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section 47 had not been complied with, and that consequently the document had not been proved. We think this was an error. In Taylor on Evidence, paragraph 1863, the matter is thus dealt with:—"The witness need not state in the first instance how he knows the handwriting, since it is the duty of the opposite party to explore on cross-examination the sources of his knowledge, if he be dissatisfied with the testimony as it stands." It appears to us that this is a correct exposition of the law in this country also, though it is permissible, and may often be expedient, that the matters referred to in the explanation should be elicited on the examination-in-chief. We may here further point out that it is within the power of the presiding Judge and often may be desirable to permit the opposing advocate to intervene and cross-examine so that the Court may at that stage be in a position to come to definite conclusion on adequate materials as to the proof of the handwriting. Though we think the Judge was wrong in the view he took of section 47, still the decree will be confirmed with costs inasmuch as the document was inadmissible on other grounds.

Decree confirmed.

APPELLATE CIVIL.

Before Mr. Justice Chandanarkar and Mr. Justice Aston.

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August 4.

BHAGCHAND AND RAMCHANDRA (ORIGINAL DEFENDANTS), APPELLANTS,
 RADHAKISAN MOHANLAL MARWADI (ORIGINAL PLAINTIFF),
 RESPONDENT.*

*Civil Procedure Code (Act XIX of 1882), section 257 A—Decree—Satisfaction
 —Sanction of Court—Agreement to pay less than the decretal amount—
 Void condition in a bond.*

On the 4th October, 1897, plaintiff obtained a money decree against defendant for Rs. 529-10-0. In full satisfaction of this decree, defendant on the 3rd June, 1898, executed a mortgage-bond, agreeing to pay Rs. 500 within three months from the date of the bond, and in case the sum were not so paid then to pay interest at Re. 1½ per cent. per mensem until payment:

Held, that so far as the bond provided for the payment of Rs. 500 it was valid as it was for the payment of a sum less than the decretal amount, and

* Second Appeal No, 145 of 1903.

therefore did not fall within the meaning of paragraph 2 of section 257A of the Civil Procedure Code (Act XIV of 1882).

Held, further, that the agreement to pay interest was void under paragraph 2 of section 257A of the Code.

Held, also, that as the agreement to pay interest after the expiration of three months was a separate agreement, it did not affect the right to sue for recovery of the Rs. 500.

SECOND appeal from the decision of Chunilal D. Kavishwar, First Class Subordinate Judge, A. P., at Násik, reversing the decree passed by M. H. Wagle, Subordinate Judge at Málegaon.

Suit to recover money due on a mortgage-bond.

Plaintiff obtained a money decree against defendant 1 on the 4th October, 1897, for Rs. 529-10-0. The decree awarded no further interest. On the 3rd June, 1898, defendant 1 executed a mortgage-bond in favour of plaintiff for Rs 500, in full satisfaction of the decree. The bond provided that the sum of Rs. 500 should be paid on the expiration of three months from the date of the bond; and that if the sum were not so paid then the sum should carry interest at the rate of Re. 1-8-0 per cent. per mensem until payment. There was a default in payment. Plaintiff thereupon filed a suit against defendant 1 to recover Rs. 500 as principal and Rs. 262-8-0 as interest due on the mortgage-bond dated the 3rd June, 1898. Defendants 2 and 3 had in the meanwhile purchased the property mortgaged on the 11th April, 1899, and they were added as defendants to the suit.

Defendants contended (*inter alia*) that the bond being in adjustment of the decree required the sanction of the Court, for want of which it was void under paragraph 2 of section 257A of the Civil Procedure Code (Act XIV of 1882).

The Court of first instance held the mortgage-bond proved, but dismissed the claim on the following grounds:—

The next question is whether it is void for want of sanction of the Court. There is no proof that the sanction of the Court was obtained or that the satisfaction of the decree had been duly certified to the Court. Plaintiff has urged that no such sanction was required, as the mortgage-bond was itself the actual and present satisfaction of the judgment-debt, and has cited in support of his contention the recent ruling of the Bombay High Court reported at I. L. R. 25 Bom., page 252.

