APPELLATE CIVIL.

Before Sir Arthur J. H. Collins, Kt., Chief Justice, and Mr. Justice Benson.

1896. April 23.

KOLLIPARA PULLAMMA (PLAINTIFF), APPELLANT,

v.

MADDULA TATAYYA AND OTHERS (DEFENDANTS NOS. 1, 3, 4, 5 AND 9), RESPONDENTS.*

Limitation Act, s. 20—Payment of interest as such—A mere credit of interest made in accounts of defendants.

In a suit brought by a creditor against certain persons to whom she had lent money on interest:

Held, that, in order to save the bar of limitation, a mere credit of interest entered in the accounts of the defendants was not a sufficient payment of interest as such under s. 20, Limitation Act, to save the bar.

SECOND APPEAL against the decree of N. Saminadha Ayyar, Subordinate Judge of Ellore, in appeal suit No. 125 of 1894, modifying the decree of E. J. S. White, District Munsif of Ellore, in original suit No. 317 of 1892.

The first four defendants are brothers, and they, with the other defendants, admittedly lived until lately in union and carried on business jointly, the first defendant Tatayya being the manager. The plaintiff lent them some money, and on the 18th December 1888, her account was adjusted by the first defendant, who signed an acknowledgment on her account for a sum of Rs. 4,181-8-7½ (exhibit C[3]). Various sums are said to have been paid subsequently to and by the plaintiff. The account was again adjusted on the 9th April 1891, when the second defendant (admittedly not the manager of the family) signed an acknowledgment for Rs. 2,924-12-1½. After allowing for several subsequent debits and credits, the suit is brought for a balance, alleged to be due to the plaintiff of Rs. 1,592-11-10½. The defendants plead that the debt has been discharged and that it has become barred by limitation. The adjustment referred to on 9th April 1891 was not proved, and no evidence was adduced to prove that the suit

* Second Appeal No. 460 of 1895.

account was in the nature of a banking account; it appears, therefore, to be simply an ordinary account for money lent for the purpose of saving the bar of limitation. The plaintiff relied on an entry which appears in her own account as well as in that of defendants, showing a payment to her of Rs. 200 on account of interest on the 6th October 1891. On the evidence the munsif found that the sum of Rs. 200 was paid by the defendants jointly to the plaintiff on 6th October 1891, and that the suit was therefore not barred. On appeal the Subordinate Judge found that the sum of Rs. 200 was not paid by the first defendant or under his orders to the plaintiff towards interest as such, and that the suit was barred by limitation as to the main portion of the amount claimed, but gave a decree for Rs. 103-1-0, the amount of four items admitted to be due by the defendants with interest up to date of plaint.

From the accounts filed in the suit by plaintiff and defendants (exhibit D^2) and (exhibit E^1), it appeared that the plaintiff was credited by the defendants with Rs. 303-13-3 on 12th October 1890, being interest at 12 annas per cent. for fourteen months and seventeen days, namely, from 23rd July 1889 to 10th October 1890.

The plaintiff preferred this second appeal.

Pattabhirama Ayyar, *Ethiraja* and *Sivagnanam* for appellant.

Mr. *Parthasaradhi Ayyangar* and *Sivasami Ayyar* for respondents.

JUDGMENT.—The plaintiff lent certain sums to the defendants, and the account between them was last settled on the 18th December 1888. In November 1892, the plaintiff sued for the balance of principal and interest due. In order to take the case out of the statute of limitations, certain alleged payments were relied on. The District Munsif found that one of these, viz., of Rs. 200 on the 6th October 1891, was true, and that there was no bar by limitation. The Subordinate Judge, however, found that the payment was not made and dismissed the plaintiff's suit, except as regards a small sum admitted by defendants. The finding of the Subordinate Judge as regards this payment is a finding of fact, and although we do not regard his reasons for the finding as altogether satisfactory, we have no power in second appeal to go behind it.

It has, however, been found by both Courts that a sum of Rs. 303 was credited in the defendants' books (Day' book and

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Ledger) to the plaintiff's account with them on the 10th October 1890 as interest due on her loan to date, and it is strongly urged before us that this amounts to a payment to her sufficient, under section 20 of the Limitation Act, to give a new starting point for limitation. No authority in support of this construction of the section has been brought to our notice, and the current of English decisions on the English statute is opposed to it (*Amos* v. *Smith*(1), *Maber* v. *Maber*(2), *Hart* v. *Nash*(3)). The broad rule deducible from those cases seems to be that though the payment need not be in money, but may be in goods, or even by a settlement of account between the parties, yet the payment must be of such a nature that it would be an answer in a suit brought by the plaintiff to recover the amount. If that test be applied to the present case, can it be said that the credit of the sum by the defendants in their books to the plaintiff's account with them is such a payment to her as would be an answer in a suit brought by her to recover the money and the interest? Clearly it would not. We find, too, that in a case (very like the present case) the Bombay High Court has decided that such a credit of interest is not a payment within the meaning of section 20 (*Ichha Dhanji* v. *Natha*(4)). We, therefore, find that this credit is not sufficient to remove the bar by limitation.

The only other grounds urged on us is that the transaction was not a loan, but a deposit, by plaintiff, in which case limitation would only run from the date of demand for payment under article 60, schedule 2 of the Act, and the suit would not be barred. The District Munsif expressly states that this plea was given up before him, and there is no affidavit to show that this statement is incorrect. The mere reference to it in the written arguments filed before the District Munsif is no proof that it was not given up after that paper was put in.

In the result, the second appeal fails and is dismissed with costs.

(1) 1 H. & C., 238.
(2) L.R., 2 Ex., 153.
(3) 2 C., M. & R., 337.
(4) I.L.R., 13 Bom., 338.