

receiver was appointed and (2) if they were in possession, whether, at that time, the plaintiff or the other defendants had the right to remove them.

After holding this enquiry the Judge will pass orders, keeping in mind the provisions of Order 40, rule 1 (2). Costs of this appeal, advocate's fee five gold mohurs, will be decided by the ultimate result of the application for removal of the receiver. If appellants are successful, they will get their costs from the respondents; if the appellants are unsuccessful, then they will bear respondents' costs of this appeal.

MOSELY, J.—I agree.

CIVIL REVISION.

*Before Sir Ernest H. Goodman Roberts, Kt., Chief Justice,
and Mr. Justice Dunkley.*

KHAN SAHIB v. UCHIL LEBBAY.*

*Limitation—Payment by debtor—Payment towards principal or interest—
Question unnecessary for purpose of limitation—Limitation Act, s. 20.*

For the purpose of saving limitation it is immaterial whether a payment made by a debtor after 1st January 1928 is towards interest or towards principal. In either case, provided the payment is made within the period of limitation and the requirement as to writing is carried out, a fresh period of limitation begins under s. 20 of the Limitation Act.

U Ba Gyi v. U Than Kyauk, I.L.R. 7 Ran. 522, distinguished.

Joseph for the applicant.

Jeejeebhoy for the respondent.

ROBERTS, C.J.—This is a case which has reached this Court from the Small Cause Court by reason of an order

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* Civil Revision No. 278 of 1937 from the judgment of the Small Cause Court of Rangoon in Civil Regular Suit No. 1608 of 1937.

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ROBERTS, C.J.

passed by my learned brother that it was desirable, in view of the decision of Baguley J. in *U Ba Gyi v. U Than Kyauk* (1), to consider the question whether a payment of Rs. 15 by a debtor at a time when the statute of limitation was running against him took the case out of the operation of the statute or not. Prior to section 20 of the Indian Limitation Act, as altered by the Indian Limitation Amendment Act, 1927, payment of interest required no endorsement in order to take the debt out of the statute, but it had to be proved that payment of interest was made as such. That was the question before Baguley J., and the payment which he had to consider was a payment on the 3rd of March 1927, before the amending statute came into operation on the 1st of January, 1928. Since 1928 there is no difference between payment towards principal and payment towards interest : both payments towards interest and payments towards principal must be endorsed on the instrument. We are asked to say in this case that the payment was not made towards interest as such : and the short answer is that the debtor must have had one of two intentions : either he must have intended to pay and paid the money towards interest as such, in which case the respondent's contentions fall to the ground, or else he must have intended to pay and have paid the money towards principal, in which case the creditor is equally protected by section 20 of the Limitation Act. The only way in which any attempt could be made to say that the Act did not apply would be by way of a contention that though the debtor intended to pay the money as part of the principal, the creditor, in exercise of his rights, appropriated the sum so paid towards interest, and that, therefore, it was not a payment, either of part of the principal or of interest as

(1) (1929) I.L.R. 7 Ran. 522.

such. I think, speaking for myself, that such a contention could find no favour in any Court of Justice and that it is clear that the case of *U Ba Gyi v. U Than Kyauk* (1) has no application to payments after the 1st of January, 1928. Accordingly, the judgment dismissing the suit is set aside and the claim is decreed for the sum as prayed with costs, five gold mohurs.

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DUNKLEY, J.—I agree. It seems to me to be clear that the provisions of section 20 of the Limitation Act, when they speak of a payment of interest or principal, refer to the intention of the debtor in making the payment; payment of interest means that the debtor intended to pay towards interest; payment of principal means that the debtor intended to pay towards the principal. When the debtor makes a payment he must intend to pay either towards interest or towards principal; he must have one or other of these two intentions. Consequently, if the argument be that the sum was not paid towards interest as such, then it must have been paid towards principal, and therefore the endorsement brings the payment within the scope of the section. In my opinion, it is clear that the only reason why the words "as such" have been retained in the third line of sub-section (1) of section 20, or why a distinction between payments of interest and payments of principal was preserved after the amendment of 1927, is with reference to payments of interest made before the 1st January, 1928, because a payment of interest made before that date will save limitation even if no endorsement on the instrument is made.

(1) (1929) I.L.R. 7 Ran. 522.