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right or interest of the value of over Rs. 100 to or in immoveable property and is therefore one the registration of which is compulsory under section 17, clause (b) of the Indian Registration Act. It cannot therefore be admissible as evidence of any transaction affecting immoveable property, under section 49 of the Registration Act. I, therefore, agree with the learned District Judge that the agreement exhibit A4 is invalid and inoperative for want of registration and cannot be binding on the plaintiffs. The defendants' appeal must, therefore, fail on this ground and I would dismiss it with cost.

August 23.

BY THE COURT:—The appeal is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan and Mr. Justice A. G. P. Pullan.

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MAHANT NARAIN DAS (DECREE-HOLDER-APPELLANT) v. THAKURAIN CHANDRAWATI KUER (JUDGMENT-DEBTOR-RESPONDENT).*

Limitation Act (IX of 1908) sections 19 and 20—(Act I of 1927), section 2, applicability of—Acknowledgment under section 19 of Limitation Act, requirements of—Interest “as such” under section 20 of the Limitation Act—Money paid on a general account—Appropriation of payments by creditor towards reduction of interest and principal both, if saves limitation under section 20.

Held, that where money is paid on a general account without a defined appropriation on the part of the debtor no part of the money can be held to have been paid for interest “as such” within the meaning of section 20 of the Indian Limitation Act, 1908. The payment must be a payment of

*Execution of Decree Appeal No. 77 of 1928, against the order of Thakur Rachhpal Singh, District Judge of Fyzabad, dated the 21st of August, upholding the order of Babu Gopindra Bhushan Chatterji, Subordinate Judge of Fyzabad, dated the 20th of January, 1928, allowing the judgment-debtor's objections.

interest "as such" and not towards the reduction of the general account in which each payment has been treated by the judgment-creditor as having the effect of reducing the consolidated liability both for the principal and the interest of the judgment-debtor. *Hanmantmal v. Rambabai* (1), *Muhammad Abdulla Khan v. Bank Instalment Co., Limited in Liquidation* (2), *Chandernal Kunwar v. Dunia Prasad* (3) and *Mahamed Kamel v. Ahmad Ali* (4), referred to.

Under section 2 of Act I of 1927 for an acknowledgment under section 19 of Act IX of 1908 to be effective the decree-holder must prove that before the date of acknowledgment payments were made for interest as such or for principal and in the latter case "acknowledgment of the payment appears in the handwriting of or in a writing signed by the person making the payment." But the proviso to sub-section (1) of section 20 of the Indian Limitation Act, 1908, as amended by section 2 of Act I of 1927, is inapplicable to a case where the alleged payment of interest was made before the first day of January, 1928.

Mr. K. P. Misra, for the appellant.

Mr. Bhagwati Nath Srivastava, for the respondent.

HASAN and PULLAN, JJ. :—This is the decree-holder's appeal in execution proceedings from the decree of the District Judge of Fyzabad, dated the 21st of August, 1928, affirming the decree of the Subordinate Judge of the same place, dated the 20th of January, 1928.

The appellant's application for execution of his decree has been rejected by the courts below on the ground that the execution is barred by limitation. The appellant's case is that the execution is not barred on two grounds: (1) Acknowledgment by the judgement-debtor which saves limitation under section 19 of the Indian Limitation Act, 1908, and (2) payments made by the judgment-debtor from time to time towards the judgment-debt. Both these grounds were examined carefully and rejected by the courts below. Having heard arguments we have come to the conclusion that the view taken by the said courts is correct.

(1) (1879) I.L.R., 3 Bom., 198.

(2) (1909) I.L.R., 31 All., 495.

(3) (1913) 19 I.C., 125, Oudh.

(4) (1925) 87 I.C., 746.

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Pullan, JJ.*

On the question of acknowledgment reliance is placed upon a letter dated the 9th of June, 1925. It is a letter written by the general-agent of the respondent and the lower court finds in agreement with the court of first instance that it was written at the instructions of the judgment-debtor. It is signed by the agent. The courts below are of opinion that the letter would have served the purpose of a valid acknowledgment within the meaning of section 19 of the Indian Limitation Act had it been shown that it was made within the time prescribed by the law of limitation for the recovery of the debt due under the decree. The finding in this behalf is that it is not so shown. The matter stands thus. Several payments were made by the judgment-debtor both before and after the letter in question, but these payments in themselves are of no avail unless they are of such a nature as would fall within the terms of section 20 of the aforementioned Act and thus keep the limitation alive so as to enable the acknowledgment relied upon to become effective. The decree-holder has therefore to prove that before the date of the letter of acknowledgment payments were made for interest as such or for principal and in the latter case "acknowledgment of the payment appears in the handwriting of or in a writing signed by the person making the payment" (vide section 2 of Act I of 1927). It may be stated that the first part of the proviso to sub-section I of section 20 of the Indian Limitation Act, 1908, as amended by section 2 of Act I of 1927, is inapplicable to the present case because the alleged payment of interest was made before the first day of January, 1928. In this case there is no evidence of an acknowledgment of the nature required by the proviso and therefore the payment of any part of the principal cannot have the effect of saving limitation.

As to the payment of interest, it is true that the decree-holder invariably credited the payments made by

the judgment-debtor partly in payment of the interest and partly of the principal. Such an appropriation by the decree-holder, however, does not satisfy the requirements of the law. The payment must be a payment of interest "as such" and not towards the reduction of the general account in which each payment has been treated by the judgment-creditor as having the effect of reducing the consolidated liability both for the principal and the interest of the judgment-debtor. See *Hanmantmal v. Rambabai* (1), *Muhammad Abdulla Khan v. Bank Instalment Co., Limited, in Liquidation* (2), *Chanderpal Kunwar v. Dunia Prasad* (3) and *Mahamed Kamel v. Ahmad Ali* (4).

The rule enacted in section 20 of the Indian Limitation Act, 1908, as to the effect of the payment of interest is wholly independent of the other rule that where a debt is due which carries interest and payments are received by the creditor without a defined appropriation on the one side or the other the money so received is first applied in payment of interest and when that is satisfied then in payment of the capital. It seems to us clear that where money is paid on a general account without a defined appropriation on the part of the debtor no part of that money can be held to have been paid for interest "as such."

The appeal therefore fails and is dismissed with costs.

Appeal dismissed.

- (1) (1879) I. L. R., 3 Bom., 198. (2) (1909) I. L. R., 31 All., 495.
 (3) (1913) 19 I. C., 125, Oudh. (4) (1925) 87 I. C., 746, Calcutta.

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