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Rs. 1,300 will be recoverable at once personally against the judgment-debtor notwithstanding the provisions of Rules 4 and 6 of Order XXXIV of the First Schedule to the Civil Procedure Code. But it seems to me quite clear that the amount is not recoverable now by the sale of any part of the mortgaged property both in view of the precise terms of the decree and of the principles underlying Rule 14 of Order XXXIV of the First Schedule of the Civil Procedure Code.

*Appeal allowed.*

R. R.

## APPELLATE CIVIL.

*Before Mr. Justice Heaton; on difference between Mr. Justice Shah and  
Mr. Justice Crump.*

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January 27.

HARGOVIND FULCHAND DOSHI (ORIGINAL PLAINTIFF), APPELLANT v.  
BAI HIRBAI (ORIGINAL DEFENDANT), RESPONDENT\*.

*Bombay Court of Wards Acts (Bombay Act I of 1905), sections 31,  
32, §(c) †—Gujarat Talukdars' Act (Bombay Act VI of 1888).*

\* First Appeal No. 241 of 1918.

† The sections run as follows:—

31. No suit relating to the person or property of any Government ward shall be brought in any civil Court until the expiration of two months after notice in writing, stating the name and place of abode of the intending plaintiff, the cause of action and the relief claimed, has been delivered to, or left at the office of, the Court of Wards; and the plaint shall contain a statement that such notice has been so delivered or left:

Provided that notice under this section shall not be required in the case of any suit, the period of limitation for which will expire within three months from the date of a notification issued under section 13, sub-section (1).

32. Subject to the provisions of the second paragraph of section 440 of the Code of Civil Procedure, in every suit brought by or against a Government ward, the manager of the Government ward's property, or, where there is no manager, the Court of Wards, having the superintendence of the Government ward's property, shall be named as the next friend or guardian for the suit, as the case may be.

*section 29G†—Suit against a Talukdar on a bond—Estate of the Talukdar under the management of the Talukdari Settlement Officer—Appointment of the Talukdari Settlement Officer as Court of Wards—Suit against Talukdar by the creditor—Talukdari Settlement Officer not a necessary party—Notice of suit to the officer.*

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A suit by a creditor against a Talukdar, whose estate is under the management of the Talukdari Settlement Officer under a notification issued under section 3(c) of the Bombay Court of Wards Act, 1905, is maintainable although no notice of suit has been given to the Talukdari Settlement Officer under section 31, or that officer is not made a party to the suit under section 32 of the Act.

FIRST appeal from the decision of Karsandas J. Desai, First Class Subordinate Judge at Ahmedabad.

Suit on a bond.

The defendant who was a Talukdar was sued on a money bond for Rs. 5,000 by the plaintiff. The bond was passed on the 15th March 1914.

The Government of Bombay issued on the 21st July 1908, a notification under section 3 (c) of the Bombay Court of Wards Act, 1905, appointing the Talukdari Settlement Officer, a Court of Wards for certain area which included the defendant's estate. On the 5th November 1914, that officer took the defendant's estate under his management, under section 28 of the Gujarat Talukdars' Act, 1885. He next issued a notification under

† The section runs as follows :—

29G. On the issue of a notification, under clause (c) of the proviso to section 3 of the Bombay Court of Wards Act, 1905, appointing the Talukdari Settlement Officer to be a Court of Wards for the whole or any part of the area to which this Act extends, the provisions of the said Bombay Court of Wards Act, 1905, shall without prejudice, to and save so far as they may be inconsistent with, anything contained in this Act, be deemed to apply to, or in respect of, any estate, which may thereafter be taken under the management of the said Talukdari Settlement Officer under sections 26 or 28, as if it were an estate under his superintendence as such Court of Wards, and the Talukdar whose estate is taken under management a Government ward within the meaning of that Act.

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section 29B *qua* Act calling upon all persons having claims against the Talukdar or her estate, to submit the same to him in writing. The plaintiff duly submitted his claim.

The present suit was filed on the 14th March 1917 to recover Rs. 6,800 due on the bond from the defendant.

