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special facts of this case that the Awarding Officer made his award on the 22nd March. Therefore, the only award, in the case, such as it is, is the award which purports to have been made by the Assistant Collector. At the same time I desire to make it clear that to my mind it does not necessarily follow that an Acquiring Officer does not make his award, simply because he sends it to the Collector or to any other officer for approval. For instance in the present case the award was made by the Assistant Collector on the 11th August, even though it was sent afterwards to the Collector for approval.

I, therefore, agree that the appeals may be dismissed.

I may add that the difficulty arising from the departmental instructions is real. In my opinion the whole position requires to be reconsidered with a view to make it clear beyond controversy as far as possible either by adequate rules under section 55 of the Act or by a suitable amendment of the Act, as to what should constitute the making of the award, and what definite step, if any, should make the award final and conclusive of the matters mentioned in section 12 of the Act.

Appeals dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

August 3.

RAGHUNATH SHIVAJI KULKARNI AND OTHERS (ORIGINAL PLAINTIFFS) APPELLANTS *v.* RAMCHANDRA NARAYAN JOSHI AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 13—Suit by mortgagee—Accounts.

* Second Appeal No. 27 of 1921.

1921.

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The plaintiffs sued to recover on a mortgage bond Rs. 1,500 for principal and Rs. 1,500 for interest. On taking accounts under section 13 of the Dekkhan Agriculturists' Relief Act, the Court found that the principal sum due to the plaintiffs at the date of the bond was over Rs. 3,000 and eventually passed a decree for Rs.6,676-4-0, comprising principal and interest found due at the date of the suit. On appeal,

Held, that, as the plaintiffs had admittedly taken a bond for Rs. 1,500, that was all the principal amount which could possibly be considered as secured on the property mortgaged.

Per MACLEOD, C. J.:—"As a rule the object of directing accounts to be taken under the Dekkhan Agriculturists' Relief Act is to ascertain how much of the amount secured by the bond is principal and how much interest after going into the history of the transactions between the parties. But once the creditor has taken a bond, then in no possible case can he recover in a suit on the bond more than the principal amount with interest."

Dadabhai v. *Dadabhai*[1], explained and distinguished.

Second appeal against the decision of N. S. Lokur, Assistant Judge of Sholapur, varying the decree passed by K. A. Sapre, Subordinate Judge at Barsi.

Suit to recover money on a mortgage bond.

On the 30th January 1903, Raghunath (defendant No. 1) passed a mortgage bond in favour of Ramchandra (plaintiff No. 1) for Rs. 1,500.

On the 3rd April 1918, the plaintiff sued to recover Rs. 1,500 as principal due on the mortgage bond and Rs. 1,500 as interest.

The defendants admitted the mortgage bond but contended that the whole of the consideration was not received and asked for accounts to be taken under the Dekkhan Agriculturists' Relief Act, 1879.

The Subordinate Judge on taking accounts found that on the 28th January 1903, two days before the bond, the principal sum due to plaintiff was Rs. 3,185-13-0 ; that as the Court had to take accounts up to the date of the suit, on the latter date the principal

(1) (1908) 32 Bom. 516.

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snm due was found to be Rs. 3,338-2-0. A decree was passed for Rs. 3,338-2-0 as principal and for an equal amount by way of interest under section 13 (9) of the Dekkhan Agriculturists' Relief Act.

On appeal, the Assistant Judge held that the plaintiff was entitled to recover Rs. 1,500 for principal and Rs. 1,500 for interest. He, therefore, varied the decree for the following reasons :—

