APPELLATE CIVIL.

Before Mr. Justice Phillips and Mr. Justice Krishnan.

1925, January 8.

P. M. A. VELLIAPPA CHETTIAR (LEGAL REPRESENTATIVE OF THE 6TH DEFENDANT), APPELLANT

v.

VENKATASUBBARAYULU NAIDU AND OTHERS (PLAINTIFF AND DEFENDANTS), RESPONDENTS.*

Mortgage-deed—Principal amount payable on a certain date—Interest payable each year—On default in payment of interest, both principal and interest becoming payable—Option of mortgagee on default—suit for both more than twelve years after default but within twelve years of date for payment of principal—Bar—Limitation Act (IX of 1908), art. 132—Starting point.

Where a mortgage-deed, dated 20th September 1890, which provided for the payment of the principal in 1904 and of the interest at the end of each year, contained a further clause that, in default of payment of interest in any year, the mortgagee "shall be at liberty to recover the whole amount of principal and interest due up to date," and after default in payment of interest the mortgagee sued for principal and interest in 1916, more than twelve years from the date of default but within twelve years from the date fixed for payment of the principal in the main contract, *Held* that, on a proper construction of the deed, the option was reserved with the mortgagee to enforce the default clause at his pleasure; that the period of limitation under article 132 of the Limitation Act started to run, not from the date of default of payment of interest but from that fixed for payment of principal under the main contract, and that consequently the suit was not barred by limitation. *Narna* v. *Ammani Amma*, (1916) I.L.R., 39 Mad., 981, followed; *Gaya Din* v. *Ghumman Lal*, (1915) I.L.R., 37 All., 400, (P), dissented from.

*Appeal No. 389 of 1919.

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APPEAL against the decree of T. M. FRENCH, Temporary Subordinate Judge of Vellore, in Original Suit No. 18 of 1918.

This is a suit to recover a sum of money on a mortgage-deed executed on the 20th September 1890, by the first defendant in favour of the assignor of the plaintiff. The deed provided for the payment of interest by the 30th Ani of each year and for payment of the principal on 30th Ani, Krodhi (13th July 1904); and it also provided that, if the interest was not paid in any year, the principal and interest should be recoverable at once. There was default of payment of interest in some years previous to this suit which was instituted on 13th July 1916. The principal defendants contended *inter alia* that the suit was barred by limitation, as more than twelve years had elapsed after the date of default in payment of interest. The Subordinate Judge over-ruled this contention and decreed the suit. The sixth defendant preferred this appeal. The material portions of the mortgage bond were as follows:

"I shall pay you the annual interest, all at once, every year on 30th Ani and obtain receipts from you. I shall pay you the principal Rs. 16,000 on 30th Ani, Krodhi year (13th July 1904). . . . . If I should fail to pay you the annual interest as aforesaid, in any year, you, your heirs and persons authorized by you in this respect shall be at liberty to recover all at once, from the hypotheca hereof and from me, my heirs and successors, the amount of principal and interest due thereunder till such date of default, quite irrespective of the subsequent instalments. . . . ."

K. Rajah Ayyar for Appellant.—The suit is barred by limitation as the cause of action for principal and interest accrued on default of payment of interest. There is no option to the mortgagee. Money had become due on default of payment of interest in any year under the deed. Article 132, Limitation Act, applies and the starting point is the date of first default. All

the High Courts, except the Madras High Court, have taken this view.

See *Gaya Din* v. *Ghumman Lal*(1), *Nathi* v. *Tursi*(2), *Shrinivas* v. *Chanbasapa Gowda*(3) but Contra *Narna* v. *Ammani Amma*(4).

A. Krishnaswami Ayyar for respondent referred to later cases in Madras following *Narna* v. *Ammani Amma*(4), viz., *Lachakkammal* v. *Sokkayya Naick*(5), *Kaliappa Nadar* v. *Sami Iyer*(6), *Ramadh Bibi Ammal* v. *Kandasami Pillai*(7) and dictum *in Juneswar Dass* v. *Mahabeer Singh*(8).

JUDGMENT.

The only question that arises in this appeal is one of limitation. The suit is brought on a mortgage-deed, dated 20th September 1890, in 1916, the mortgage money not being payable under the deed until 1904. There is also a clause in the deed that in default of payment of interest the whole amount of principal and interest up to that date, should become due. It is argued before us in the first place that this default clause leaves no option to the mortgagee as to whether he shall or shall not enforce it; but on a consideration of the language of the document which is translated in this Court as follows: "If I should fail to pay . . . you shall be at liberty to recover," it is clear that the option is reserved with the mortgagee to enforce this clause at his pleasure. That being so, the question is whether the period of limitation started to run on the date of default, or when the money became due under the terms of the main contract, namely, 1904, under Article 132 of the Limitation Act. The view that the money becomes due within the meaning

(1) (1915) I.L.R., 37 All., 400 (F.B.).
(2) (1921) I.L.R., 43 All., 671.
(3) (1923) 25 Bom. L.R., 103.
(4) (1916) 1 L.R., 39 Mad., 981.
(5) (1918) M.W.N., 586.
(6) (1921) M.W.N., 384.
(7) (1919) 9 L.W., 479.
(8) (1876) I.L.R., 1 Calc., 163 (P.C.).

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of this article at the date of the first default has been adopted by the Allahabad High Court in *Gaya Din* v. *Ghumman Lal*(1), and that decision has been followed in two subsequent cases in *Nathi* v. *Tursi*(2), and *The Collector of Jaunpur* v. *Jamna Prasad*(3). The case in *Gaya Din* v. *Ghumman Lal*(1), has been considered by this Court in *Narna* v. *Ammani Ammal*(4), in which a Division Bench took a view different from that of the Allahabad High Court and that view has subsequently been followed in *Ramadh Bibi Ammal* v. *Kandasami Pillai* (5) *Lachakkammal* v. *Sokkayya Naick*(6), *Kaliappa Nadar* v. *Sami Iyer*(7), and to one or other of these cases we both have been parties. There is no definite pronouncement of the Privy Council on this point, although there is a dictum in support of the view taken in this Court in *Juneswar Dass* v. *Mahabeer Singh*(8), the other cases of the Privy Council cited before us, namely, *Kishan Narain* v. *Pala Mal*(9), and *Muhammad Hafiz* v. *Muhammad Takariya*(10), are decisions under Order XI, rule 2, of the Code of Civil Procedure, and are not authorities on this point. In this state of affairs we prefer to follow the course of decisions in this Court in preference to the view of the Allahabad High Court; and consequently this appeal must fail and is dismissed with costs of plaintiff, and seventy-third respondent.

In this view it is unnecessary to decide the further point upon which the lower Court relies, namely, that the limitation was saved by reason of the acknowledgment of the debt.

The balance of Rs. 50 due to the Court guardian will be paid by the appellant.

K.R.

(1) (1915) I.L.R., 37 All., 400 (F.B.).
(2) (1921) I.L.R., 43 All., 671.
(3) (1922) I.L.R., 44 All., 360.
(4) (1916) I.L.R., 39 Mad., 981.
(5) (1919) 9 L.W., 479.
(6) (1918) M.W.N., 586.
(7) (921) M.W.N., 384.
(8) (1876) I.L.R., 1 Calc., 163 (P.C.).
(9) (1923) 44 M.L.J., 123 (P.C.).
(10) (1922) I.L.R., 44 All., 121 (P.C.).