APPELLATE CIVIL.

Before Bhide and Curris JJ.

DAVINDAR SINGH (PLAINTIFF) Appellant,

versus

LACHHMI DEVI (DEFENDANT) Respondent.

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July 12.

Civil Appeal No. 2635 of 1928.

Indian Registration Act, XVI of 1908, section 49, proviso (added by Act XXI of 1929)—Acknowledgment of debt in unregistered sale-deed—whether admissible—also for purpose of limitation—Indian Limitation Act, IX of 1908, section 19—Acknowledgment—whether a 'promise in writing to pay a time-barred debt'—Indian Contract Act, IX of 1872, section 25 (3)—Interest—implied agreement to pay.

Held, that an unregistered sale-deed, though inadmissible for proving any transaction affecting the immoveable property which it purported to convey, can be received in evidence for the collateral purpose of proving an acknowledgment of debt.

Chandra Kunwar v. *Chaudhri Narpat Singh* (1), *Varada Pillai* v. *Jeevarathnammal* (2), and *Qadar Bakhsh* v. *Mangha Mal* (3), relied upon.

Held also, that such an acknowledgment is admissible for the purpose of section 19 of the Indian Limitation Act.

Nundo Kishore Lall v. *Mst. Ramsookhee Kooer* (4), *Mugniram* v. *Gurmukh Roy* (5), and *Khushalo* v. *Behari Lal* (6), relied upon.

Thakur Das v. Fatte Khan (7), and *Jaisukh* v. *Syad Muhammad Khan* (8), distinguished.

Indian Registration Act, section 49 proviso, referred to.

Held however, that the acknowledgment in the present case would not be a *promise in writing to pay* a time-barred debt within the meaning of section 25 (3) of the Indian Contract Act.

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(1) (1907) L.L.R. 29 All. 184 (P.C.).
(2) (1920) I.L.R. 43 Mad. 244 (P.C.).
(3) (1923) I. L. R. 4 Lah. 249.
(4) (1880) I. L. R. 5 Cal. 215.
(5) (1899) I.L.R. 26 Cal. 334.
(6) (1881) I. L. R. 3 All. 523.
(7) 60 P. R. 1880.
(8) 89 P. R. 1880.

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Maganlal Harjibhai v. *Amichand Golabji* (1), referred to.

Kahan Chand-Dula Ram v. *Daya Ram-Amrit Lal* (2), and *Fateh Chand* v. *Ganga Singh* (3), distinguished.

Held further, that interest may be allowed when there is an implied agreement to pay interest.

Willmot v. *Gardner* (4), and *In re Duncan and Co.* (5), referred to.

First appeal from the decree of Pandit *Devi Dayal* Joshi, *Senior Subordinate Judge, Lahore, dated the 1st August 1928, dismissing the plaintiff's suit.*

MEHR CHAND MAHAJAN, NAWAL KISHORE, and NAROTAM SINGH, for Appelllant.

FAKIR CHAND and CHIRANJIV LAL, for Respondent.

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BHIDE J.—This appeal arises out of a suit for recovery of Rs. 47,196 brought by *Sardar* Davindar Singh against his mother-in-law, *Mussammat* Lachhmi Devi. The defendant's husband died about 1901 and thereafter she used to live with *Sardar* Hari Singh, her husband's brother, till 1913. But, thereafter, differences arose between them, which led to litigation. It is alleged that defendant borrowed money from plaintiff from time to time during this period and the debt due to the plaintiff from the defendant (including interest) amounted to Rs. 28,417-3-9 on the 21st June 1920. On that day a sale-deed was executed by *Mussammat* Lachhmi Devi in favour of the plaintiff with respect to some of her immoveable property in order to wipe off this debt. A sum of about Rs. 500 was advanced by the plaintiff for purchase of stamp, etc., and the sale-deed was to be registered on the 28th June

(1) (1928) I. L. R. 52 Bom. 521.
(2) (1929) I. L. R. 10 Lah. 745.
(3) (1929) I. L. R. 10 Lah. 748.
(4) (1901) L. R. 2 Ch. 548.
(5) (1905) L. R. 1 Ch. 307.

