

## APPELLATE CIVIL.

*Before Jai Lal J.*

JAGTU MAL-SADA SUKH RAI (PLAINTIFFS)

Appellants

*versus*CHARANJI LAL-FAKIR CHAND AND ANOTHER  
(DEFENDANTS) Respondents.

Civil Appeal No. 1707 of 1931.

*Indian Limitation Act, IX of 1908, section 20—Part-payment by cheque—Proviso (as amended by Act, I of 1927)—effect of.*

*Held*, that part-payment of principal by means of a cheque, which has been accepted by the creditor and subsequently honoured by the Bank, amounts to a part payment of the principal debt, and that the fact of such payment must in such a case be deemed to be in the handwriting of the person making the same within the meaning of the proviso to section 20 of the Indian Limitation Act.

*Kedar Nath Mitra v. Dinabandhu Saha* (1), *M. B. Singh & Co. v. Sircar & Co.* (2), *Kesrichand Johr Mull v. Mukteswar Trigunait* (3) and *Shotirmal Tirithdas v. Rup Chand Raghunathdas* (4), followed. Other cases discussed.

And that, as the result of the amendment of the proviso to section 20, the creditor is now able to rely on the writing of the debtor, not only as to the fact of the payment but also as the acknowledgment of that fact.

*Second appeal from the decree of Mr. R. B. Beckett, District Judge, Ambala, dated the 2nd July, 1931, affirming that of Mr. G. U. Whitehead, Sub-ordinate Judge, Second Class, Ambala, dated the 23rd March, 1931, dismissing the plaintiffs' suit with costs.*

(1) (1915) I. L. R. 42 Cal. 1043.

(3) 1930 A. I. R. (Pat.) 372.

(2) (1930) I. L. R. 52 All. 459.

(4) 1931 A. I. R. (Sind) 28.

SHAMAIR CHAND, for Appellants.

TEK CHAND, for Respondents.

JAI LAL J.—The only question of law involved in this second appeal is, whether the part payment of principal of a debt, before the expiration of the prescribed period, by means of a cheque which has been accepted by the creditor and has subsequently been cashed by him, has the effect of extending the period of limitation so as to entitle the creditor to a fresh period of limitation from the time when the payment was made, within the meaning of section 20 of the Indian Limitation Act.

The learned District Judge has held against the creditor on the authority of *Sardar Bachittar Singh v. Jagan Nath*. (1). In that case the learned Judges of the Chief Court, Punjab, were inclined to agree with the view taken in *Mackenzie v. Tiruvengadathan* (2) which had been approved and followed in *Gurmukh Singh v. Pohlo* (3). It appears, however, that they did not finally base their decree on this view of the law. On the other hand, they found that the part payment of the principal by means of a cheque had not been proved but they held that certain documents amounted to acknowledgment of liability by the debtor and consequently found in favour of the creditor. The opinion, therefore, that section 20 of the Indian Limitation Act did not apply was *obiter*. Still that appears to have been the view of the Punjab Chief Court and of the Madras High Court. Subsequent to this, however, there have been several occasions on which the same question has been discussed by several High Courts in this country, and a contrary view has been taken

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(1) 1 P. R. 1897. (2) (1886) I. L. R. 9 Mad. 271.

(3) 120 P. R. 1894.

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by them. *Kedar Nath Mitra v. Dinabandhu Saha* (1), *M. B. Singh & Co. v. Sircar & Co.* (2), *Kesri Chand-Johr Mull v. Mukteswar Trigunait* (3) and *Chotir Mal Tirithdas v. Rupchand Raghunathdas* (4), are direct authorities in support of the proposition of the appellant's counsel that part payment of principal by means of a cheque, which has been accepted by the creditor and subsequently honoured by the Bank, does amount to a part payment of the principal debt, and that payment must in such cases be deemed to be in the handwriting of the person making the same within the meaning of the proviso to section 20 of the Indian Limitation Act. In *Sakharam Manchand Gujar v. Kewal Padamsi Gujar* (5), the question was not directly involved, but the learned Judges adopted the reasoning of the decision in *Kedar Nath Mitra v. Dinabandhu Saha* (1). No recent authority of any other High Court taking the contrary view has been cited on behalf of the respondent.

In my opinion the weight of authority is distinctly on the side of the appellant, and my own opinion coincides with the view taken in the cases cited on his behalf.

There is, however, one aspect of this case which needs consideration. The proviso to section 20 of the Indian Limitation Act has recently been amended. Whereas previously the requirement was that, in the case of part payment of principal of a debt, the fact of payment should appear in the handwriting of the

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(2) (1930) I. L. R. 52 All. 459. (4) 1931 A. I. R. (Sind) 28.

(5) (1920) I. L. R. 44 Bom. 392.

person making the same, the proviso as now amended runs as follows:—

“Provided that, 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 same.”

The question is, whether this amendment has narrowed down the scope of the proviso as it originally existed, so far as the part payment of the principal is concerned. In my opinion the amendment of the proviso has been made in favour of the creditor who is now able to prove the writing of the debtor not only relating to the actual fact of the payment but also to the acknowledgment of the fact of payment.

In view of what I have stated above this appeal must be accepted and the decree of the District Judge set aside. I order accordingly and send the case back to the District Judge with direction to proceed with the appeal in accordance with law. The costs of this appeal will abide the result.

*N. F. E.*

*Appeal accepted.*

*Case remanded.*

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