The defendant contended *inter alia* that the suit which was brought against the defendant Talukdar alone was not maintainable, inasmuch as the Talukdari Settlement Officer was not made a party to the suit as required by section 32 of the Bombay Court of Wards Act, 1905, and as no notice of suit was given to him under section 31 of the Act.

The Subordinate Judge upheld the defendants' contentions and dismissed the suit.

The plaintiff appealed to the High Court.

The appeal was first heard by Shah and Crump JJ. on the 5th January 1920; but their Lordships having differed in opinion referred the following judgments:—

SHAH, J.:—The plaintiff in this case sued to recover Rs. 6,800 on a bond dated 15th March 1914 for Rs. 5,000 with interest from the defendant, who is a Talukdar.

The defendant admitted the execution of the bond and contended on the merits that she was an agriculturist and that an account as required by the Dekkhan Agriculturists' Relief Act should be taken. She also pleaded that her estate was taken under management by the Talukdari Settlement Officer, that the said officer constituted a Court of Wards, that he ought to have been joined as a guardian of the defendant as required by section 32 of the Bombay Court of Wards Act, and that as no notice was given to that officer as required by section 31 of the said Act, the suit was bad.

The suit was filed on the 14th March 1917, just within three years from the date of the bond.

The trial Court found on the merits that Rs. 6,800 were due to the plaintiff but dismissed the suit on the ground that the absence of the notice required by section 31 and the non-joinder of the Talukdari Settlement Officer as a guardian *ad litem* of the Talukdar as provided by section 32 of the Bombay Court of Wards Act were fatal to the suit.

The plaintiff has appealed to this Court; and it is contended on his behalf that sections 31 and 32 of the Court of Wards Act cannot apply to the present suit and that his claim should have been decreed by the lower Court. The respondent contends that sections 31 and 32 of the Court of Wards Act apply and that the non-compliance with the provisions of these sections is fatal to the plaintiff's claim. We have so far heard arguments only on this question of law.

The few facts relevant to this point are not in dispute. The defendant is a Talukdar within the meaning of the Gujarat Talukdars' Act. The Talukdari Settlement Officer has been constituted a Court of Wards for the whole area, to which the Gujarat Talukdars' Act is applicable, by a notification, dated 21st July 1908—published in the *Bombay Government Gazette*, Part I at p. 1474 under section 3 (c) of the Court of Wards Act. In 1914, the management of the defendant's estate was undertaken by the Talukdari Settlement Officer under section 28. That Officer published a notification under section 29B of the Gujarat Talukdars' Act inviting the claims against the Talukdar under that section and signed it as Talukdari Settlement Officer and Court of Wards. The claim was duly submitted to that officer within the time prescribed by the section; and ultimately the plaintiff filed the present suit against the defendant.

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It is claimed for the defendant that in virtue of the provisions of section 29G of the Gujarat Talukdars' Act the provisions of sections 31 and 32 of the Bombay Court of Wards Act apply to the present suit; on the other hand it is contended that under that section the provisions of the Bombay Court of Wards Act would apply without prejudice to and so far as they were not inconsistent with the provisions of the Act referred to in the section. Thus the question is whether sections 31 and 32 of the Court of Wards Act can be applied without prejudice to and consistently with the provisions of Bombay Act II of 1905 (which may be taken to be the Act indicated by the expression "this Act" in section 29G). The effect of the application of these sections is a question of secondary importance in this case. For even if the non-compliance with the provisions of section 32 of the Court of Wards Act may not be fatal to the suit as pointed out in *Sayad Amir Saheb v. Shekh Masleudin*<sup>(1)</sup>, it is clear that the absence of a notice required by section 31 of that Court, if the section applies, would be fatal to the suit. I may here dispose of the contention raised on behalf of the appellant that this is not a suit relating to the property of the ward within the meaning of section 31. I do not think the contention is sound. I am of the opinion that a suit on a promissory note or a bond against a ward would be a suit relating to the property of the ward within the meaning of section 31.

