purchased a little more than 12 hours before the trunk was placed in the train. He gave no explanation: and contented himself with a denial that he knew the man, or that the man had visited his house, or that he had seen the trunk. All these statements were untrue. In these circumstances it is impossible to say that the proceedings which ended with a conviction for murder resulted in a failure of justice. For these reasons the appeal should be dismissed and their Lordships will humbly advise His Majesty accordingly.

Solicitors for the appellant: *Hy. S. L. Polak & Co.*

Solicitor for the respondent: *The Solicitor, India Office.*

APPELLATE CIVIL.

Before Harries, C.J. and Manohar Lall, J.

SANTA PRASAD SINGH

v.

THAKUR HARKISHORE PRASAD SINGH.*

1939.

January, 20.

Limitation Act, 1908 (*Act IX of* 1908), *section* 20 (*1*)—*payment made by debtor without specification—appropriation by creditor towards interest as such—the words "as such" in the amended section* 20(*1*), *whether are redundant.*

Where a payment is made by the debtor to his creditor within the period of limitation, and the debtor does not specify whether the payment is towards interest or principal but the creditor appropriates the payment towards interest, the payment is a payment of interest as such within the meaning of section 20(*1*) of the Limitation Act, 1908.

The words "as such" in section 20(*1*) of the Act, as amended in 1927, are now redundant.

*Appeal from Original Decree no. 38 of 1937, from a decision of Charles Ernest Walze, Esq., Subordinate Judge of Deoghar, dated the 23rd December, 1936.

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Liquidator, Bagha Co-operative Society v. *Debi Mangal Prasad Sinha*(1) and *Bankanidhi Tantra* v. *Godipatna Co-operative Society*(2), followed.

Udaypal Singh v. *Lakshmi Chand*(3), dissented from.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Harries, C.J.

Sir Sultan Ahmed and *S. N. Bose*, for the appellant.

G. P. Das (with him *D. C. Varma* and *Sambhu Brahmeswar Prasad*), for the respondent.

HARRIES, C.J.—This is a plaintiff's appeal from a decree of the learned Subordinate Judge of Deoghar dismissing his claim for monies due as principal and interest under a promissory note.

On the 10th of February, 1929, the defendant executed a promissory note for Rs. 9,200 and by the terms of the said note he agreed to pay interest thereon at the rate of one per cent. per mensem. It appears that from time to time the defendant made payments to the plaintiff and these payments were all endorsed by the defendant in his own hand on the back of the promissory note. At the date of this suit a sum of Rs. 15,652-12-0 was due and owing as principal and interest upon the said note.

A number of defences were raised; but it is only necessary to consider one of them, namely limitation. The learned Judge found that the note had been duly executed and that the sum claimed was due for principal and interest. He, however, found that the claim was barred by limitation and accordingly dismissed the suit.

The plaintiff contended that certain admitted payments made by the defendant extended the time

(1) (1936) I. L. R. 16 Pat. 27.
(2) (1936) I. L. R. 16 Pat. 294.
(3) (1935) I. L. R. 58 All. 261, F. B.

of limitation and that the suit was within time. The two payments relied upon were a payment of Rs. 400 on the 21st of April, 1933, and a payment of Rs. 722-4-0 on the 7th of January, 1934. These payments were within limitation, but, according to the defendant's contention, they were not such payments as would extend the time in favour of the plaintiff.

The payments are set out in paragraph 3 of the plaint, and it is to be observed that nowhere is it stated whether these payments were made towards interest or towards principal or both. All that is pleaded is :—

"That thereafter on 3rd February 1932 the defendant repaid Rs. 70 and on 17th March 1932 repaid Rs. 60 and on 21st April 1933 repaid Rs. 400 and on 7th January 1934 repaid Rs. 722-4-0 towards the dues for the said loan and endorsed all the aforesaid repayments in his own hand on the back of the said promissory note."

It is further clear from the next paragraph in the plaint that these payments were appropriated by the plaintiff towards interest, because he states that on the 3rd of February, 1936, that is, when the plaint was filed, the sum of Rs. 9,200 was due as principal, that is, the original sum advanced and Rs. 6,452-12-0 as interest. It is clear, therefore, that the plaintiff must have appropriated all the payments made towards interest.

It is to be observed that the defendant does not deny this in his written statement. He says that the allegations contained in paragraphs 3 and 4 of the plaint, which relate to payments and appropriation, are partially correct, though he says that the plaintiff had not given credit for all the amounts paid by the defendant. Further, it is clear that the defendant had made endorsements on the back of the promissory note in respect of each of these payments.

Though the learned Judge was satisfied that two payments had been made within the period of limitation, yet he felt constrained to hold that the suit was barred by reason of certain decisions of other courts

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upon the construction to be given to section 20 of the Limitation Act. He accordingly dismissed the suit.

