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a money allowance received by the defendant, not on her own account alone, but on account of all the sharers. He seeks to establish no new right which did not exist before, but simply to recover for the year 1868-69 what he had been receiving ever since 1851 to 1867-68. Moreover, no service has to be performed for this allowance; it is free from service, a money payment being made to Government in lieu of service.

"I submit this question of jurisdiction for the opinion of the High Court."

The reference was considered by GIBBS and MELVILL, JJ.

PER CURIAM:—The money claimed is not due on a bond or other contract, and it was decided in the case of *Keshavbhat* v. *Bhágirathibái*, S. A. No. 804 of 1865 (*a*), that "personal property," as used in Sec. 6 of Act XI. of 1865, must be limited to chattels moveable, and does not include claims to money other than those which are distinctly specified in the statute. The Court concurs in that decision, and is of opinion, on the above grounds, that this claim is not cognisable by a Court of Small Causes.

(*a*) 3 Bom. H. C. Rep., A. C. J. 75.

Sept. 20.

Referred Case.

VITHOBA' valad UKBA *et al.* .....*Appellants.*
CHOTA'LA'L TUKA'RA'M .....*Respondent.*

Mortgage—Destruction of Property mortgaged—Liability of Mortgagor—Hindú Law.

By the Hindú, as well as by the English, law, a creditor in whose hands a pledge has accidentally perished, is notwithstanding entitled to recover his debt, in the absence of an agreement to the contrary.

CASE stated for the decision of the High Court, under Sec. 28 of Act XXIII. of 1861, by Satyendra Náth Tagore, Assistant Judge of Khándesh:—

"The plaintiff brought this action to recover Rs. 150, payable under a mortgage bond dated the 14th of November

1863, mortgaging a house, which subsequently was accidentally burnt down.

"The defendant answered that the house mortgaged to the plaintiff had been burnt down through the plaintiff's negligence, and, as the plaintiff was not in a position to restore the house, according to agreement, that he, the defendant, was not liable.

"The Subordinate Judge of Amalner found that the mortgaged premises had been set on fire through the default of the plaintiff, and that, therefore, the suit would not lie.

"The plaintiff appeals, on the ground that the suit is maintainable.

"I found the facts of the case to be as follows:—

"The defendant on borrowing a sum of money from the plaintiff gave him a bond for it, and by the bond also pledged a house, providing that it should be redeemed upon repayment of the principal within three years, and that the usufruct should be taken in lieu of interest. The plaintiff also at the same time executed an agreement engaging to restore the house upon the debt being paid off by the defendant. The mortgaged premises were burnt down while in the possession of the mortgagee. The defendant thereupon brought a suit to recover the value of his property, but failed on the ground that there was no proof of negligence in the mortgagee. I consider that the judgment in that suit is conclusive as to the same issue in the present case; but, whether conclusive or not, I find on the evidence that the fire was the result of an accident. Emboldened by the defendant's failure in the former suit, the plaintiff has now in his turn brought this action on the bond for the recovery of the money lent. Under the circumstances, I am of opinion that the plaintiff is not entitled to recover the mortgage-debt, unless he is in a condition to reconvey the mortgaged estate according to agreement. * * *

"As the case is one of first impression, and the issue involved is of some importance, namely, the responsibility of a

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mortgagee for the loss of the mortgaged property, I accede to the *vakíl's* application to state a case for the opinion of the High Court, and pass a decree in favour of the defendant, contingent on the decision of the Honorable the Judges of the High Court."

The reference came on for disposal before GIBBS and MELVILL, JJ.

Bhairavnáth Mangesh, for the plaintiff:—According to Hindú law the suit is maintainable, as by law a mortgagee can recover the debt due to him, the pledge being lost without any default on his part.

Cur. adv. vult.

20th Sept. PER CURIAM:—The Court considers that, in the absence of any express agreement to the contrary, a creditor in whose hands a pledge has perished by accident, and without negligence on his part, is entitled to proceed against his debtor for recovery of the debt. The rule of Hindú law in this matter is in accord with that of the English and Roman laws. (Vyavahár Mayukha, Chap. V., Sec. II., cl. 4.*)

* Stokes' Hindú Law Books, p. 114.

Special Appeal No. 155 *of* 1870.

Sept. 27.

NA'RA'YAN GOVIND OK, for himself and as Administrator and Guardian of Gangádhar and Dámodhar Sakhárám .....*Appellant.*

GANESH A'TMA'RA'M FADKE *et al.* .....*Respondents.*

Surety—Mortgage Bond—Relinquishment by Mortgagee of Mortgaged Property.

Where a creditor sued his principal debtor and two sureties upon a mortgage bond, and in his plaint formally relinquished his claim against part of the mortgaged property, *it was held* that after such relinquishment the sureties were no longer bound, their position being altered for the worse by reason of such relinquishment.

THIS was a special appeal from a decree of the Acting District Judge of Thána, confirming, on appeal, the decree of the Subordinate Judge of Kalyán.