1900.

ANANDRAO v. JOTI.

Abdul(1). The case of *Nilava* v. *Rudraya*(2) related to a maintenance claim, and the document was in the nature of a family arrangement, and it was held that the value of the maintenance right was not the same as the value of the property itself. A claim for maintenance did not necessarily create a charge on the property—*Kalpagathachi* v. *Ganapathi Pillai*(3). When the property was worth more than Rs. 100, a partition deed relating to the division of the same must be registered—*Shankar* v. *Vishnu*(4)—even when mother and sons were parties to it—*Lakshmamma* v. *Kameswara*(5). The case of *Heramb'dev* v. *Kashinath*(6) related to an endorsement on a sanad, which endorsement was held not to create any interest, when the sanad was returned to the grantor. None of the rulings cited apply to the present case. The value of the interest created, being a claim to receive Rs. 40 a year, must at the lowest calculation exceed Rs. 100, and, therefore, the document was inadmissible in evidence for want of registration. The *takid* had no independent efficacy of its own. It was only a subsidiary document intended to give effect to the partition. Apparently, it has not been acted upon for more than twelve years since the document was executed. The District Court, therefore, very properly dismissed the claim. I would dismiss the appeal.

(1) (1886) 10 Bom., 634.
(2) (1875) 12 Bom. H. C. R., 141.
(3) (1889) 3 Mad., 184.
(4) (1876) 1 Bom., 67.
(5) (1889) 13 Mad., 281.
(6) (1889) 14 Bom., 472.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

RAGHO SHITARAM, PLAINTIFF, *v.* HARI, DEFENDANT.*

1900.
March 15.

Indian Limitation Act (*XV of* 1877), *Sec.* 20—*Part-payment of principal—Payment in kind.*

A payment may be made not only in the current coin of the realm, but in any other medium that the creditor may choose to accept.

Where goods are delivered by the debtor and taken by the creditor in payment either of principal or interest as such, such delivery would be a good payment of principal or interest, as the case may be, so as to extend the period of limitation under section 20 of the Limitation Act (XV of 1877).

* Civil Reference, No. 4 of 1900.

1900.

RAGHO v. HARI.

REFERENCE under section 617 of the Civil Procedure Code (Act XIV of 1882) by Ráo Bahádur N. G. Phadake, First Class Subordinate Judge at Násik.

The reference was in the following terms :—

"The plaintiff sues on an account stated and signed by the defendants on 26th August, 1896, for Rs. 300 as principal found due by adjustment of a former account and Rs. 135 as interest thereon at the rate of Rs. 1-4-0 per cent. per month. The cause of action is said to have accrued on the 27th August, 1896, the date of the suit being 24th August, 1899. It is alleged that no part-payments are made by the defendants.

"The defendants Nos. 1 and 2 contend that the suit is time-barred, the *kháta* sued on being executed on 12th August, 1896, instead of 26th August of that year as alleged fraudulently in the plaint, that if the suit be at all within time, part-payments to the aggregate amount of Rs. 92-13-3 in the shape of corn and such other articles are made, and that they are willing and ready to pay the balance in eight instalments.

"The plaintiff admits in No. 26 that 1¾ *pallas* of rice of the value of Rs. 38-8-0 and 1¼ *maunds* of wheat of the value of Rs. 12-8-0 were paid to him in satisfaction of interest. There is no dispute about the date of payments. Their date is 25th November, 1896. The payments appear to be made on the same date. The actual fact is that the deceased Ragho bought the articles, *viz.*, rice and wheat, from the defendants' shop without paying anything for them, and the defendants credited him with the same in the plaintiff's *kháta* at theirs in respect of the dealing in suit. The defendants Nos. 1 and 2 are father and son, and are living together, and jointly keeping a shop and carrying on business as grocers.

"Here the question is 'do these part-payments in kinds extend the period of limitation under section 20 of the Limitation Act?'

"I am of opinion that they do.

"The parties are professionally traders. The part-payments consist of purchases of 1¾ *pallas* of rice worth Rs. 38-8-0 and 1¼ *maunds* of wheat worth Rs. 12-8-0 made on credit by the deceased plaintiff from the defendants, who have, as already stated, credited him with the same in their account books.