The really important question, therefore, is whether the provisions of sections 31 and 32 can apply to a suit by a creditor against a Talukdar whose estate is under the management of the Talukdari Settlement Officer so long as the said notification of 1908 under section 3(c) of the Court of Wards Act is in force. It is

<sup>(1)</sup> (1916) 40 Bom. 541.

a question of practical importance so far as suits against the Gujarat Talukdars are concerned.

Section 29G of the Gujarat Talukdars' Act provides that on the issue of a notification under section 3(c) of the Bombay Court of Wards Act constituting the Talukdari Settlement Officer a Court of Wards, the provisions of the Bombay Court of Wards Act, 1905, shall without prejudice to, and save so far they may be inconsistent with, anything contained in this Act, be deemed to apply to or in respect of any estate, which may thereafter be taken under the management of the Talukdari Settlement Officer under section 26 or section 28, as if it were an estate under his superintendence as such Court of Wards and the Talukdar, whose estate is taken under management a Government ward within the meaning of that Act. It is in virtue of these provisions that sections 31 and 32 are said to apply to the estate and the Talukdar in question. The conditions as to the publication of the notification and the management of the Talukdari Settlement Officer referred to in the section are satisfied. The question therefore is whether the application of sections 31 and 32 involves any prejudice to the provisions of the Act referred to in section 29G as "this Act" and whether the sections are inconsistent in any way with that Act.

In order to determine the question of prejudice or inconsistency, it is necessary to examine briefly the scheme and history of the relevant Acts. In 1862, an Act was passed with a view to deal with the indebtedness of Talukdars in the District of Ahmedabad. It contained a special scheme. I do not consider it necessary to examine it in detail. It is enough to point out that the civil Courts were practically debarred from entertaining suits to recover debts against a Talukdar in respect of whose estate a declaration was made by

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the Government under section 1 of the Act. The Gujarat Talukdars' Act, with which we are concerned, was passed in 1888. The last section of that Act practically limited the application of the Act of 1882. The purpose of the Gujarat Talukdars' Act as stated in the preamble was to provide for the revenue administration and the partition of the estates held by a certain class of land-holders in some of the Districts of Gujarat. Its scheme as disclosed in the provisions of the Act was essentially to give effect to the said purpose; and it is sufficient to say that generally speaking, the scheme was quite different from that of the Bombay Court of Wards Act of 1905, to which I shall refer presently. It is relevant to point out that sections 26 to 28 as they stood before the amending Act V of 1905 enabled the Talukdari Settlement Officer to take up the management under certain conditions which in no sense indicated any kind of disability on the part of the Talukdar concerned to sue or to be sued in a civil Court. The property remained vested in the Talukdar, and the Talukdari Settlement Officer was merely the manager of the estate. Up to 1905 that undoubtedly was the rule applicable to the Talukdars except in those cases, where the estates were managed under Bombay Act VI of 1862. They were liable to be sued and competent to sue even when their estates were under the management of the Talukdari Settlement Officer under sections 26 to 28. In 1905, the Bombay Court of Wards Act was passed and the provisions of sections 4 and 5 of the Act show that it was meant for land-holders who were disqualified to manage their own property and the disqualifications are indicated in section 5. Its scheme, generally speaking, was different from that of the Gujarat Talukdars' Act. It created a statutory disability for such disqualified land-holders to sue or to be sued, subject to the provisions of section 32.

About the same time the Gujarat Talukdars' Act was amended by Bombay Act II of 1905; and the amendment with which we are concerned was that the main Act was supplemented by certain provisions on the lines of the corresponding provisions of the Court of Wards Act, enabling the Talukdari Settlement Officer to invite and to adjudicate the claims against the Talukdari estates concerned without any prejudice to the right of the creditors to sue the Talukdars. Section 28 was amended; but the amendment does not affect the present point. Sections 29A to 29G, with which we are concerned, were incorporated in the main Act. They are on the lines of the corresponding provisions in the Court of Wards Act. Section 29G was enacted with a view to provide generally by reference that the provisions of the Bombay Court of Wards Act may apply under certain circumstances so far as they may be applicable without prejudice to and consistently with Act II of 1905. Thus in 1905, the Legislature did not make any provision in terms against the competence of the Talukdars whose estates were taken under management under section 26 or 28 to sue or to be sued in the ordinary way.

