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rule laid down in *Mani Ram Seth v. Seth Rup Chand* (1), namely, that an unconditional acknowledgment implies a promise to pay.

The appeal must therefore be accepted and the suit remanded to the Court of the District Judge for a finding on the issue, whether the defendant is entitled to reduction of interest, which was left undecided. Stamp on appeal to be refunded, other costs to be costs in the litigation.

*N. F. E.*

*Appeal accepted.*

*Case remanded.*

#### APPELLATE CIVIL.

*Before Sir Shadi Lal, Chief Justice, and Mr. Justice Bhide.*

PANNA LAL (PLAINTIFF) Appellant

*versus*

RAM SINGH AND ANOTHER (DEFENDANTS)

Respondents.

Civil Appeal No. 671 of 1924.

*Indian Limitation Act, IX of 1908, section 20—Part payment without specifying towards which of several debts it is made—Appropriation of, by creditor, as part payment of the debt in suit—claim for balance of that debt—Limitation—whether extended by the part payment.*

The plaintiff sued for the recovery of Rs. 2,200, on the basis of a bond and sought to avoid the bar of limitation by pleading a payment of Rs. 200, made by the debtors without specifying the debt towards which the payment was made, and which plaintiff had appropriated as part payment of the amount due upon the bond (as he was entitled to do under section 60, Indian Contract Act) but which, it was found, might have been made by the debtors towards a different debt:—

*Held*, that in the absence of evidence to shew that the part payment was made by the debtors in respect of the debt

in suit, the suit had been rightly dismissed ; for the object of section 20 of the Limitation Act is to give a fresh starting point for limitation when there is an acknowledgment of the debt by the debtor either by payment of interest or of a portion of the principal. The payment is viewed from the stand-point of the debtor and hence the determining factor is the intention of the debtor in making the payment and not that of the creditor in appropriating it.

*Buta v. Parma Nand* (1), *A. Curlender v. Abdul Hamid* (2), and *Sukharam Manchand v. Keval Padamsi* (3), distinguished.

*Second appeal from the decree of J. K. M. Tapp, Esquire, District Judge, Sialkot, dated the 10th December, 1923, affirming that of Bawa Jhanda Singh, Subordinate Judge, 2nd Class, Sialkot, dated the 23rd November 1922, dismissing the plaintiff's suit.*

DUNI CHAND, for Appellant.

M. L. BATRA, for Respondents

The Judgment of the Court was delivered by—

BHIDE J.—The plaintiff sued in this case for recovery of Rs. 2,200 on the basis of a bond. The suit has been dismissed as time-barred and the plaintiff has filed a second appeal.

The sole point for decision is that of limitation. The suit was instituted after the expiry of the normal period of limitation but the plaintiff sought to bring it within limitation by virtue of a payment of Rs. 200 made by the defendants, which according to him gave a fresh starting point for limitation under section 20 of the Indian Limitation Act.

The fact that the aforesaid sum of Rs. 200 was paid by the defendants on the 30th August, 1916,

(1) 84 P. R. 1904.

(2) (1921) I. L. R. 43 All. 216.

(3) (1920) I. L. R. 44 Bom. 392.

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as alleged by the plaintiff is not disputed. The defendants, however, allege that it was paid towards the discharge of another decretal debt. The sum of Rs. 200 was remitted in the shape of a *hundi* which was accompanied by a letter in the handwriting of one of the defendants. The letter does not, however, specify the debt towards which the payment was made. The Courts below have found that there was, as a matter of fact, another decretal debt towards which the payment may have been made. This finding of fact must be accepted as final for the purposes of this second appeal.

The plaintiff appropriated the sum of Rs. 200 towards the debt due on the bond and this he was entitled to do under section 60 of the Indian Contract Act, as the debtors had not specified the debt towards which the payment was made. The question for decision, however, is whether such an appropriation serves to give a fresh starting point for limitation under section 20 of the Indian Limitation Act in the absence of any evidence to show that the payment was made by the debtors in respect of the debt due on the bond.

Section 20 of the Indian Limitation Act runs as follows:—“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 authorised 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 authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made: provided that, in the case of part payment of the principal of a debt, the

fact of the payment appears in the handwriting of the person making the same.”

It would appear from the wording of the section that in order to give a fresh starting point for limitation the payment relied upon must have been made towards the interest or part of the principal of the debt in question. In the present case, it was alleged by the plaintiff at first that the payment was made towards the interest due on the bond, but this position was subsequently abandoned. The position now taken up is that the payment was in respect of the principal of the bond ; but as already pointed out there is no evidence to establish that the payment was made in respect of the bond which forms the basis of the suit. Mere appropriation of the payment by the plaintiff towards the bond cannot help him. The object of the section evidently is to give a fresh starting point for limitation when there is an acknowledgment of the debt by the debtor either by payment of interest or of a portion of the principal. The payment is viewed from the stand-point of the debtor and hence the determining factor seems to be the intention of the debtor in making the payment and not that of the creditor in appropriating it.

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The learned counsel for the appellant has referred us to *Buta v. Parma Nand* (1), *A. Curlender v. Abdul Hamid* (2), and *Sukharam Manchand v. Keval Padamsi* (3). But these authorities merely lay down that it is sufficient for the purposes of section 20 of the Indian Limitation Act if the payment is in the handwriting of the debtor and it is not necessary that there should be an explicit statement in the handwriting of

(1) 94 P. R. 1804. (2) (1921) I. L. R. 43 All. 216.

(3) (1920) I. L. R. 44 Bom. 392.

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the debtor that the payment is made in part payment of the principal. This may be perfectly true where there is other evidence to establish that the payment was in fact made by the debtor towards the debt in dispute. In the present instance, however, there is no such evidence available and hence these authorities cannot help the plaintiff. The learned counsel for the appellant was unable to cite a single authority in support of his contention that mere appropriation of a payment by the creditor is sufficient to save limitation under section 20 of the Indian Limitation Act.

On the facts found by the Courts below, the suit has been rightly held to be time-barred. This appeal must therefore be dismissed with costs.

N. F. E.

*Appeal dismissed.*

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