the District Court with instructions to record its finding according to law. The proceedings should be returned within two months.

Papers returned.

APPELLATE CIVIL.

Before Mr. Justice Bayley, Acting Chief Justice, and Mr. Justice Fulton.

DHONDI (ORIGINAL PLAINTIFF), APPELLANT, *v.* LAKSHMAN (ORIGINAL DEFENDANT), RESPONDENT.*

1894. *July* 9.

The Dekkhan Agriculturists' Relief Act (XVII of 1879), Sec. 13, Cls. (b), (d), and Sec. 15(1) —Mortgage—Redemption suit—Account—Principal debt how ascertained—Arbitration.

In a redemption suit under the Dekkhan Agriculturists' Relief Act (XVII of 1879) the Court should, in taking an account, form its own opinion on the subject. As the law stands, a mere guess as to the sum of money actually advanced cannot be made in

* Second Appeal, No. 780 of 1892.

(1) Section 13, clauses (*b*), (*d*), and section 15 of the Dekkhan Agriculturists' Relief (Act XVII of 1879):—

13. When the Court inquires into the history and merits of a case under section twelve, it shall—

notwithstanding any agreement between the parties or the persons (if any) through whom they claim, as to allowing compound interest or setting off the profits of mortgaged property without an account in lieu of interest, or otherwise determining the manner of taking the account,

and notwithstanding any statement or settlement of account or any contract purporting to close previous dealings and create a new obligation,

open the account between the parties from the commencement of the transactions and take that account according to the following rules (that is to say):—

(*a*) * * * * * *

(*b*) in the account of principal there shall be debited to the debtor such money as may from time to time have been actually received by him or on his account from the creditor, and the price of goods, if any, sold to him by the creditor as part of the transactions:

(*c*) * * * * * *

(*d*) in the account of principal there shall not be debited to the debtor any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made in the course of the transactions, unless the Court, for reasons to be recorded by it in writing, deems such debit to be reasonable.

1894.

DHONDI v. LAKSHMAN.

favour either of one side or the other. If there are no materials from which the Court can satisfy itself as to the amount which should be allowed on account of principal, whether under clause (*b*) or clause (*d*) of section 13 of the Act, it is open to it to have recourse to arbitration under the provisions of section 15.

Máhádu v. *Rájárám*(1) considered.

Máloji v. *Vithu*(2) referred to.

THIS was a second appeal from the decision of Ráo Bahádur C. N. Bhat, First Class Subordinate Judge of Poona, with appellate powers.

The plaintiff sued to redeem and recover possession of certain lands mortgaged to the defendant by two deeds, *viz.*, one for Rs. 1,995, dated the 24th October, 1866, and a second for Rs. 1,300, dated the 16th July, 1869. He alleged that the loans actually received were only Rs. 25 and that the rest was accumulated interest. He prayed that an account of the rents and profits received by the defendant should be taken, and after deducting them from the mortgage-debt due by the plaintiff, the balance of the debt, if any, should be made payable by instalments.

The defendant denied the plaintiffs' allegations and stated that he was willing to restore the land on payment of Rs. 3,295.

The Subordinate Judge relying on *Máhádu* v. *Rájárám*(1) treated the amounts mentioned in the mortgage-bonds as principal, and ordered that the same be paid with costs by yearly instalments of rupees two hundred with interest at rupees six per cent. per annum on the amount of the debt due, or at once, and in case of

15. Instead of inquiring into the history and merits of a case under section twelve, or if upon so inquiring the Court is unable to satisfy itself as to the amount which should be allowed on account of principal or interest, or both, the Court may, of its own motion, direct that such amount be ascertained by arbitration.

If the parties are willing to nominate arbitrators, the arbitrators shall be nominated by them in such manner as may be agreed upon between them: if the parties are unwilling to nominate arbitrators, or cannot agree in respect of such nomination, the Court shall appoint any three persons it thinks fit:

Provided that if all the parties reside in the same village, town or city, and, in the opinion of the Court, three fit persons can be found among the residents of such village, town or city, it shall appoint residents of such village, town or city.

The provisions of sections 503 to 522 (both inclusive) of the Code of Civil Procedure shall apply to every reference to arbitration under this section.

(1) P. J., 1887, p. 216. (2) I. L. R., 9 Bom., 520.

default in the payment of the amount of any instalment and that the plaintiff should be put in possession of the mortgaged property after the then standing crops were reaped.

On appeal by the plaintiff the Judge confirmed the decree.

The plaintiff preferred a second appeal.

Mánekshán J. Taleyárkhán for the appellant (plaintiff):—The Judge ought to have gone into the history of the transaction and ascertained the real sum due as directed by the Dekkhan Agriculturists' Relief Act. The Courts have assumed that the amounts mentioned in the two bonds constituted the principal debt. This is a very wrong mode of dealing with the case under the provisions of the Dekkhan Agriculturists' Relief Act.

There was no appearance for the respondent (defendant).

