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in order that the plaintiff should tender some evidence. If he had put in any appearance in person or by pleader, his default in producing the evidence might have been a reason for a decision under section 158. But as he did not appear, we think the most appropriate section to which the order must be referred is section 157, and its consequential section 102. The Court below is, therefore, wrong in treating the order as made under section 158 and in refusing to consider on its merits the application made by the plaintiff under section 103.

We, therefore, set aside the order of the Subordinate Judge of the First Class, and direct him to hear the application. The respondent to pay the costs of this appeal.

Order set aside.

APPELLATE CIVIL.

Before the Honourable Chief Justice Farran and Mr. Justice Parsons.

CHATURBHAI KARSAN AND OTHERS, MANAGERS OF THE SHOP OF KARSAN NA'GJI (ORIGINAL PLAINTIFFS), APPELLANTS, v. HARBHA'MJI HARISANGJI (ORIGINAL DEFENDANT), RESPONDENT.*

Mortgage—Suit by mortgagee on mortgage—Interest allowed at mortgage rate up to decree—Transfer of Property Act (IV of 1882), Secs. 86 and 88.

In a suit by a mortgagee to recover the money due on his mortgage, the plaintiff is entitled to interest at the rate specified in the mortgage-deed up to date of decree, and a Civil Court has no discretion to refuse to award such interest.

APPEAL from the decision of Ráo Bahádur Lálshankar Umia-shankar, First Class Subordinate Judge of Ahmedabad.

The plaintiffs sued to recover the amount due on a mortgage executed by the defendant on the 23rd July, 1883.

The Subordinate Judge passed a decree for the plaintiff for Rs. 10,223, but allowed interest only up to the date of filing the suit.

The plaintiffs appealed.

Govardhanrám M. Tripathi, for the appellants (plaintiffs):—
We are entitled to interest at the mortgage rate up to the date

* Appeal No. 71 of 1894.

of the decree—Transfer of Property Act (IV of 1882), sections 86 and 88; *Surya Náráyan Singh v. Jogendra Náráin Roy*⁽¹⁾; *Bikramjit Tewari v. Durga Dyál Tewari*⁽²⁾.

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There was no appearance for the respondent (defendant).

FARRAN, C. J.—The general rule is that a plaintiff is entitled to interest in accordance with the terms of the mortgage bond up to date of decree, and that a Civil Court has not a discretion vested in it to refuse to award such interest. That rule appears to be recognized in the Transfer of Property Act, sections 86 and 88. We must, therefore, vary the decree of the lower Court by directing interest to be awarded up to date of decree. That will make the total sum payable Rs. 10,717-10-0, instead of Rs. 10,223-8-0, which was the sum awarded by the lower Court. The appellants must have their costs of appeal. The six months' time for payment will run from the date of this decree.

Decree varied.

(1) I. L. R., 20 Cal., 360.

(2) I. L. R., 21 Cal., 274.

APPELLATE CIVIL.

Before Mr. Justice Parsons and Mr. Justice Candy.

MOTIRA'M RAGHUNA'TH, DECEASED, BY HIS HEIRS AND SONS GULA'B-
CHAND AND OTHERS, PLAINTIFFS AND DECREE-HOLDERS, v. BHIVRA'J
VALAD KHEVRA'J, DEFENDANT AND JUDGMENT-DEBTOR.*

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August 15.

Civil Procedure Code (Act XIV of 1882), Sec. 307—Vacation—Holiday—Days on which the office is open—Office day—Payment of purchase-money for property bought at Court-sale.

The time during which a Court is closed for the vacation is not a holiday within the meaning of section 307(1) of the Civil Procedure Code (Act XIV of 1882). Days on which the office is open and the purchase-money for property bought at a Court-sale could have been paid are office days.

* Civil Reference, No. 13 of 1895. •

(1) Section 307.—The full amount of purchase-money shall be paid by the purchaser before the Court closes on the fifteenth day after the sale of the property, exclusive of such day; or if the fifteenth day be a Sunday or other holiday, then on the first office-day after the fifteenth day.