"Section 20 requires the payment of interest as such for the extension of the period of limitation. It does not say that payment should be made towards liquidation of interest as such *in express terms* or otherwise. A payment made 'by the debtor' on the silent understanding of its being availed of towards liquidation of interest, would be sufficient under the section. The defendant No. 2 admits in his *pursis* that the practice of trade is first to appropriate a part-payment towards the liquidation of interest due and then to use the surplus, if any, in satisfaction of the principal. When the payment of rice and wheat took place as said above there was evidently a mutual understanding on the part of both the parties that so much of the part-payment as amounted to interest due up to date of the payment was paid as interest and the remaining as a part of the principal. The facts of *Hanmantmal* v. *Rambabhai* (I. L. R., 3 Bom., 198) and of *Mackenzie* v. *Tiruvengadathan* (I. L. R., 9 Mad, 271) are quite different from those of the present one."

The reference was argued before Parsons and Ranade, JJ.

S. V. Bhandarkar (*amicus curiæ*) for plaintiff.

E. P. Patankar for defendants.

PARSONS, J.:—The question referred, *viz.*, "do these part-payments in kind extend the period of limitation under section 20 of the Limitation Act," is, as appears from the statement, a double one and must be dealt with by us as such. First, the Judge asks the question as to part-payments made in kind generally, and we can at once answer this question in the affirmative. A payment may be made not only in the currency coin of the realm, but in any other medium that the creditor may choose to accept. The law on this point is clear. "Where it has been agreed between the debtor and the creditor that the latter shall receive goods in part-payment of his claim, the delivery of such goods to him operates as part-payment—*Hooper* v. *Stephens*[1]." Section 50 of the Contract Act enacts the same: "The performance of any promise may be made in any manner, or at any time which the promisee prescribes or sanctions": and illustration (*c*) is as follows:—"A owes B 2,000 rupees. B accepts some of

(1) (1835) 4 A and E., 71.

1900.

RACHO v. HARI.

A's goods in reduction of the debt. The delivery of the goods operates as a part-payment."

Secondly, the Judge asks the question as to the particular payments made in the case before him. This, however, is a question of fact to which we can give no definite answer. It depends entirely upon the understanding or agreement between the parties, and the Judge must himself find what that was. All we can say is that if the goods in question were delivered by the defendant and taken by the plaintiff in payment either of principal or of interest as such, there would be a good payment made either of principal or of interest as the case may be.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Ranade.

1900. *March* 21.

BHIKANBHAI (ORIGINAL DEFENDANT No. 1), APPELLANT, *v.* HIRALAL RAMDINSHET MARWADI (ORIGINAL PLAINTIFF), RESPONDENT.*

Lease—Condition—Breach of condition—Illegal contract—Contract Act (IX of 1872), *Sec.* 23—*Tolls Act (Bom. Act III of* 1875), *Sec.* 10(1)—*Amending Act (Bombay Act V of* 1881), *Sec.* 2.

Under section 10 of the Tolls Act (Bombay Act III of 1875) Government leased to plaintiff the levy of tolls on certain conditions. One of the conditions was that plaintiff should not sublet the tolls without the permission of the Collector previously obtained. One of the clauses of the lease provided that for a breach of any of the conditions of the lease, the Collector might impose a fine of rupees two hundred. The plaintiff sublet the toll to the defendants without the permission of the Collector, and sued to recover a certain amount which the defendants promised to pay for the sublease. The defendants contended that the contravention of the condition of the lease was illegal and opposed to public

* Second Appeal, No. 698 of 1899.

(1) Section 10 of the Tolls Act (Bom. Act III of 1875)—

10. It shall be lawful for the Government to lease the levy of tolls at such rates not exceeding the rates mentioned in the schedule annexed to this Act, upon any public road or bridge by public auction or private contract from year to year or for a longer period not exceeding seven years on such terms and conditions as the Government may deem desirable : provided that the lessee shall give security for the due fulfilment of such conditions, and that all sums payable under the terms and conditions of the lease shall be recoverable as a demand for the land revenue under the law for the time being in force so far as applicable.