Lord St. Leonards in Incorporated Society v. *Richards*(1) to the effect that a mortgagee who set up an adverse title could not claim all the benefits attached to the character of a fair creditor. But the effect given to this observation was only with regard to the terms as to interest and costs. That is a very different thing from going the length of depriving the mortgagee of a statutory right. The decision certainly does not support any such conclusion as that. And it is clear that the mortgagee has a statutory right under section 72, Transfer of Property Act, 1882, to be reimbursed for these payments of rent. It is said that he did not profess to make these payments as mortgagee, but made them as owner after his invalid purchase. But when the purchase goes, then the parties are remitted to their original position and he must be credited with these payments as made by him in his capacity as mortgagee, the only capacity that he had when the conveyance failed.

This was the only point that was argued in this appeal and in my opinion the argument fails and the appeal must be dismissed with costs.

SCROOPE, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Fazl Ali and Chatterji, JJ.

TUGAN MULL

v.

LADHU LAL.*

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July, 8, 15.

Limitation Act, 1908 (*Act IX of* 1908), *sections* 19, 20 *and Schedule* 1, *Article* 183—"*payment*" *referred to in the*

*Appeal from Original Order no. 205 of 1928, from a decision of Maulvi Md. S. Uddin Khan, Deputy Magistrate Subordinate Judge, at Pakaur, dated the 17th August, 1928.

(1) (1841) 1 Dr. and War, 334.

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Article, significance of—unqualified as to mode of payment or the person making it—sum realised in execution from some of the judgment-debtors, whether gives fresh start to limitation against all the judgment—debtors—costs of the suit, whether included in "principal money secured by the decree."

Article 183, Schedule I of the Limitation Act, 1908, provides twelve years as the period of limitation for enforcing a judgment, decree or order of any court established by Royal Charter in the exercise of its ordinary original civil jurisdiction, or an order of His Majesty in Council.

The proviso to that Article lays down:

Provided that when the judgment, decree or order has been revived, or some part of the principal money secured thereby, or some interest on such money has been paid, or some acknowledgment of the right thereto has been given in writing signed by the person liable to pay such principal or interest, or his agent, to the person entitled thereto or his agent, the twelve years shall be computed from the date of such revivor, payment or acknowledgment, or the latest of such revivors, payments or acknowledgments, as the case may be."

Held, (*i*) that the provisions of Article 183 regarding acknowledgments as well as payments are self-contained and must be read independently of sections 19 and 20 of the Limitation Act, 1908;

(*ii*) that the word "payment" has been used in the Article in a wider sense than in section 20 of the Act and that the word as used in the Article is not qualified in any way as to the mode in which payment is to be made or as to the person who is to make it.

Held, therefore, that the realisation of a certain sum from some of the judgment-debtors in execution in part satisfaction of the decree was a "part payment" within the meaning of the Article so as to give a fresh start to limitation against all the judgment-debtors.

Arjee Prabappa Chetti v. *Koneti Desikachari*(1), followed.

Held, further, that the "principal money secured by the decree" includes costs of the suit.

Appeal by one of the judgment-debtors.

The facts of the case material to this report are stated in the judgment of Fazl Ali, J.

(1) (1924) 49 Mad. L. J. 101.

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S. C. Mazumdar, for the appellant.

S. N. Bose, for the respondents.

FAZL ALI, J.—It appears that on the 15th May, 1914, a decree was passed on the Original Side of the Calcutta High Court against the appellant and certain other persons. This decree was executed in the year 1916 against two of the judgment-debtors and, a writ of arrest being issued against them as applied for by the decree-holders, a sum of Rs. 600 was realised in partial satisfaction of the decree on or after the 17th April, 1916. In February, 1926, the respondents who had meanwhile succeeded to the interest of the original decree-holders applied to the Calcutta High Court for transmission of the decree to Pakaur for execution and the decree was accordingly transmitted. As it appeared, however, that the provisions of Order XXI, rule 16, Code of Civil Procedure, 1908, had not been complied with, the execution petition was struck off on the 2nd July, 1926, and the respondents thereupon applied to the Calcutta High Court for removing the defect and an order from the Calcutta High Court substituting the present decree-holders was received at Pakaur on the 14th December, 1927, and copies of the amended decree and the certificates of non-satisfaction were also received on the 31st March, 1928. On the 12th April, 1928, the respondents filed an execution petition in which they prayed for the realisation of the dues from the appellant alone. Thereupon the appellant preferred a number of objections, one of which was that the execution was barred by limitation. The Subordinate Judge of Pakaur overruled all the objections of the appellant including the one regarding limitation and hence this appeal.