1920. But before the deed could be registered, the defendant resiled from the contract at the instance of some of her relations and then an oral agreement is said to have been entered into by the parties on the 28th June 1920, by virtue of which *Mussammat* Lachhmi Devi agreed to pay the amount due with interest at 1 *per cent. per mensem* within two years. A further sum of Rs. 500 was borrowed by her in 1921. The amount due was not paid according to the agreement and the plaintiff was therefore obliged to institute the present suit on the 15th June 1925.

The defendant denied having taken any loans from the plaintiff and also the execution of the sale-deed of the 20th June 1920 and the alleged subsequent oral agreement. She further pleaded that the suit was time-barred.

The learned Judge of the trial Court found that money was advanced by the plaintiff to the defendant as alleged by him and that the execution of the sale-deed dated 21st June 1920 (which was satisfactorily established) proved her liability to the extent of Rs. 28,417-3-9 on that date. He, however, held that the alleged subsequent oral agreement of the 28th June 1920 was not proved. The plaintiff sought to base his claim on the original advances in the alternative, but it was held that this claim was time-barred and that the " acknowledgment " of the debt contained in the sale-deed referred to above was not admissible in evidence to bring it within limitation under section 19 of the Indian Limitation Act. As regards the alleged loan of Rs. 500 in the year 1921, the learned Judge found that a sum of Rs. 450 only was proved to have been advanced to the defendant in that year. In the event the whole suit was dismissed as time-barred. From this decision plaintiff appeals.

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The first and the most important question in the case is whether money was advanced by the plaintiff to the defendant from time to time by way of a loan as alleged by him. A statement of the sums alleged to have been so advanced will be found at pages 78-79 of part II of the printed paper book (hereinafter referred to as ' Statement A ' for the sake of brevity). It will appear therefrom that from about 1st July 1914 up to 9th December 1918 a sum of Rs. 18,255-11-0 was advanced by the plaintiff.

A sum of Rs. 502-12-3 was advanced on the 21st June 1920, for the expenses of the sale-deed which was executed on that date, but which was eventually not registered. Another sum of Rs. 500 was advanced in 1921 and then the money dealings between the parties seem to have come to an end.

Out of the items included in the above statement, some were advanced by means of cheques. The total of these items comes to Rs. 7,335-11-0. The receipt of this sum with the exception of a sum of Rs. 4,000 advanced on a promissory note to *Mirza* Jalal-ud-Din, who held a general power of attorney from the defendant, was admitted by the defendant; but she tried to make out that the sum was not advanced as a loan. Her statements on the point, however, are so conflicting and unsatisfactory that they cannot be accepted for a moment In the first written statement she stated that the money was given to her as a relation and was not a debt. When she was examined before the issues on the 26th of August 1920, she slightly modified this position and stated that although she *did borrow* some money from the plaintiff after the death of her son it had been duly paid off. Eventually, when she was examined as a witness on her own behalf, she completely changed her position and stated

that the money given to her by the plaintiff was out of a sum of Rs. 25,000 or so, which had been deposited by her with the plaintiff. There is not a tittle of evidence on the record to support the latter statement. As regards the item of Rs. 4,000 advanced to Mirza Jalal-ud-Din, her agent, she professed ignorance of the fact in her *Jawab Dawa*, but later admitted in her statement before the issues that Mirza Jalal-ud-Din did borrow money from the plaintiff once on her behalf.

