya Chetti) executed a promissory note in favour of the appellants (Arbuthnot & Co.) for Rs. 4,000. It provided that the debt was to be repaid by monthly instalments of Rs. 500 each, commencing on the 6th September 1881, and that in case any instalment was in arrear, the whole debt then due was to be paid on demand. The respondents paid on twelve different dates small sums aggregating Rs. 1,799-14-3, but these payments were not made according to the tenor of the bond either in respect of the amount of instalment or the date on which it was to be paid. The last of such payments was a sum of Rs. 100 paid on the 4th September 1882, and the other payments were made more than three years before suit.

But the last instalment payable according to the terms of the promissory note became due on the 6th April 1882, and the

* Appeal 27 of 1885.

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appellants brought this suit in August 1885. The respondent pleaded, *inter alia*, limitation in bar of the claim. It was shown by the appellants that Rs. 100 was credited in their books on the 4th September 1882, and that it was a part-payment made on account of the principal, but the only writing which they produced in evidence was exhibit B. This document purports to be a cheque drawn on the Agra Bank by one Haji Mahomed in favour of G. Venkaya Chetti or order, and endorsed to Messrs. Arbuthnot & Co. by G. Venkaya Chetti. No evidence was, however, produced to show that the respondent No. 2 was the person who endorsed the cheque, or that the signature which the endorsement bore was his. It was contended before the learned Judge who tried the suit in the Court below that it was brought in time on the ground that the last payment was made in September 1882, whilst the plaint was presented in August 1885. Mr. Justice Parker held that three years ought to be reckoned from the date on which the last instalment fell due, and on this ground, and on the further ground that there was no evidence that the respondent No. 2 endorsed the cheque B, or that respondent No. 1 authorized him to do so, he dismissed the suit with costs. It is argued in appeal that the claim is not barred by limitation and that permission should be given to produce further evidence, in case we consider that the signature of respondent No. 2 to the endorsement on the cheque B is not sufficiently proved.

This case is governed by art. 75, sch. II of Act XV of 1877. It provides that the time shall run from the period when the first default is made, unless where the payee waives the benefit of the provision, and then when fresh default is made in respect of which there is no waiver. In effect it creates a case of election as each instalment becomes overdue, and after the last instalment becomes overdue, there can be no election for the obvious reason that there are no two obligations to elect between. The learned Judge was right in holding that time began to run under art. 75 from the 6th April 1882, after which there could be no waiver. As to the contention that permission should be given to produce further evidence, we do not consider that such evidence would save the limitation. Assuming that respondent No. 2 endorsed the cheque B, it does not satisfy the requirements of s. 20 of the Act of Limitations. The proviso to that section requires that the fact of the part-payment should appear in the handwriting

the debtor or his agent. The cheque is only an order for payment, and it does not evidence any payment at all. Nor does it show for what purpose the payment was made. There is, no doubt, some parole evidence as to the payment, but the Act requires that the fact of payment, and that such payment was a part-payment, should appear in writing signed by the debtor or his agent authorized to make the payment.

It is not urged that there is such writing, and the appeal must therefore fail. It is next urged that no double set of costs should have been awarded, but the respondents had distinct defences in respect of the question of limitation and appeared by different pleaders, and we cannot say that they were not entitled to separate costs.

We dismiss the appeal with costs.

Solicitors for appellants, *Barclay & Morgan.*

APPELLATE CIVIL.

Before Mr. Justice Brandt and Mr. Justice Parker.

PONNUSÁMI (PLAINTIFF), APPELLANT,

and

THATHA AND OTHERS (DEFENDANTS), RESPONDENTS.*

1886. Feb. 1, 8.

Hindú law—Gift of undivided share by a coparcener invalid.

The rule of Hindú law which forbids voluntary alienations of the family estate by a Hindú coparcener applies as well to gifts to relatives as to gifts to strangers.

APPEAL from the decree of D. Irvine, District Judge of Trichinopoly, in suit 9 of 1884.

The plaintiff, Ponnusámi Pillai, sued Thatha, Shanmugam, and Thangathammál, infant children of the daughter of plaintiff's deceased brother Chidambaram, to cancel a deed of gift executed by Chidambaram in favour of defendants and to recover possession of certain land held by virtue of such gift.

The plaintiff alleged that Chidambaram was his coparcener and died undivided, and that the land sued for was part of the family estate.

* Appeal 133 of 1885.