For convenience the Legislature provided in section 29G for the application of the provisions of the Bombay Court of Wards Act, so far they can apply without prejudice to the main Act as amended in 1905, by a general reference to the Bombay Court of Wards Act under certain conditions. This method of legislation has its own inconveniences, for as occasion arises the Courts have to determine whether the particular provision in the Court of Wards Act could be applied without prejudice to or consistently with the amending Act, and in doing so the Courts have not that assistance in determining the intention of the Legislature, which they would have when the provisions are directly

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incorporated in the main Act. Under these circumstances it is difficult to determine the intention of the Legislature with reference to the particular provisions. Just as the words in section 29G making the provisions of the Court of Wards Act are general, it must be remembered that the saving clause also is very wide in its terms. We ought to construe these words in their plain and natural sense and determine whether in applying sections 31 and 32 of the Bombay Court of Wards Act any prejudice to or inconsistency with Act II of 1905 is involved. In my opinion in the absence of any clear indication the question of prejudice or inconsistency should be considered in the light of the general scheme and history of the Gujarat Talukdars' Act and the provisions contained in sections 29A to 29E. Section 29D specifically provides, that subject to certain provisions which are not material for the present purpose, nothing in the section shall be construed to bar the institution of a suit in a civil Court for the recovery of a claim against a Talukdar, whose estate is taken under the management or his property, which has been duly submitted to the managing officer. This does not confer any right to sue, but it expressly saves the right of suit against a Talukdar whose estate is taken under management without any limitations. This provision is inserted in an Act, which neither creates nor implies any disability in the Talukdar to sue or to be sued in the ordinary way. Under the circumstances it is clear to my mind that while amending the Gujarat Talukdars' Act in 1905 the Legislature did not create or imply any such disability apart from the provisions of section 29G. Having regard to the general terms of the saving clause in that section, it seems to me that the application of sections 31 and 32 of the Bombay Court of Wards Act does involve a prejudice to the provisions of the amending Act particularly, to sub-section 3 of

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section 29D. These two sections are appropriate in the Bombay Court of Wards Act. In my opinion they are not essential and at any rate not equally appropriate in the Gujarat Talukdars' Act; and I am not satisfied that the Legislature intended to effect such an important procedural change without expressly providing for it in the main Act, as is involved in the application of sections 31 and 32 to suits against the Gujarat Talukdars, whose estates are taken under management under section 26 or section 28. The fact that claims were invited in the present case under section 29B and not under the corresponding provisions of the Court of the Wards Act indicates that the procedure under the Gujarat Talukdars' Act was intended to be followed. Apart from this consideration, however, I am of opinion that the application of sections 31 and 32 of the Bombay Court of Wards Act involves a prejudice to the provisions of the Gujarat Talukdars' (Amendment) Act, 1905, even if they are not inconsistent with section 29D, sub-section (3). There are many provisions in the Court of Wards Act which can apply to Talukdars and their estates under section 29G without any prejudice to the Gujarat Talukdars' Act. But sections 31 and 32 do not seem to me to fall in that category.

I am, therefore, of opinion that the suit was properly brought against the Talukdar and is not bad for want of notice required by section 31 of the Bombay Court of Wards Act.

I would, therefore, hear the appeal on the other issues and pass a decree in favour of the plaintiff for the amount which may be found due on the bond sued upon.

CRUMP, J.:—The only question for our decision is whether sections 31 and 32 of the Bombay Court of Wards Act (Bombay Act I of 1905) are applicable to this suit, and if so, whether the suit is barred by those provisions.