As regards the other items, which are unsupported by cheques there is no documentary evidence to prove the actual advances. The plaintiff has not been able to produce even any account books as he kept none. He has, however, gone into the witness-box and has deposed to the advances having been made as alleged and to a balance of about Rs. 28,000 having been found due on the date of the sale-deed referred to above. He has deposed that this balance was found with the help of accounts which the defendant herself and her son Krishen Dev Singh had kept. The fact that Krishen Dev Singh did keep an account was admitted by the defendant herself in the witness box. As a matter of fact two registers were produced in Court at one stage, but later on when the defendant was asked to produce them she stated that her counsel had not returned them to her. The counsel on the other hand stated that the registers were duly returned to a servant of the defendant and the learned Judge of the Court below has recorded a note supporting the latter statement. It is almost impossible to believe that the defendant or her counsel could have been careless in respect of these registers. The disappearance of these registers gives rise to a strong suspicion that they were deliberately withheld in the interest of the defendant as a result of second thought.

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The learned Judge of the trial Court was favourably impressed by the testimony of the plaintiff, which he has characterised as "quite straightforward and natural." Although there is no direct documentary evidence (*e.g.*, cheques, accounts, etc.) with regard to some of the advances, the plaintiff's testimony in respect of them is supported by a good deal of other valuable circumstantial evidence. The plaintiff has produced a number of letters written to him by Krishen Dev Singh during 1914-15 (when most of these advances were made) which go to show that Krishen Dev Singh and his mother, the defendant, were in great financial difficulties during the period. The letters contain frequent references to the pitiable condition of the defendant and pathetic appeals for help and some of them contain acknowledgment of substantial help from the plaintiff, although no definite amounts are mentioned therein (see *e.g.* Exhs. P/1 to P/3, P/5, P/6, P/10, P/12 and P/15). There are some letters from the defendant also in which she describes her difficulties and appeals to the plaintiff for help (see Exhs. P/42, P/44-A, P/43). The next and perhaps the most important piece of evidence in plaintiff's favour is the sale-deed, dated the 21st June 1920. The defendant has denied the execution of this sale-deed but it has been proved beyond any doubt by evidence which is detailed in the judgment of the trial Court and it is unnecessary to recapitulate it here. The learned counsel for the defendant tried to argue before us that the defendant was a *pardanashin* lady and was probably the victim of some fraud or undue influence. But the defendant is not a *pardanashin* lady at all in the true sense of that term, *i.e.* a lady living in seclusion, shut in the *zenana* and having no communication with any male strangers except from be-

hind a screen [*cf. Fayyaz-ud-Din* v. *Kutab-ud-Din* (1)]. She is a literate lady with a certain amount of education, subscribes to newspapers, manages her affairs and even appears in Courts. The plea of fraud or undue influence was not even raised in the Court below, but I may say that from the manner in which she has given her evidence and conducted her defence, it seems to me that she is probably the last person to be the victim of fraud or undue influence.

The sale-deed remained unregistered; but though it is inadmissible for proving any transaction affecting the property which it purported to convey, it can be received in evidence for collateral purposes as I shall presently show. The sale-deed contains an admission that a debt of Rs. 28,417-3-9 was due to the plaintiff from the defendant on the date of the execution of the deed. The execution of the deed being established, it was for the defendant to explain this admission [*vide Chandra Kunwar* v. *Chaudhri Narpat Singh* (2)]. But she has offered no explanation. It was probably owing to the absence of any reasonable explanation of this admission that the defendant was reduced to take up an extreme position and meet the plaintiff's claim with a flat denial.

Besides the items included in the sale-deed, there are two others which the plaintiff claims to have advanced to the defendant. The first is an item of about Rs. 500 alleged to have been given for the purchase of stamp and other expenses of the sale-deed. This has been sufficiently proved by the evidence of plaintiff, corroborated by that of Charan Singh, the deed-writer. The other item was a sum of Rs. 500 said to have been advanced in 1921. As to this, the learned Subordinate

(1) (1929) I. L. R. 10 Lah. 761. (2) (1907) I. L. R. 29 All. 184 (P.C.).

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Judge has found that a sum of Rs. 450 was proved to have been advanced and this finding has not been challenged before us by either side.

