1870. *February* 14. *S. A. No.* 162 *of* 1869.

the Lower Appellate Court. Consequently the decree of that Court must be reversed and the record remanded in order that a decree in the appeal may be passed on the merits of the case.

The costs hitherto in this and the Lower Courts will abide the decree.

Appeal allowed.

Appellate Jurisdiction. (a)

Special Appeal No. 222 *of* 1869.

SRI RAJAH PAPAMMA ROW GARU and another..... } *Special Appellants.*

TOLETI VENKAIYA and another..... } *Special Respondents.*

When a sum of money is payable under a bond by instalments with a condition that, in default in paying one instalment, the whole amount shall then become due, and default is made but the obligee subsequently accepts payment of one or more sums as an instalment or instalments due under the bond, such acceptance amounts to a waiver of the condition of forfeiture and puts an end to the cause of action which had accrued, so that the bond is set up again as a bond payable by instalments and no cause of action under the condition arises until some fresh default is made in the payment of a subsequent instalment.

1870. *February* 21. *S. A. No.* 222 *of* 1869.

THIS was a special appeal against the decision of H. Morris, the Civil Judge of Rajahmundry in Regular Appeal No. 112 of 1868, modifying the decree of the Court of the Principal Sadr Amin of Rajahmundry in Original Suit No. 19 of 1866.

Ráma Row, for the special appellants, the defendants.

Mayne, for the special respondents, the plaintiffs.

The facts are sufficiently mentioned in the following

JUDGMENT:—This is a suit upon a razinamah, to recover a certain sum as interest due under the terms of the document. The main question for decision is whether the suit is barred by the Law of Limitations. The razinamah was for a time treated as a decree and execution issued upon it, but no decree had in fact been passed and the refusal of the Court to continue to execute it led to this suit being brought. The amount of the razinamah was made payable by instal-

(a) Present: Scotland, C. J. and Collett, J.

1870.
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ments and there was a condition that on default the whole amount should be recoverable at once. In February 1862 the defendants were alleged to be in default, and the plaintiffs sought to enforce by execution the payment of the whole amount, but in September 1862 the High Court held that the plaintiffs were bound to accept the payment by instalment. This was not a voluntary acceptance on the part of the plaintiffs of the payment as an instalment, and if there had then been a default, it would not amount to a waiver of the condition of forfeiture. But we find that in February 1863 plaintiffs accepted payment of an instalment then due, and there is nothing to show that this acceptance was otherwise than an entirely voluntary act on their part. The next instalment did not become due till February 1864, and then default was made, and if the right of action in respect to the condition of forfeiture is to be reckoned only from this date, then the present suit is not barred, as it was brought within three years from that date. We are of opinion that when a sum of money is payable under a bond by instalments with a condition that on default in paying one instalment the whole amount shall then becomes due, and default is made but the obligee subsequently accepts payment of one or more sums as an instalment or instalments due under the bond, such acceptance amounts to a waiver of the condition of forfeiture and puts an end to the cause of action which had accrued, so that the bond is set up again as a bond payable by instalments, and no cause of action under the condition arises until some fresh default is made in the payment of a subsequent instalment. In this view the acceptance of the instalment due in February 1863 was a waiver of the condition of forfeiture and no fresh cause of action arose until default was subsequently made in February 1864.

As to the amounts awarded on account of interest we disposed of the objections taken by the defendants at the hearing of the special appeal. The result is that we affirm the decree of the Lower Appellate Court with costs.

Appeal dismissed.