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The facts so far they are necessary for the determination of this question are as follows. The defendant is a Talukdar and as such within the scope of the Gujarat Talukdars' Act (Bombay Act VI of 1888). In 1908, by a notification of the local Government under clause (c) of the proviso to section 3 of the Bombay Court of Wards Act the Talukdari Settlement Officer was appointed to be a Court of Wards for the area to which the Gujarat Talukdars' Act extends. In 1914, the Talukdari Settlement Officer took charge of the defendants' estate with the sanction of the Local Government under section 28 of that Act. The present suit was filed on March 24, 1917.

The question for decision arises thus. It is argued that upon these facts, section 29G of the Gujarat Talukdars' Act comes into operation, and that the result is that sections 31 and 32 of the Bombay Court of Wards Act apply, and as admittedly the provisions of those sections have not been complied with the suit is barred—that section 29G of the Gujarat Talukdars' Act does apply cannot be contested. The facts here are precisely those contemplated in that section. The question is what is its effect. The operative words are as follows: "The provisions of the said Bombay Court of Wards Act shall, *without prejudice to, and save in so far as they may be inconsistent with, any thing contained in this Act*, be deemed to apply to or in respect of any estate which may.....be taken under the management of the said Talukdari Settlement Officer.....as if it were an estate under his superintendence as such Court of Wards and the Talukdar whose estate is taken under management a Government ward within the meaning of that Act".

The only words which can be invoked as limiting the applicability of the Bombay Court of Wards Act are the words italicised above. And the question is

whether those words preclude the applicability of the Court of Wards Act to the present case. The proposition urged before us was that sections 31 and 32 of the Bombay Court of Wards Act were inconsistent with and not without prejudice to section 29D (3) of the Gujarat Talukdars' Act. The argument was that section 29D (3) gave an unrestricted right to sue and that that right could not be fettered in any way without inconsistency or prejudice.

The proposition does not (in my opinion) bear examination. It rests on a mistaken view of the true meaning of section 29D of the Gujarat Talukdars' Act. The right of suit exists absolutely. It is not given by anything enacted in the Gujarat Talukdars' Act. That Act may limit that right but does not confer it. The true meaning and effect of clause 3 of section 29D is not to confer any right, but to remove the bar which might otherwise be held to be imposed by the preceding clauses of the section. Those clauses would otherwise be capable of the construction that the Legislature having indicated the forum and the remedy, recourse to the civil Courts is barred. The right of suit is left unfettered so far as this section is concerned save in the case of claims settled by consent. (It may be noted here that the present claim was duly submitted within the meaning of clause (3)). Now sections 31 and 32 of the Court of Wards Act impose two limitations upon the right of suit. The first is that notice shall be given to the Court of Wards (section 31); the second that the Court of Wards shall be named as guardian *ad litem* of the Government ward. The Legislature says to the creditor in section 29D of the Gujarat Talukdars' Act: "Nothing in this section shall bar your right to sue the Talukdar" and in the Court of Wards Act "You shall not sue the Talukdar without giving notice and without naming the Talukdari Settlement

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Officer *qua* Court of Wards as the guardian *ad litem* of the Talukdar". Had the Legislature in the former enactment said: "Nothing shall bar your right" the case would be different. As the enactments stand I see no inconsistency between these two directions, nor (in my opinion) does the second operate to the prejudice of the first. The result is that sections 31 and 32 of the Bombay Court of Wards Act must be held to be applicable.

The second question is what is the effect of these sections. The point has been discussed by this Court in *Sayad Amir Saheb v. Shekh Masleudin*<sup>(1)</sup> and it has there been pointed out that the omission to comply with section 32 does not necessarily entail the dismissal of the suit. Therefore section 31 alone need be considered. It is imperative in its terms—as imperative as section 80 of the Code of Civil Procedure from which it is derived. It was argued that a suit such as the present is not "a suit relating to the person or property of a Government ward", and the case last cited is relied upon. But so far as this point is concerned the *ratio decidendi* there was that the suit related to the property of an institution of which the Government ward was a trustee. That is not so here. \* This suit is a suit to recover money alleged to be due on a bond executed by the Talukdar. That is in my opinion a suit relating to the property of the Talukdar. It follows that the suit is bad for want of notice. I would therefore confirm the decree of the lower Court and dismiss the appeal with costs.