I, therefore, hold that the various items mentioned in the statement A, were advanced by the plaintiff, as alleged, with this modification that only a sum of Rs. 450 instead of Rs. 500 is proved to have been advanced in 1921.

I now come to the alleged oral agreement, which is said to have been entered into by the parties on the 28th June 1920, and as a result of which the sale transaction was dropped and the sale-deed was not registered. It was urged on behalf of the appellant that the alleged oral agreement is the only reasonable explanation of the non-registration of the sale-deed, and that the evidence of respectable witnesses in support of it should have been accepted by the learned Subordinate Judge. There is no doubt that some of the witnesses who have deposed to the agreement appear to be respectable gentlemen and I find no difficulty in believing that the registration of the deed was dropped through their intervention and at the request of the defendant as stated by them. But the evidence is not altogether convincing as to whether a formal agreement to pay any specified sum, within a specified time and at a certain rate of interest was entered into. The witnesses mention, for instance, that the debt was to be paid within two years. But the plaintiff himself deposes that the debt was to be paid within two years or when the litigation with Sardar Hari Singh came to an end. According to the plaintiff's case, the whole amount included in the sale-deed was to be paid with interest. This means an agreement to pay compound

interest on a sum of about Rs. 10,000 which was included by way of interest in the item of Rs. 28,417-3-9, which was to be paid to the vendee. I do not think, the plaintiff would have been content with a mere verbal assurance on a point like this. If any formal agreement were contemplated, the plaintiff would have probably got it reduced to writing. The only explanation given by him of the absence of any writing is that the point was not pressed as the defendant is his mother-in-law and it would not have looked proper on his part to insist on a written agreement. But it must be remembered that plaintiff's wife was already dead and matters had come to a stage when the plaintiff had thought it necessary to induce the defendant to part with some of her property to wipe out the debt which had already risen to a high figure. It seems to me that the probability is that plaintiff having got an admission of the debt in writing in the sale-deed was persuaded to accept the defendant's assurance that she would pay the debt soon and no agreement of any specific character was entered into. The learned Subordinate Judge who heard the evidence of the witnesses in support of the oral agreement was not convinced thereby and in view of all the circumstances, I am not prepared to dissent from his finding.

The next question for determination is that of limitation. It seems quite clear that although the plaintiff was unable to prove the oral agreement referred to herein, it is open to him to fall back on the original advances made by him. The learned counsel for the respondent argued that there was a novation of contract when the sale-deed was executed and as the plaintiff failed to get the deed registered, he cannot now fall back on the original agreement.

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But there is no force whatever in this contention. It was never the case of the defendant that she was willing to have the sale-deed registered and it was through plaintiff's default that the contract fell through, and in the circumstances the argument advanced by the learned counsel is scarcely intelligible. I feel no doubt that the sale-deed remained unregistered not through any fault of the plaintiff but owing to the defendant's own request.

The plaintiff seeks to bring his claim within limitation under section 19 of the Indian Limitation Act, 1908, on the basis of the defendant's admission contained in the sale-deed, dated 21st June 1920, that a sum of Rs. 28,417-3-9 was due to the plaintiff on that date. The details of the principal amount and interest are not given in the deed, but in the absence of any explanation to the contrary there is no reason why the plaintiff's statement on the point, that the sum was made up of advances made on different occasions with interest thereon, as shown in statement A, should not be accepted. The learned Subordinate Judge held this acknowledgment to be inadmissible for the purposes of section 19 of the Indian Limitation Act on the ground that the acknowledgment is not " distinct and separate " from the transaction of sale.

