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and the mortgagee in connection with this deed, and certain other advances independently made by the mortgagee, about which an arrangement appears to have been made by the mortgagor to pay the moneys due by instalments of Rs. 400 per year. The account books contain certain entries showing payments made towards these instalments, but they do not show that these payments were made towards interest *as such* due on the deed in suit, and the oral evidence produced on the point to supplement what is not entered in the books cannot be believed. The court below was, therefore, justified in holding that these payments, if made, did not save limitation.

I agree in the order proposed.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Mukerji.

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GOKUL DAS (PLAINTIFF) *v.* NATHU (DEFENDANT).*

Civil Procedure Code, section 20—Debtor and creditor—No place fixed for payment—Presumption of law—Duty of debtor to seek creditor.

If there is no special covenant for payment of a debt elsewhere, the presumption of law is that the borrower ought to seek out the lender for payment. *Sri Narain* v. *Jagannath* (1), referred to. Also *Bangali Mal* v. *Ganga Ram, Asharfi Lal* (2), cited in argument.

THIS was an application to revise a decision of the Court of Small Causes at Moradabad. The facts of the case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

Dr. *Kailas Nath Katju*, for the applicant.

* Civil Revision No. 118 of 1925.

(1) (1917) 15 A.L.J., 653. (2) (1922) 71 Indian Cases, 431.

The opposite party was not represented.

MUKERJI, J.—These two applications in revision may be disposed of by the same judgement as the facts are very similar.

The applicants who are plaintiffs in two different suits are money-lenders by profession and their practice of money-lending is something like this. They send munims or trusted servants of theirs with money to villages in different districts with instructions to lend money to people who might stand in need of borrowing. It is alleged that the defendants in these two cases borrowed money from the plaintiffs' agents, in one case in the district of Bareilly and in the other in the district of Shahjahanpur. The plaintiffs are residents of the district of Moradabad. The debtors did not pay and thereupon they brought the two suits for recovery of the money at Moradabad.

The defendants did not appear. The plaintiffs' agents who had lent the money in each case went into the witness-box and swore that there was an express agreement by the debtors that they would repay the loans at Moradabad. The agents further produced memoranda made in the account-books of the plaintiffs to the effect that the borrowers had agreed to repay the money at Moradabad.

The learned Judge of the Small Cause Court disbelieved the evidence given to the effect that there was an express agreement to repay the money at Moradabad. The evidence was trustworthy and should have been accepted. He was of opinion that it was not likely to have been the case that the borrowers would come to Moradabad to make payment.

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Evidently the learned Judge thought that the borrowers had agreed to pay at their own homes where the loans were advanced.

Assuming that the evidence that the defendants had agreed to pay at Moradabad was untrustworthy, we have to rely on presumptions of law alone. For there is no evidence to show that the borrowers and the lenders had agreed that repayment would be made only at the borrowers' place. The presumption of law was pointed out in the case quoted by the learned Judge of the Small Cause Court himself, *Sri Narain* v. *Jagannath* (1) and it is this that in the absence of a contract to the contrary the borrower ought to seek out the lender for payment. The learned Judge was therefore not justified in ignoring the rulings of this Court.

I allow the applications in revision, set aside the decrees of the court below and decree the plaintiffs' claim in each case against the defendants with costs and interest at 6 per cent. per annum from the date of the institution of the suit till recovery.

Application allowed.

(1) (1917) 15 A.L.J., 653.