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secured. It appears to us that the correct date to take for the division of loans into two classes is the date on which the loan was taken, that is on the 26th of April, 1928. On that date in the present case there was the execution of this hypothecation deed and accordingly this loan must be classed as a secured loan. The interest on a secured loan is naturally at a lesser rate than the interest on an unsecured loan because the lender is receiving some security for his money. If we were to hold otherwise it would defeat the provisions of the Act because in most cases the creditor could bring a suit for a simple money decree and having obtained that decree would proceed by attachment of the property which had been hypothecated and proceed to sell it on his simple money decree, and by this device he would obtain a higher rate of interest than the rate which is specified in schedule III. For these reasons we allow this application in revision and we hold that the proper rate to apply is the rate for a secured loan in schedule III. The order of the lower court will be amended accordingly.

Before Sir Shah Muhammad Sulaiman, Chief Justice, and Mr. Justice Bennet

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PURAN CHAND (DECREE-HOLDER) *v.* BHAGWAT PRASAD (JUDGMENT-DEBTOR)*

U. P. Agriculturists' Relief Act (Local Act XXVII of 1934), sections 3, 5—Conversion of decree into instalment decree—Original decree itself an instalment decree under order XX, rule 11—Conversion into instalment decree under the Act.

A decree for money, directing payment by instalments under order XX, rule 11 of the Civil Procedure Code, can be converted into an instalment decree drawn up in accordance with the provisions of section 3 of the U. P. Agriculturists' Relief Act. Section 5 of the Act is very general in its scope and applies to any decree for money, including a decree already directing payment by instalments under order XX, rule 11.

*Civil Revision No. 109 of 1936.

Mr. *Panna Lal* and Dr. *K. N. Malaviya,* for the applicant.

Mr. *G. S. Pathak,* for the opposite party.

SULAIMAN, C.J., and BENNET, J.:—This is an application in revision by a decree-holder arising out of a proceeding under sections 3 and 5 of the U. P. Agriculturists' Relief Act. The decree-holder had obtained in 1934 a decree for money, directing payment by instalments under order XX, rule 11 of the Civil Procedure Code. After coming into force of the U. P. Agriculturists' Relief Act the judgment-debtor applied under section 5 for the decree being converted into a fresh decree for payment by instalments in accordance with the provisions of section 3 of the Act. The court below has held that it must proceed under the Act.

In revision it is argued before us that inasmuch as there had already been a decree directing payment by instalments, section 5 would not apply as it must apply to a case where there is no decree for payment by instalments at all. This contention does not appear to be sound.

Section 5 lays down that "Notwithstanding anything contained in the Code of Civil Procedure, 1908, the court shall, unless for reasons to be recorded it directs otherwise, at any time, on the application of the judgment-debtor and after notice to the decree-holder, direct that *any decree for money*.....passed .....whether before or after this Act comes into force, shall be converted into a decree for payment by instalments drawn up in such terms as it thinks fit *in accordance with the provisions of section* 3." The section is most general in its scope and applies to "any decree for money". It is therefore impossible to hold that it is inapplicable to the case where a decree for money directing payment by instalments under order XX, rule 11 has been passed. Section 3 contains no less than five sub-sections and lays down several provisions regarding the fixing of instalments at the time of passing

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a decree. These provisions are not all contained in order XX, rule 11. The legislature has therefore directed that the court should convert a decree for money into a decree for payment by instalments drawn up in such terms as it thinks fit in accordance with the provisions of section 3. This implies that the court should apply its mind to the provisions of section 3 and order a fresh decree to be prepared, fixing instalments in accordance with the provisions of that section. The second proviso to section 3, sub-section (1) lays down that in case of agricultural calamity, where there is likelihood of causing hardship, the court may allow further time for payment of such instalments as it may consider proper. It would nullify the provision if we were to hold that section 5 is wholly inapplicable to a case where there is a decree for money already directing payment by instalments. There seems to be no reason for restricting the scope of section 5 when the language employed therein is general. We are therefore of opinion that it was open to the court below—and indeed it was its duty, unless it was for reasons to be recorded prepared to act otherwise—to convert the previous decree into one for payment by instalments in such terms as it thought fit in accordance with the provisions of section 3.

The next point urged is that the total period over which the instalments are spread, namely 10 years, is too long. This was not a case to which chapter III applied and therefore the maximum period under the first proviso to section 3, sub-section (1) is 15 years. We cannot hold in revision that the court below has committed any irregularity in the exercise of its jurisdiction in fixing the period of 10 years which is well within the maximum limit.

The revision has no force and it is accordingly dismissed with costs.