In support of this view he has relied chiefly on two Punjab Chief Court rulings, *viz. Thakur Das* v. *Fatte Khan* (1), and *Jaisukh* v. *Syad Muhammad Khan* (2), but these rulings do not appear to have much bearing on the point now under discussion. In both these rulings a claim was brought originally on mortgage bonds which were held to be inadmissible in

(1) 60 P. R. 1880. (2) 89 P. R. 1880.

evidence for want of registration and the question for decision was whether the mortgage bonds could be received in evidence as simple bonds. It was held that there was no promise to pay a debt in these documents which could be divided from the mortgage transaction and which could stand even if everything relating to the mortgage transaction were struck out from the deed. In the present instance the plaintiff is not seeking to enforce the sale-deed as a bond, but only relying on the acknowledgment of debt contained therein. The rulings cited for the appellant, *viz. Nundo Kishore Lall* v. *Mst. Ramsookhee Kooer* (1), *Mugniram* v. *Gurmukh Roy* (2), *Khushalo* v. *Behari Lal* (3), seem to be more in point and are clearly in his favour. It has been held in more recent decisions also [see *e.g. Varada Pillai* v. *Jeevarathnammal* (4), and *Qadar Bakhsh* v. *Mangha Mal* (5)] that an unregistered deed which is inadmissible in evidence for want of registration can be used as evidence for collateral purposes, *e.g.*, to ascertain the nature of possession since the date of the deed, etc., and this principle has now been embodied in a proviso to section 49 of the Indian Registration Act by Act XXI of 1929.

It was urged that the portion of the sale-deed in which the defendant stated that the debt was jointly due from her and her deceased son and that interest was accumulating does not specifically mention that the debt was due to the plaintiff, but this is clear from the context and the recital in the deed, which follows, that a sum of Rs. 28,417-3-9 was to be credited to the vendee. That reference to other parts of

(1) (1880) I. L. R. 5 Cal. 215. (3) (1881) I. L. R. 3 All. 523.
(2) (1889) I. L. R. 26 Cal. 334. (4) (1920) I. L. R. 43 Mad. 244 (P.C.).
(5) (1923) I. L. R. 4 Lah. 249.

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the deed to elucidate the meaning is permissible will appear from the manner in which their Lordships of the Privy Council have dealt with an acknowledgment of the type, in *Muniram Seth* v. *Seth Rupchand* (1).

I, therefore, hold that the acknowledgment of debt contained in the sale-deed referred to above can be relied upon by the plaintiff for saving limitation under section 19 of the Indian Limitation Act.

Section 19 of the Indian Limitation Act, however, requires further that the acknowledgment should be made before the expiry of the period of limitation and it is, therefore, necessary to consider whether this condition is satisfied with respect to each of the items in statement A. The acknowledgment in the sale-deed was made at a time when the Punjab Loans Limitation Act was in force and under that Act the period of limitation for a suit based upon these items would have been six years from the date of the advance. The acknowledgment in the sale-deed would, therefore, serve to save limitation only in respect of those items which were advanced within six years before the date of the sale-deed. The date of the sale-deed being 21st June 1920, we have to see which of the items were advanced within six years preceding this date.

It would appear from statement A that plaintiff himself is uncertain about the dates of the first four items. The date of the first item as given in the statement seems to be clearly wrong; for Krishen Dev Singh, in his letter dated 3rd June 1914 (exhibit P/3), refers to a pleader having been engaged on payment of a sum of Rs. 3,000 and it is not disputed

(1) (1906) I. L. R. 33 Cal. 1047, 1057 (P. C.).