The only question which was urged before us was that of limitation. It was conceded that the decree being passed on the Original Side of the Calcutta High Court the matter would be governed by Article

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183 of the Limitation Act, but the whole controversy centred round the proviso to Article 183 according to which when some part of the principal money secured by the decree or some interest on such money has been paid, the period of 12 years prescribed by the Statute is to be computed from the date of the last payment. It was urged in the first instance that there was no proof that as a matter of fact the sum of Rs. 600 had been realised from some of the judgment-debtors in execution of the decree. This argument, however, cannot be accepted for a moment in the face of the certificate of part satisfaction granted by the Calcutta High Court which clearly mentions that the sum of Rs. 600 had been realised in partial satisfaction of the decree.

The next question which was raised was whether a sum of money realised by execution can be considered to be part payment within the meaning of Aritcle 183 of the Limitation Act. It was also urged that even assuming that the sum of Rs. 600 had been paid to the decree-holders within the meaning of the Article that payment would revive the decree only against the person who had paid it and not against the appellant. In my opinion, however, none of these objections can prevail. It appears to me that the provisions of Article 183 regarding acknowledgments as well as payments are self-contained and must be read independently of sections 19 and 20 of the Limitation Act.

This is exactly the view which seems to have been taken by Srinivas Aiyangar, J. in *Arjee Prabappa Chetti* v. *Koneti Desikachari*(1) where that learned Judge pointedly drew attention to the difference between the language of section 20 and that of Article 183 and observed—

"In section 20 of the Limitation Act where a part payment is referred to as giving rise to a further starting of limitation, it is significant that it is prescribed that, for the purpose of saving limitation, the

(1) (1924) 49 Mad. L. J. 101.

part of the principal of a debt should be paid by the judgment-debtor or by his agent duly authorised in that behalf, but in Article 183, however, there are no such words to be found after the words " some part of the principal money secured thereby or some interest on such money has been paid." The payment is not therefore required to be made either by the debtor or by some person acting on his behalf. The difference in the wording is significant and, I cannot help thinking, fully intended. It follows, therefore, that even if the payment is for the judgment-debtor or on his own account, it would be a payment that will save limitation giving rise to a fresh starting point."

I find in the decision of this case ample authority for the proposition that the word " payment " has been used in Article 183 in a wider sense than in section 20 of the Limitation Act, and as the word " payment " as used in Article 183 is not qualified in any way as to the mode in which the payment is to be made or as to the person who is to make it, I am of opinion that the payment of Rs. 600 on or about the 17th April, 1916, provided a fresh starting point for the limitation and the execution was not time-barred.

Another point which was urged by Mr. Mazumdar appearing for the appellant was that there is no proof in this case as to whether the sum of Rs. 600 was paid as part of the principal or interest or on account of the costs of the suit and that the decree-holder cannot take advantage of Article 183 unless there is a clear finding on that point. It appears to me, however, that there is absolutely no substance in this objection also. It must be remembered that what this Article provides is that in order to save limitation some part of the principal money *secured by the decree* or some interest on such money has been paid. It is clear that the principal money secured by the decree includes costs and, therefore, the payment of Rs. 600 comes within the meaning of the Article. Mr. Mazumdar also invited us to go into the question whether there

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was a revivor of the decree or not by virtue of the order of the Calcutta High Court dated the 16th August, 1926, and he asks us to consider the effect of a number of decisions cited by him. I consider, however, that in view of my finding that the payment of Rs. 600 saves the limitation in this case, it is unnecessary to enter into this question.

The result is that the appeal is dismissed with costs.

CHATTERJI, J.—I agree.

Appeal dismissed.

FULL BENCH.

Before Terrell, C.J., Kulwant Sahay, Fazl Ali, James and Dhavle, JJ.

1930.

July, 25.
August, 7.

SURAJMULL BRIJLAL

v.

COMMISSIONER OF INCOME-TAX, BIHAR AND ORISSA.*

Mandamus—prerogative writ of—Patna High Court, whether has power to issue—Specific Relief Act, 1877 (Act I of 1877), sections 45 and 50—High Court of Calcutta, Bombay and Madras, whether have powers to issue writ apart from section 45.

By reason of section 50 of the Specific Relief Act, 1877, the High Court of Calcutta, Bombay and Madras have no longer any power to issue the prerogative writ of mandamus apart from the terms of section 45 of the Act. That being so, the Patna High Court, which was constituted long after the Specific Relief Act had been passed, cannot be said to have inherited any power from the High Court of Calcutta to issue a writ of mandamus.

*Miscellaneous Judicial Case no. 96 of 1929.