That case is, in my opinion, distinguishable. The only question before the High Court in that case was whether the agreement embodied in the mortgage-

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bond was an agreement to give time for the satisfaction of the judgment-debt and thus fell under paragraph 1 of the section 257A. The question whether the agreement fell within the second paragraph of the section was expressly omitted. The ruling is therefore not binding if the present mortgage-bond fell within the second paragraph of the section 257A. Now, in this case interest at the rate of Re. 1-8-0 per cent. per mensem is agreed to be paid on the judgment-debt and it becomes the agreement which provides for the payment of a sum in excess of the sum due under the decree and falls within the purview of section 257, paragraph 2. Cases reported at I. L. R. 9 Bom. 176 and 22 Bom. 693 apply. I therefore hold that the mortgage-bond is void for want of sanction of the Court.

On appeal, the lower Appellate Court reversed this decree and awarded the claim so far as the payment of Rs. 500 was concerned and rejected the claim for interest.

Defendants 2 and 3 appealed to the High Court.

D. W. Pilgaonkar, for the appellants (defendants):—The bond in question provides for excess over decretal debt and the plaintiff has claimed interest also in his plaint. The words “directly or indirectly,” in section 257A of the Civil Procedure Code (Act XIV of 1882), must be given effect to. *Tukaram v. Anantbhat*⁽¹⁾ is a decision on clause 1 of section 257A. The present suit falls within clause 2 of the section: see *Davlatsing v. Panda*,⁽²⁾ *Heera Nema v. Pestonji*⁽³⁾ and *Dhanram v. Ganpat*.⁽⁴⁾ The terms of the bond cannot be separated. The whole forms but one agreement and “directly” or “indirectly” it provides for excess over decretal debt. In *Vishnu Vishwanath v. Har Patel*⁽⁵⁾ such an argument was raised, but the Court held that the consideration for the whole bond was one.

S. R. Bakhale, for the respondent (plaintiff):—There are two conditions in the bond and they are separate. The condition to pay interest is void. The whole bond is not void. In this case, some portion of the decretal debt is remitted; so the first condition in the bond provides for less than the decretal amount. The cases of *Heera Nema v. Pestonji*⁽³⁾ and *Dhanram v. Ganpat*⁽⁴⁾ do not apply because there was no remission of decretal debt in those cases.

(1) (1900) 25 Bom. 252.

(3) (1898) 22 Bom. 693.

(2) (1884) 9 Bom. 176.

(4) (1902) 27 Bom. 96; (1902) 4 Bom. L. R. 872.

(5) (1888) 12 Bom. 499.

CHANDAVARKAR, J. :—We think that the decree of the Subordinate Judge, with Appellate Powers, in this case is right.

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The decree which the respondent (plaintiff) had obtained in 1897 against the appellant (defendant) was for Rs. 529-10-0 and awarded no interest. In full satisfaction of that decree the appellant executed the mortgage-bond in dispute, agreeing to pay Rs. 500 within three months from the date of the bond. So far as this agreement goes it cannot be said to fall within the meaning of paragraph 2 of section 257A of the Code of Civil Procedure, as it was for the payment of a sum *less* than the decretal amount. And it is this agreement which the lower Appellate Court has enforced by passing a decree for Rs. 500 in favour of the respondent.

It is contended, however, for the appellant that it is a term of the mortgage-bond in dispute that if the sum of Rs. 500 were not paid within three months interest at Re. 1-8-0 per cent. per month should run on it until payment. This agreement to pay interest is indeed void under paragraph 2 of section 257A; but, as held by the lower Appellate Court, it is a separate agreement and stands apart from the other, whereby the appellant became liable to pay Rs. 500 within three months. It was open to the respondent to sue on the latter agreement on the expiry of three months, and that right is not affected by the agreement to pay interest in the event of non-payment within that period. It was held in *Davlatsing v. Pandu* ⁽¹⁾ that if there are two agreements in a bond, one of which is void and the other is not, and if one can be separated from the other, the agreement which is not void is not affected by paragraph 2 of section 257A and can be enforced.

We, therefore, confirm the decree with costs.

Decree confirmed.

(1) (1884) 9 Bom. 176.