"The principle of *Janoji* v. *Janoji* (I. L. R. 7 Bom. 185) was followed in *Ramchandra* v. *Janardhan* (I. L. R. 14 Bom. 19) and *Mugappa* v. *Mahamadsaheb* (I. L. R. 34 Bom. 260)...The lower Court has relied upon the ruling in *Dadabhai* v. *Dadabhai* (I. L. R. 32 Bom. 516). The facts of that case can be easily distinguished from the present. It was a suit for redemption filed by agriculturist mortgagors and at their instance accounts of the mortgage were taken under sections 12 and 13 of the Dekkhan Agriculturists' Relief Act. As the profits of the mortgaged property, which the mortgagee was to enjoy in lieu of interest, were found insufficient to meet the interest due on the mortgage amount at the rate allowed by the Court, the total amount found due on the date of the suit exceeded the amount secured by the mortgage, namely, Rs. 2,499, in spite of the fact that the consideration for the mortgage had been, on taking accounts, found to be, Rs. 2,314 only. The mortgagee appeared as a defendant to oppose the redemption unless his dues were paid. Here the mortgagee comes to the Court with a prayer for a specific amount as due on his mortgage. The accounts were taken not merely of the mortgage but of all the dealings between the parties to ascertain whether the consideration of the mortgage was good or not. As I have already said, the mortgage deed was not passed to secure everything that was due on the date of his execution, but only a portion carved from it and the remainder was allowed to continue as an unsecured Khata debt as before. If the total dues of the debt of the mortgage were, on taking accounts, found to be less than the mortgage amount then the defendants would have got the benefit of it and the amount would have been reduced accordingly. But since it is ascertained to exceed that amount, the amount of the excess becomes immaterial for the purposes of this suit based on the mortgage deed. That excess must be left to be recovered as an unsecured debt in the ordinary way."

The plaintiffs appealed to the High Court.

W. B. Pradhan for *P. B. Shingne*, for the appellants:—In this case the account taken by the trial Court

is correct. The provisions of the Dekkhan Agriculturists' Relief Act are peremptory on the point as to the mode of taking accounts. The account is to be opened up and account is to be taken from the commencement of the transactions between the parties. When this is done, the debtor becomes liable under section 13 for the amount of principal and interest due at the foot of the account.

In a particular case, this process may result in imposing upon the debtor a liability of a peculiar kind, which, under the general law, may not be imposed. But the Court must take the law as it is and cannot control the plain language of the sections by reference to the intention of the Legislature. An example in point is furnished by the case of *Janoji* v. *Janoji*[1]. This case has been subsequently followed.

Under the Dekkhan Agriculturists' Relief Act a larger sum than that claimed by the creditor can be allowed: see *Dadabhai* v. *Dadabhai*[2].

No appearance for the respondents.

MACLEOD, C. J.:—The plaintiffs filed this suit to recover on a mortgage bond Rs. 1,500 for principal and Rs. 1,500 for interest. The 1st and 4th defendants appeared. They admitted the mortgage bond but contended that the whole consideration was not received; that the 1st defendant was in difficulty and so he admitted the previous debt of Rs. 900; that instalments should be granted; that accounts should be taken; and that the defendants only received Rs. 600 as consideration. Accordingly the learned Subordinate Judge took accounts with the result that he found that, on the 28th January 1903, two days before the bond, the principal sum due to the plaintiffs was Rs. 3,185-13-0. Nothing was paid in cash on the day of

[1] (1882) 7 Bom. 185. [2] (1908) 32 Bom. 516.

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the bond, so that taking the principal sum on the date of the bond to be Rs. 3,185-13-0, he considered that double that amount should be allowed. But as he had to take accounts up to the day of the suit, on the latter day the principal sum due was Rs. 3,338-2-0, and so he passed a decree for double that amount, viz., Rs. 6,676-4-0 and costs of the suit to be paid in yearly instalments of Rs. 400 each.

In appeal this decree was varied by substituting in the decretal order the words "Rs. 1,500 for principal and Rs. 1,500 for interest up to the date of the suit, together with future interest at 6 per cent. per annum on the principal amount or the unpaid portion of it, and proportionate costs," for the words "Rs. 6,676-4-0 and costs."

