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from the obligation in respect of the property, and the bond is, therefore, notwithstanding its disabilities in regard to the registration law, admissible as evidence in support of a claim to enforce the money-obligation. It would also in our judgment be admissible in proof of the fact that the debt was not exigible from the defendants until on and after the expiry of five years from the date of the loan. In holding thus we follow the Full Bench ruling of this Court in *Sheo Dial vs Prag Dat Misr* (1).

It remains to consider whether the plaintiff's claim or any portion of it is within the limitation provided for the recovery of a simple money debt. This suit was instituted on the 18th January, 1879. It is obvious that three years from the date of the loan have long ago expired. Neither is the plaintiff helped by the provisions of art. §6 of the Limitation Act—"On a single bond where a day is specified for payment"—that day being here the 3rd February, 1876: for the plaintiff's claim is not based on a single bond, that is to say a bill, or written engagement for the payment of money, without a penalty. But it is contended that s. 20 of the Limitation Act saves the plaintiff's suit, part-payment of principal and interest having been made by the defendant before the expiration of the prescribed period for recovering the debt. But there is no proof of such payments in this case, nor even an allegation that in respect of part-payments of principal the fact of the payment appears in the handwriting of the person making such payment. The last payments according to the plaintiff's own case were made in May, 1874. The appeal fails, and is dismissed with costs. The objection on behalf of the respondents is not allowed.

Appeal dismissed.

Before Mr. Justice Straight and Mr. Justice Tyrrell.

LACHMAN PRASAD (PLAINTIFF) v. CHAMMI LAL AND OTHERS
(DEFENDANTS)*.

Suit for money had and received for the plaintiff's use—Suit of the nature cognizable in Small Cause Court.

C, a mortgagee, the mortgage having been foreclosed, sued D, the mortgagor, for possession of the mortgaged property and obtained a decree for possession

* Second Appeal, No. 75 of 1881, from a decree of Pandit Jagat Narain, Subordinate Judge of Cawnpore, dated the 20th November, 1880, reversing a decree of Munshi Lalta Prasad, Munsif of Cawnpore, dated the 7th May, 1879.

(1) I. L. R., 3 All., 229.

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thereof. He subsequently agreed with *D* to surrender the mortgaged property to him, if he deposited the mortgage-money in Court by a specified day. *D* borrowed the money for this purpose by means of a conditional sale of the property to *L*, and deposited it in Court. The deposit was made after the specified day and consequently *C* took possession of the property. The money deposited by *D* remained in deposit, and while there *C* caused it to be attached in execution of a money-decree he held against *D*, and it was paid to him. *L* thereupon sued *C* in the Munsif's Court to recover such money, which amounted to Rs. 350. Held that the suit must be regarded as one for money had and received by the defendant for the use of the plaintiff, and was therefore one cognizable in a Court of Small Causes.

THE mortgagees of certain immovable property, the mortgage having been foreclosed, sued the mortgagor, Daya Ram, for possession of the mortgaged property, and obtained a decree for possession thereof. They subsequently entered into an agreement with Daya Ram to surrender the property to him, if he deposited the mortgage-money in Court by a specified day. Daya Ram borrowed the money for this purpose by means of a conditional sale of the property to the plaintiff in the present suit, Lachman Prasad, and deposited it in the Court which had made the decree against him. The deposit was made after the day specified, and the mortgagees in consequence took possession of the property. The money deposited by Daya Ram remained in deposit, and while there the mortgagees caused it to be attached in execution of a money-decree which they held against Daya Ram, and it was paid to them. Lachman Prasad thereupon brought the present suit against the mortgagees to recover such money, which amounted to Rs. 350 odd, instituting the suit in the Munsif's Court. The defendants set up as a defence to the suit that it was not cognizable in the Munsif's Court, but in the Court of Small Causes having local jurisdiction. The Munsif held that the suit was cognizable by him and not cognizable in a Court of Small Causes. On appeal by the defendants the lower appellate Court took a different view of the nature of the suit, and returned the plaint in order that it might be presented to the Small Cause Court. The plaintiff appealed to the High Court, contending that the suit was cognizable in the Munsif's Court.

Munhis *Hanuman Prasad* and *Sukh Ram*, for the appellant.

Pandit *Nand Lal*, for the respondents.

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The judgment of the Court (STRAIGHT, J., and TYRRELL, J.,) was delivered by

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STRAIGHT, J.—Looking at the form of the plaint in this case, we think the suit must be regarded as one for money had and received by the defendants for the use of the plaintiff. In other words, the plaintiff's claim is for money which has come into the hands of the defendants under such circumstances that they must be taken to hold it to the use of the plaintiff, and to be under an implied contract to pay it to him. On these grounds, and not those mentioned by the Subordinate Judge, we think that the suit was cognizable by a Court of Small Causes, and therefore no second appeal lies to this Court. The appeal is dismissed with costs.

Appeal dismissed.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Straight.

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KHARAG SINGH (DEFENDANT) v. BHOLA NATH AND OTHERS (PLAINTIFFS).*

Bond—Interest—Penalty—Equitable relief.

By a registered bond for Rs. 4,500, dated the 4th October, 1875, in which immovable property was hypothecated as collateral security, it was provided that the obligor should pay interest at the rate of R^c. 1-4-0 per cent. per mensem at the end of every six months, and upon default in the payment of such interest that he should pay interest at the rate of Rs. 2 per cent. per mensem from the date of the bond. The bond also contained a stipulation against alienation and declared that the principal sum was payable on demand. The obligees sued the obligor upon the bond, claiming to recover the principal sum, and interest from the date of the bond for three years eleven months and twenty days, less different sums amounting to Rs. 1,600 paid from time to time on account, at the defaulting rate of Rs. 2 per cent. *Hold* that, having regard to the fact that the security of property was given for the loan, and the obligor contracted not to alienate the property, that the defaulting rate of interest provided by the bond was of a penal character, relating as it did not only to the interest due on and subsequent to the default, but retrospectively to the date of the bond itself, and should not be awarded, but that reasonable compensation only should be awarded for the obligor's breach of contract in respect of interest. Accordingly the Court made a decree giving the obligees interest on the principal sum, from the date of the bond to the date of the decree, at R^c. 1-4-0 per cent. per mensem, and compound interest, from the date of default in the payment of interest to the date of the decree, at the rate of four annas per cent. per mensem, by way of damages for such default.

* First Appeal, No. 76 of 1880, from a decree of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 15th January, 1880.