SHAH AND CRUMP, JJ.:—In view of the difference of opinion on the point arising in this appeal we state the following question of law for determination under the proviso to sub-section 2 of section 98 of the Code of Civil Procedure.

(1) (1916) 40 Bom. 541.

Whether sections 31 and 32 of the Bombay Court of Wards Act are applicable to the present suit ?

The point thus referred was argued before Heaton J.

*B. G. Rao*, for the appellant.—The whole history of the Gujarat Talukdars' Act shows clearly that the provisions of sections 31 and 32 of the Court of Wards Act could not have been intended by the Legislature to override the Gujarat Talukdars' Act.

Before the Gujarat Talukdars' Act and even under it, a suit could be brought against a Talukdar although his estate was under the management of the Talukdari Settlement Officer without giving him any previous notice or making him a party to the suit.

Section 29 D (3) of the Act clearly provides that "...nothing in the section shall be construed to bar the institution of a suit in a civil Court for the recovery of a claim against a Talukdar whose estate is taken under management or his property...."

The provisions of sections 31 and 32 of the Court of Wards Act are therefore in the words of section 29 G of the Gujarat Talukdars' Act "to the prejudice of and inconsistent with" the provisions of the Gujarat Talukdars' Act.

Even as shown in the referring judgment of Shah J., the objects of both the Acts are different and so in the absence of clear indication as to the intention of the Legislature to the contrary, the provisions of sections 31 and 32 of the Court of Wards Act are not necessary for the purpose of the Gujarat Talukdars' Act.

[HEATON, J. :—If sections 31 and 32 are not to apply to the Gujarat Talukdars' Act, can you show which sections of the Court of Wards Act are to apply under section 29 G of the Gujarat Talukdars' Act.]

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Section 23 : the Gujarat Talukdars' Act does not contain any provision as to the powers of the Managing Officer under the Act ; and so under section 29 G of the Gujarat Talukdars' Act, the Managing Officer is to have the powers under section 23 of the Court of Wards Act.

*N. K. Mehta*, for the respondent.—Under section 3 of the Court of Wards Act, notification was issued appointing the Talukdari Settlement Officer to be a Court of Wards for the whole of the area to which the Gujarat Talukdars' Act applied.

The estate came under his management subsequently under section 28 of the Gujarat Talukdars' Act and consequently under section 29 G of the Gujarat Talukdars' Act, it is submitted, that the provisions of sections 31 and 32 of the Court of Wards Act are to apply in the present case unless it is shown that the said provisions are "to the prejudice of or are inconsistent with anything contained in" the Gujarat Talukdars' Act.

The said provisions, we submit, are in no way "to the prejudice of or inconsistent with" anything in the Gujarat Talukdars' Act, not even to section 29 D (3) of the said Act. Section 29 (B) (1) of the Gujarat Talukdars' Act requires that when any Talukdari estate has been taken under management under section 26 or section 28 "the managing officer may publish...a notice... calling upon all persons having claims against such Talukdar or his property, to submit the same in writing." Section 29 D (1) provides what the Talukdari Settlement Officer has to do when the claims are so submitted to him.

Then clause (3) provides that nothing in that section "shall be construed to bar the institution of a suit in a civil Court for the recovery of a claim against a

Talukdar whose estate is taken under management or his property."

The said clause does not confer any right to bring a suit against a Talukdar or his property. It only saves a creditor's right to bring such a suit.

Section 31 of the Court of Wards Act in requiring a previous notice cannot be said to be "to the prejudice of or inconsistent with" anything contained in the aforesaid section of the Gujarat Talukdars' Act.

Section 31 of the Court of Wards Act does not take away the right of suit saved by section 29 D (3); nor does it in any way curtail the period for bringing such a suit. If a creditor chooses to put off bringing a suit till the last moment so as not to leave him time for giving the necessary notice, can it be contended that the provisions of section 31 of the Court of Wards Act are inconsistent with or are to the prejudice of the provisions of section 29 D (3)?