FULTON, J.:—In this case the plaintiff, who is an agriculturist, sued to redeem two mortgages created by bonds, dated respectively the 24th October, 1866, and the 16th July, 1869. On enquiring into the history from the commencement of the transactions and taking an account the Court of first instance wrote as follows:—

"The first deed was passed by plaintiff's deceased father to defendant's grand-uncle for Rs. 1,995. The recital made in the deed itself goes to show that the deed was passed for old debts, including probably a considerable amount of accumulated interest. The second bond seems to have been passed for a cash consideration.....Defendant informed the Court that he or she had no accounts or other means to show how the consideration was made up and was not aware whether Krishnáji Govindráv Jádhav, a near relation of defendant, possessed any accounts. Krishnaji Govindráv was one of the witnesses cited by plaintiff, but he did not put in his appearance, and a warrant was ordered to be issued for his arrest. Plaintiff, however, failed to give the requisite process fees, and no warrant was issued. The Court has, therefore, to determine the point on what materials it has before it in the shape of mortgage-deeds.....Defendant's grand-uncle was not a money-lender by profession, and there was hardly any necessity for him to keep regular accounts. Plaintiff has

1894.

DHONDI v. LAKSHMAN.

put in a few old bonds, the oldest being for Rs. 25; but his pleader is unable to explain the several links which are undoubtedly wanting to give a fair idea as to how the accounts were made from time to time. In fact, several of the connecting links have long perished. A Court inquiring into the history of a case under section 12 of the Dekkhan Agriculturists' Relief Act is not intended to eke out by mere guesses a history which is defective. The proper course is to start from the point where reasonable certainty begins—P. J., 1887, p. 216. On the authority of the above ruling, as I find nothing to rely on behind the mortgage transaction of 1866, I decide that Rs. 1,995 and Rs. 1,300 must be taken as the principal."

In dealing with the question the appellate Court, after pointing out that the evidence was insufficient to connect certain old bonds with the transactions in dispute, proceeded as follows:—"There is nothing to show that the defendant has withheld account books. The plaintiff himself looked up to one Krishnáji Govind Jádhav to produce accounts, but the plaintiff himself did not persevere in getting him or the accounts alleged to be with him into the Court. The lower Court has, therefore, properly held that the sums mentioned in the mortgage-bonds, Exhibits 28 and 29, were to be treated as the principal[1]."

From these extracts it appears that both Courts seem to have considered that they were bound by some rule of law to come to the conclusion at which they arrived. In holding that the item of Rs. 1,955 was all principal, the Second Class Subordinate Judge does not appear to have acted on his own opinion of what was probable, as he thought the deed was passed for old debts, including probably a considerable amount of accumulated interest. The appellate Court's judgment was not equally explicit; but from the reference to the case reported in the printed judgment, it seems that the Judge considered that it laid down a general principle by which Courts were bound when taking accounts under the Dekkhan Agriculturists' Relief Act. An examination of that case, however, does not show that any general principle was prescribed, excepting that the Act did not intend a defective

(1) P. J. for 1887, p. 216.

history to be supplemented by mere guesses. Nothing is said about the "proper course" to follow. Their Lordships merely dealt with the facts before them which were held to justify the finding of the District Judge in appeal. No rule was laid down as to the conclusions which other Judges of fact might draw from the evidence before them in cases with which they might have to deal. The words "proper course" quoted by the Second Class Subordinate Judge seem taken from the summary in the Index to the Judgments for 1887, and are not to be found in the judgment itself.

In a case like the present a serious difficulty undoubtedly arises in determining the amount of principal, but the Court must nevertheless endeavour to form its own opinion on the subject. As the law stands, mere guesses as to the sum of money actually advanced cannot be made in favour either of one side or the other. If there are no materials from which the Court can satisfy itself as to the amount which should be allowed on account of principal, whether under clause (*b*) or clause (*d*) of section 13 of the Act, it is open to it, as pointed out in *Máloji* v. *Vithu* [1], to have recourse to arbitration under the provisions of section 15

Under these circumstances, as the account has not been taken in accordance with the Act, we must reverse the decree of the lower appellate Court and remand the appeal for a fresh decision in reference to the above remarks.

Decree reversed.

(1) I. L. R., 9 Bom., 520.

ORIGINAL CIVIL.

Before Mr. Justice Farran.

MACMILLAN AND OTHERS (PLAINTIFFS) *v.* KHÁN BAHÁDUR SHAMSUL ULAMA M. ZAKA (DEFENDANT).*

1895. *February* 25.

Copyright—Infringement—Translations—Jurisdiction—Statute 5 and 6 Vict., cap. 45—Order for books sent from Bombay to Delhi—Value payable post—Registration of copyright—Notice of disputed proprietorship—Act XX of 1847, *Sec.* 8—*Practice—Procedure.*

The plaintiffs were publishers in London. The defendant carried on a printing and publishing business at Delhi. Between the years 1869 and 1891 the defendant transla-

* Suit No. 607 of 1894.