It seems to us that the learned Subordinate Judge took entirely a wrong view of the functions of the Court in taking an account under the Dekkhan Agriculturists' Relief Act. The plaintiffs admittedly took a bond for Rs. 1,500, and, therefore, that was all the principal amount which could possibly be considered as secured on the property mortgaged. Even supposing the learned Judge was right in finding that at the date of the bond a greater sum than Rs. 1,500 was due to the plaintiffs if they chose to take a bond for Rs. 1,500, they cannot be allowed to contend afterwards that the balance of the amount should also be considered as secured on the mortgaged property. As a rule the object of directing accounts to be taken under the Dekkhan Agriculturists' Relief Act is to ascertain how much of the amount secured by the bond is principal and how much interest after going into the history of the transactions between the parties. But once the creditor has taken a bond, then in no possible case can he recover in a suit on the bond more than the principal amount with interest. We may

refer to the case of *Dadabhai* v. *Dadabhai* [1] where the plaintiffs, who stated that they were agriculturists, sued to redeem and recover possession of the properties in suit, alleging that they were mortgaged by their fathers to the defendants for Rs. 2,499 on the 3rd May 1898; that accounts should be taken; and that the amount, if any, found due to the defendants, should be made payable by instalments. The learned Judge found that the plaintiffs were agriculturists; that Rs. 2,314 was the consideration for the mortgage; that the mortgage was with possession; and that Rs. 2,499 were due to the defendants on the mortgage; and that the said amount should be paid by the plaintiffs to the defendants by ten instalments. The learned Judge said: "A commission was issued...to make up these accounts. Their report is filed. I have not been scrupulously careful in examination of these calculations as more than Rs. 2,499 are to be found due under any version. I cannot allow more than Rs. 2,499 to defendants as even in the case of non-agriculturists they could not have got more." In second appeal to the High Court it was held that the Subordinate Judge was in error in thinking that he could not award more than Rs. 2,499. Then the case was remanded to take an account according to the provisions of section 13 of the Dekkhan Agriculturists' Relief Act. But it must be noted in that case that it was alleged in the plaint that the mortgage amount was Rs. 2,499, and therefore, all that the Court decided was that on the accounts being taken it was open to the Judge to award more than the principal amount alleged to be due on the mortgage by the plaintiff.

The principle involved seems to us to be an extremely simple one, that when a mortgagee seeks to recover

[1] (1908) 32 Bom. 516.

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what is due for the principal on the mortgage bond, he cannot be allowed to say that the principal is more than what it is stated to be in the plaint. Certainly there are no provisions of the Dekkhan Agriculturists' Relief Act which would entitle the Court in taking an account to add anything to the amount stated as principal in the bond for which the mortgaged property stood security. The appeal, therefore, must be dismissed.

Decree confirmed.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

1921.

August 19.

GANESH VENKATESH JOGLEKAR (ORIGINAL PLAINTIFF), APPELLANT *v.* RAMCHANDRA NARAYAN JOGLEKAR (ORIGINAL DEFENDANT), RESPONDENT*.

Land Revenue Code (Bom. Act V of 1879), section 121—Boundary line—Survey Officer deciding that a strip of land lying between two numbers was common property of adjoining owners—Dispute as to title between owners—Jurisdiction of civil Courts.

The plaintiff and the defendant were owners of adjoining houses in the city of Poona. The houses were separated by an open space about five feet in width. On this space were a stable and a gutter. In 1916 it was decided in an enquiry by the Survey Officer that the gutter and the stable were common property of the parties. The plaintiff thereupon sued for a declaration that the ground on which the gutter and the stable stood belonged exclusively to him. The trial Judge decided that the Survey Officer's decision had no judicial force and on going into the question of title he held that the plaintiff was entitled to a declaration with respect to the stable alone. On appeal by the defendant, the District Judge reversed the decree on the ground that the jurisdiction of the civil Court to entertain the suit was ousted under the provisions of section 121 of the Land Revenue Code.

Held, reversing the decision, that it would be the duty of the Enquiry Officer to settle the boundary between the lands of adjoining house owners, and the boundary so settled would, according to the provisions of section 121 of the Land Revenue Code, be determinative of the rights of the land-holders on either side of the boundaries so fixed; but it would not be determinative of

* Second Appeal No. 719 of 1920.