Further, it is submitted that sections 29 B, 29 C, 29 D and 29 F correspond to sections 13 to 18 of the Court of Wards Act and are contemporaneous enactments, sections 29 B to F and G being inserted in the Act by Bom. Act II of 1905.

Section 29 D (3) which saves the creditor's right of suit against a Talukdar or his property corresponds to section 16 (3) of the Court of Wards Act and could it be then contended that the provisions of section 31 are in any way to the prejudice of or inconsistent with the provisions of section 16 (3)? If not, how could they be "inconsistent with or to the prejudice of" the provisions of section 29 D (3) of the Gujarat Talukdars' Act. Further, it has not been shown that the provisions of section 31 are prejudicial to or inconsistent with any other section of the Gujarat Talukdars' Act.

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As regards the difference in the objects of the Acts, I submit that the Gujarat Talukdars' Act has a twofold object: (1) Revenue administration of estates held by certain superior holders and (2) the management of their estates by the Talukdari Settlement Officer as shown by sections 26, *et seq.*, and so far as the latter object is concerned the objects of both the Acts is the same.

As regards section 23 of the Court of Wards Act referred to by the other side, I submit that so far as the Gujarat Talukdars' Act is concerned, it is not needed since section 23 (2) (e) of the said Act makes the necessary provision as to the powers of the Managing Officer. No doubt under section 29 G of the Gujarat Talukdars' Act such of the sections of the Court of Wards Act as give greater powers to the Managing Officer than those under the Gujarat Talukdars' Act cannot be applied to the latter Act.

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HEATON, J.:—The judgments of Shah and Crump JJ. state the facts with such fulness and clearness that I need not repeat them.

The point for decision is whether sections 31 and 32 of the Bombay Court of Wards Act are applicable to this suit. I find that they are not.

By the Gujarat Talukdars' Act and Court of Wards Act the right to sue a Talukdar in the one case and a Government ward in the other, is left unaffected, except in certain specified cases with which we are not now concerned; though suits against the Court of Wards and Officers acting thereunder are broadly speaking prohibited by section 45 of the Court of Wards Act. The point I wish to emphasise is: that the suits which are unaffected are suits, not against Government

or any officials; but against the Talukdar or the Government ward in person and by name. This is clear from the provisions of the Acts in general and from section 16, clause (3) of the Court of Wards Act and section 29 D (3) of the Gujarat Talukdars' Act in particular. But though this is so the provisions of the Court of Wards Act show to my mind with unmistakable clearness, that though the suit is against the Government ward by name it is, except in form and name, a suit against the manager of the Government ward's property. This is manifest from section 32 of the Court of Wards Act which provides that the manager "shall be named as the next friend or guardian for the suit." Thereafter the suit necessarily proceeds in actual practice as if the manager and not the ward was the litigant. In pursuance of this purpose section 31 of the Court of Wards Act requires a notice of two months before the suit is brought, just as in the case of suits against Government servants. In private suits no such notice is under the ordinary law required. Then section 35 contemplates suits by the manager on behalf of the ward, a further confirmation of the proposition that the purpose of the Act is to treat the manager not the ward as the real litigant.

Is the policy of the Gujarat Talukdars' Act similar? If it is, then it is to my mind quite clear that section 29G of the Gujarat Talukdars' Act must be read as making sections 31 and 32 of the Court of Wards Act applicable to suits against Talukdars in cases such as the present. The reasons for this proposition need no further amplification as it is I think accepted by both Shah and Crump JJ.

But if the policy of the Gujarat Talukdars' Act is different; if that Act contemplates the Talukdar himself as the real litigant; in other words if it regards a suit like the present as in substance and in reality a suit

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against the Talukdar personally; then to apply sections 31 and 32 of the Court of Wards Act would be to go clean against the policy of the Gujarat Talukdars' Act.