The only point for consideration is whether time was extended by these payments by reason of section 20(*1*) of the Limitation Act as amended by Act I of 1927. Section 20(*1*) of the Limitation Act as amended is in these terms:—

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"Where interest on a debt or legacy is, before the expiration of the prescribed period, paid as such by the person liable to pay the debt or legacy, or by his agent duly authorized in this behalf,

or where part of the principal of a debt is, before the expiration of the prescribed period, paid by the debtor or by his agent duly authorized in this behalf,

a fresh period of limitation shall be computed from the time when the payment was made:

Provided that, save in the case of a payment of interest made before the 1st day of January 1928, an acknowledgment of the payment appears in the handwriting of, or in a writing signed by, the person making the payment."

It is to be observed that before the Amending Act of 1927 a written acknowledgment of the payment was only necessary in the case of a part payment of the principal sum due. Further before and after the amendment the words "paid as such" appear in connection with sums paid as interest.

It has been argued before us by Sir Sultan Ahmed on behalf of the appellant that this case is concluded by authority of this Court, and in my view this contention is well-founded. The precise point which arises in this case was decided by a Division Bench of this Court in the case of *Bankanidhi Tantra* v. *Godipatna Co-operative Society*(1). In that case a payment was made by the debtor to the creditor within the period of limitation, though the debtor did not specify whether the payment was towards interest or principal. The creditor appropriated the payment towards interest, and a Bench of this Court held that the payment was a payment of interest as such, and

(1) (1936) I. L. R. 16 Pat. 294.

as the fact of payment appeared in the handwriting of the person making the same, a new period of limitation commenced from the date of such payment by reason of section 20(*1*) of the Limitation Act. In that case it was argued, as it has been argued before us, that a payment by a debtor to a creditor without any specification cannot be a payment of interest as such even though the creditor exercising his option has appropriated the payment towards the interest. The Bench of this Court expressly held that where such a payment is made and is appropriated by the creditor towards interest, it is a payment of interest as such by the debtor and saves limitation by reason of section 20(*1*) of the Limitation Act.

This point was also argued in an earlier case of this Court, namely, *Liquidator, Bagha Co-operative Society* v. *Debi Mangal Prasad Sinha*(1). In that case a Bench was inclined to hold that a payment made without specification and appropriated by the creditor to interest was a payment by the debtor which prevented the bar of limitation.

A contrary view has been taken by a majority of three Judges in the Full Bench case of *Udaypal Singh* v. *Lakshmi Chand*(2). In that case section 20(*1*) of the Limitation Act was fully considered. The majority held that where money is paid by a debtor without specifying whether the payment is towards interest or towards principal, leaving it to the option of the creditor to appropriate it as he likes, and the creditor appropriates it wholly towards interest due, there is neither a payment of interest as such nor a part payment of the principal within the meaning of section 20 of the Limitation Act. A contrary view was taken by two Judges. I am inclined to agree with the view of the minority in this Full Bench case. It was pointed out by Thom, J. that the words " as such " in the section appear to

(1) (1936) I. L. R. 16 Pat. 27.
(2) (1935) I. L. R. 58 All. 261 F. B.

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be redundant. In his view, a payment of interest is a payment of interest, and it is no more a payment of interest if the words "as such" are added. Any other interpretation would lead to the absurd result that though the payment made without specification must either be towards interest or towards principal or partly towards both, it will not give a fresh start to limitation. Thom, J. was of opinion that according to the rules of interpretation of statutes, it is permissible to ignore or reject words which are redundant or which lead to an absurd result. In my judgment, these words are now redundant since the amendment of this section of the Limitation Act by the Amending Act of 1927. Previous to the amendment, the fact of payment of interest needed no acknowledgment in writing by the person making the payment, whereas a payment towards principal required such an acknowledgment to extend limitation. After the Amending Act payments towards interest or principal require acknowledgments of the payments in the handwriting of the person paying in order to be effective in extending the time. The words "paid as such" may have been necessary in the section before it was amended; but after the amendment I cannot see what effect can be given to them, and in my view they are redundant. If they are not redundant, then in my view a payment made to a creditor which can be appropriated by the creditor at his option either towards principal or interest, is a payment of interest as such the moment the creditor appropriates the payment towards interest. If a debtor, for example, in terms said to the creditor that he was sending him Rs. 100 so that the latter could apply it either towards principal or interest as he desired, then in my view the payment would be a payment as such towards either principal or interest the moment the creditor had appropriated it to one or other. Unless some such view is taken, a payment by a debtor to a creditor without any specification becomes no payment at all, so far as section 20 is

concerned, if the creditor appropriates it towards interest. If he appropriates it towards principal, it would extend the time provided there was the necessary written acknowledgment. Even if there is such an acknowledgment, it will have no effect at all on limitation if the money is appropriated towards interest. Such, to my mind, is a result which the legislature could never have intended. In my view the minority view of the Allahabad Full Bench is to be preferred to the majority view. In any event this Bench must follow the previous decisions of this Court and accordingly I hold that the suit is not barred by limitation. There is no dispute as to the amount due under the note, and I would, therefore, allow this appeal, set aside the decree of the Court below and decree the plaintiff's claim for the amount claimed together with pendente lite interest at the rate of six per cent. and interest from the date of this decree onwards at the same rate.