that this payment was made out of the first item. It is, therefore, clear that the sum of Rs. 3,700 must have been advanced some time before 3rd June 1914, *i.e.* more than six years before the date of the sale-deed. The acknowledgment in the sale-deed cannot, therefore, save limitation with respect to this item and this item must be excluded. As regards the next three items also there is nothing on the record to show when they were advanced. It is alleged that these sums were remitted by the plaintiff from England, but the evidence on the record does not show the exact period of his stay in England. The burden of proof was on the plaintiff to show that the acknowledgment relied upon was made within six years from the dates on which each of these sums was advanced, and he having failed to discharge the burden, these items must also be excluded. There is one more item, *viz.* item No. 7 of which the date has not been satisfactorily established. The date of this item as given in statement A is 25th January 1915. But the plaintiff has deposed that it was advanced in compliance with Krishen Dev Singh's letter, exhibit P/2, which is dated 25th January 1914. The plaintiff has deposed that the date of exhibit P/2 is incorrect but it is not clear how he is in a position to make this statement after the lapse of so much time. It does not appear that he had made any note that the date was wrong and there is, therefore, some force in the contention of the learned counsel for the respondent that this statement is perhaps being made just to bring the item within limitation. I hold that the date of this item also is not satisfactorily established and I would accordingly exclude this item. As regards the remaining items the acknowledgment seems to be within time and I hold that the plaintiff is entitled to recover them

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The learned counsel for the appellant urged that an unconditional acknowledgment, by itself, imports a promise to pay and therefore the acknowledgment contained in the sale-deed can serve as a basis of plaintiff's claim, even if the acknowledgment was with respect to some items which had become time-barred. This position was apparently not taken up in the Court below and seems to have been put forward at the last moment only in view of some recent rulings of this Court [see, *e.g. Kahan Chand-Dula Ram* v. *Daya Ram-Amrit Lal* (1), and *Fateh Chand* v. *Ganga Singh* (2)]. But I do not think this argument can help the plaintiff in this case. For section 25 (3) of the Indian Contract Act requires that in the case of a time-barred debt there should be a *promise in writing to pay* the barred debt. I do not think the acknowledgment in the present case can be said to fulfil the requirements of this section with respect to the items discussed above [cf. *Maganlal Harjibhai* v. *Amichand Golabji* (3)].

The last point which requires discussion in this appeal is that of interest. The learned counsel for the respondent has urged that the plaintiff is not entitled to any interest, as according to his own statement in the witness-box no rate of interest was fixed when the advances were made. But the plaintiff has also stated that it was understood that interest would be paid and this statement is supported by defendant's admission in the sale-deed that interest was accumulating and the inclusion of interest in the sum of Rs. 28,417-3-9 to be paid to the plaintiff. According to statement A the latter sum included interest at 1 *per cent. per mensem*, and the plaintiff is claim-

(1) (1929) I. L. R. 10 Lah. 745. (2) (1929) I. L. R. 10 Lah. 748.
(3) (1928) I. L. R. 52 Bom. 521.

ing the same rate of interest for the subsequent period. Interest may be allowed even when there is an implied agreement to pay interest [see, *e.g.*, *Willmot* v. *Gardner* (1), *In re Duncan and Co.* (2)] and in the present instance such an agreement may be clearly inferred from the sale-deed referred to above. The rate at which interest is claimed is not excessive or very unreasonable and there seems to be no good reason for disallowing it. As regards the item of Rs. 4,000 advanced on a promissory note (item No. 19 in statement A), however, interest can be allowed at 6 *per cent. per annum* or $\frac{1}{2}$ *per cent. per mensem* only, in view of section 80 of the Negotiable Instruments Act.

On the above finding I hold that the plaintiff is entitled to recover all the items included in statement A with the exception of items Nos. 1 to 4 and items Nos. 7 and 19 with interest at 1 *per cent. per mensem*. He is also entitled to recover item No. 19 with interest at $\frac{1}{2}$ *per cent. per mensem*. The last item advanced in 1921 will be taken as Rs. 450 instead of Rs. 500 for reasons stated already. The calculation is worked out in a separate statement attached to this judgment and it will appear therefrom that the plaintiff is entitled to a sum of Rs. 25,418-2-11 inclusive of interest up to the date of the suit. I would, therefore, accept the appeal and pass a decree for this sum in plaintiff's favour with proportionate costs throughout.

CURRIE J.—I concur. CURRIE J.

A. N. C.

Appeal accepted.

(1) (1901) L. R. 2 Ch. 548. (2) (1905) L. R. 1 Ch. 307.