The judgments which have led to the reference of this appeal to me, show that the matter can be effectively argued both ways. I have therefore to find some considerations which to my mind conclusively point to one solution as correct rather than the other.

I find two such considerations one purely general, the other peculiar to the circumstances of the two Acts under discussion; and fortunately both point the same way.

The general consideration is this: The application of limitations such as are imposed by sections 31 and 32 of the Court of Wards Act could be secured for suits against Talukdars by two methods. *First*, by enacting in the Gujarat Talukdars' Act provisions similar to sections 31 and 32 of the Court of Wards Act. This method has not been adopted. Or *second*; by incorporating the provisions by reference; as it is said is done by section 29 of the Gujarat Talukdars' Act. As to this I feel bound to say that if it is the method adopted by the Legislature, it is an unwise, a clumsy and a most confusing method. The provision contained in sections 31 and 32 of the Court of Wards Act are special and peculiar. If it is intended to apply them to any particular class of suits that intention ought to be expressed with unmistakable clarity. Unless the contrary is made manifest the ordinary law as to filing suits must apply to suits against private persons. A suit against a Talukdar is a suit against a private person. I do not see how any one can say that it is made manifest that sections 31 and 32 of the Court of Wards Act apply to such a suit. It is quite reasonable to infer, in

spite of the difficulties, that the Legislature intended sections 31 and 32 to apply and this Crump J. has done; and he may be right, for the intention of the Legislature is sometimes an uncertain thing. But no one can, I think, say that the intention of the Legislature in this matter is made manifest with unmistakable clearness. Yet it would have been very easy to make it clear. On general grounds therefore I infer that the usual law applies and not sections 31 and 32.

The particular reason which appeals to my mind is this. In the case of Talukdars there is not as in the case of Government wards, the same need for such provisions as sections 31 and 32 of the Court of Wards Act contain; for the severance of the Talukdar from his estate is less complete, the management is of a more restricted kind. Consequently there is less need to treat a suit against the Talukdar as if it really were a suit against the manager. What I have said is apparent from the following facts: a manager under the Court of Wards has power to sell, exchange, mortgage, charge or let the property (section 26, Court of Wards Act). A manager under the Guajrat Talukdars' Act has substantially only the power of letting, leasing and getting in the profits [Gujarat Talukdars' Act, section 29 (1) and section 30 (2) (c)].

The manager under the Gujarat Talukdars' Act is to divide the surplus receipts amongst the Talukdars (section 29 (3)); the manager under the Court of Wards Act disposes of the entire profits in a manner similar to that of a guardian (sections 23 to 27 of the Court of Wards Act). Lastly, the manager under the Court of Wards Act is appointed for more than a temporary purpose and usually retains his position as manager so long as the economic condition of the estate requires it. A manager under the Gujarat Talukdars' Act on the

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other hand is often appointed for a much more temporary purpose ; as for example to avoid danger to the public peace (section 26) : or pending the partition of a Talukdari estate (section 27). It is true that at the request of the Talukdar a management may come into existence similar to that under the Court of Wards Act (section 28) and the management in this case is of that kind. But under the Gujarat Talukdars' Act this is only one of several descriptions of management under the Court of Wards Act, it is the sole description.

As I have indicated already where the Legislature have made their intentions so obscure, a Judge is I think bound to infer that there is no departure from the ordinary law intended, unless expediency or some other consideration compels us to infer that it was intended. I do not think that expediency or anything else, compels one to infer that sections 31 and 32 of the Court of Wards Act are applicable to suits against a Talukdar. Even when his estate is under management, a suit filed in the ordinary way can proceed without any serious fear that justice will not be done.

Whether for other reasons altogether the manager in person or in virtue of his office is a proper or a necessary party to such a suit as the present, is a different matter altogether, a matter which has not been discussed and as to which I say nothing.

I therefore hold that the suit in this case is not barred and that the decision of the lower Court is wrong.

The result is that the case is now referred back to the Bench before which it was argued which will presumably dispose of the appeal, and make a final order.

*Order accordingly.*

R. R.