The appellant is entitled to the costs in this Court and in the Court below.

MANOHAR LAL, J.—Having listened to the argument of the learned Advocate for the respondent, I am not in the least convinced that the decision of this Court in *Bankanidhi Tantra* v. *Godipatna Co-operative Society*(1) is erroneous. That decision follows the minority decision of the Allahabad Full Bench case in *Udaypal Singh* v. *Lakhmi Chand*(2) which, in my opinion, is correct, if I may say so respectfully.

The payments in this case are said to be Rs. 400 in April, 1933, and Rs. 722-4-0 in January, 1934. The question is whether these payments are payments towards principal or towards interest or partly towards principal and in part towards interest. This can be decided either by the writings themselves or by some other evidence or by the operation of law. The defendant gives no evidence that he made these

(1) (1936) I. L. R. 16 Pat. 294.
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payments towards interest or towards principal. The plaintiff, on the other hand, states in his plaint in paragraph 4 that he appropriated these towards interest. The law allows him to do so. On the dates of these payments interest due was more than the amounts paid in. The result, therefore, is that on the evidence, as it stands and upon the pleadings, it must be held in law that these payments were made towards interest.

It was then argued that the payments have never been made expressly towards interest "as such". I do not understand the meaning of the words "as such" in section 20(1) of the Limitation Act even as it stood before the amendment. If that section is read, all it means is that where interest is paid on a debt before the expiration of the prescribed period by the person liable to pay the debt, certain consequences will follow. The words "as such" appear to me to be redundant in that section and are merely put in as ex cautela. The words are not "where money is paid by the debtor" but where interest is paid. The amendment to the section by the Act of 1927 contemplates these very meanings as pointed out by Sir Courtney Terrell, late Chief Justice, in *Bankanidhi Tantra* v. *Godipatna Co-operative Society*(1). The legislature now as a result of experience has directed that all acknowledgments of payments should be in the handwriting of, or in a writing signed by, the person making the payment as a safeguard against the reckless allegation that used to be advanced on behalf of the creditors that the debtor had made certain payments towards interest. The result is that if there is an acknowledgment in writing as in the present case, it can easily be seen from the accounts whether the payment is intended to be made towards interest or principal or both. In case of doubt it will be decided by the appropriation made by the creditor. In any case the debt has been

(1) (1936) I. L. R. 16 Pat. 294.

acknowledged and this saves limitation. If the argument of the learned Advocate for the respondent was sound, no evidence other than the writing was admissible to prove the nature of the payment. But that is not the meaning of the proviso as added by the legislature. I, therefore, agree that the appeal should be allowed with costs.

Appeal allowed.

S. A. K.

APPELLATE CIVIL.

Before Manohar Lall and Chatterji, JJ.

CENTRAL INDIA SPINNING, WEAVING AND MANUFACTURING COMPANY, LIMITED

1939.

January, 5, 23.

v.

KHEMRAJ MARWARI.*

Appeal—Compromise—parties agreeing to be bound by the decision of the court—appeal, whether lies from the decision—test—intention of the parties.

Where the parties agree to be bound by the decision of the Court with regard to a dispute which they specifically ask it to decide, no appeal lies from the decision.

Where the party invites the Court to adopt a procedure which is not contemplated by the Code of Civil Procedure, 1908, and in fact the procedure is extra cursum curiae, he cannot turn round and say that the Court is to blame for the very procedure which he invited the Court to follow. In each case the appellate Court will try to find as to what the true intention of the party was and the question whether an appeal lies or not will depend upon the conclusion arrived at by the Court.

Jaggu Mal v. *Brij Lal*(1), *Robert Murray Burgess* v. *Andrew Morton*(2), *Ballabh Das* v. *Sri Kishen*(3) and *Pisani* v. *Attorney General for Gibraltar*(4), reviewed.

*Appeal from Original Decree no. 204 of 1936, from a decision of Maulavi Saiyid Muhammad Ibrahim, Subordinate Judge of Ranchi, dated the 27th June, 1936.

(1) (1930) A. I. R. (All.) 127.
(2) (1896) A. C. 136.
(3) (1926) A. I. R. (All.) 90.
(4) (1874) 5 P. C. 516.