Ram Kishore Tandon vs Shayaur Sundar Lal on 27 October, 1950

Equivalent citations: AIR1951ALL155, AIR 1951 ALLAHABAD 155

JUDGMENT

Wali Ullah, J.

1. This appeal arises out of an application made by the judgment-debtor under Sections 8 and 9, U. P. Debt Redemption Act, (XIII [13] of 1940) for amendment of a preliminary decree for sale passed in a mortgage suit. The mortgage was executed by Shyam Sunder Lal in favour of the appellant Ram Kishore Tandon in respect of an advance of Rs. 1428 at six per cent. interest compoundable half yearly. The hypothecated property consisted of two houses in the city of Gonda and five tenancy groves in an agricultural village called Gird Gonda. Out of the mortgage money only a sum of Rs. 339 was paid in cash at the time of the execution of the mortgage the balance of the consideration was set off against sums due under six earlier mortgage deeds in respect of the case property executed by the same mortgagor in the name of one Sarju Prasad, grand-father of Ram Kishore Tandon, the mortgagee in the deed of 30-3-1927. It is not disputed that the interest of the mortgagee under the earlier deeds was vested in Ram Kishore Tandon at the date of the mortgage dated 30-3-1927. The first of these six deeds was executed on 26-4-1915 and the last one on 23-10-1916. In these deeds the rate of interest was 12 per cent. compoundable half yearly.

2. On 26-8-1939, Ram Kishore Tandon, the mortgagee, obtained a preliminary decree for sale on foot of the mortgage dated 30-3-1927 (Ex. 1). It was for a sum of Es. 1428 with future interest at six per cent. payable in eight annual instalments. On failure of payment of any one instalment, the decree-holder was given a right to apply for preparation of a final decree. On default of payment of the instalments, the decree-holder applied for making the preliminary decree absolute, or final. Eventually on 12-12-1942, the Court passed the final decree. I may observe here that before the final decree was passed, the mortgagor--the judgment-debtor--respondent--does not appear to have put forward any claim--as he might well have done under Section 9, Debt Redemption Act--for a fresh determination of the amount due under the decree in accordance with the provisions of the Debt Redemption Act nor does he appear to have filed any appeal against the preliminary decree.

3. While proceedings for execution of the final decree were pending, on 2-2-1944, the judgment-debtor put in his application for amendment under Sections 8 and 9, Debt Redemption Act, praying for amendment of the preliminary decree. This application was contested by the decree-holder on various grounds. Amongst-other grounds, it was urged that no amendment of the preliminary decree was possible inasmuch as it had been superseded by the final decree passed in December 1942. The decree-holder also made a declaration purporting to be under Section 4 (3) of the Act to the effect that he would not execute the decree against the land, agricultural produce or

person of the judgment-debtor.

4. The learned Munsif held that the declaration made by the decree-holder under Section 4 (3), Debt Redemption Act, was ineffective. In view of the second proviso to that sub-section the application should have been made before the final decree was passed inasmuch as the suit was pending when the Debt. Redemption Act came into force on 1-1-1941. He did not consider the question whether the preliminary decree could be amended under Section 8, Debt Redemption Act after the passing of the final decree. He, however, expressed the opinion that the principal amount of the debt having been determined in the suit itself it could not be redetermined at the stage of execution proceedings. He, however, amended the decree to this extent that he reduced interest from six per cent to four and a half per cent simple on the principal amount of Rs. 1428 from the date of the loan.

5. Against the decision of the learned Munsif the judgment-debtor went up in appeal and' prayed for the re-opening of the earlier transactions and re-determination of the principal amount due under the deed in suit. There was-also a cross-appeal by the decree-holder in which he challenged the right of the judgment-debtor to claim amendment of the preliminary decree after the passing of the final decree. The learned Additional Civil Judge who decided the appeals held that under Section 8 of the Act both the preliminary decree as well as the-final decree could be amended in spite of the fact that the final decree had been passed after the commencement of the Debt Redemption Act. He accordingly re-opened the earlier mortgage transaction and after calculating interest on the various sums borrowed at 41/2 per cent. simple, from the date of their execution, and after giving credit for payments made, came to the conclusion that only a small sum of Rs. 364 and odd, was due to the mortgagee on the date of the execution of the mortgage dated 30-3-1927 (Ex. 1). In this view of the matter the decree passed by the learned Munsif was modified and the decretal amount was drastically reduced.

6. Dissatisfied with the decree passed by the learned Additional Civil Judge, the decree-holder, on 22-9-1944, filed the present appeal in the Chief Court of Oudh. In the first instance the appeal came on for hearing before a learned single Judge of this Court, Misra J. After hearing arguments, the learned Judge expressed the view that two points arose for consideration in this case :

> "(1) Does Section 8, Debt Redemption Act, contemplate amendment of a preliminary decree when that decree has already matured into a decree absolute passed after 1-1-1940,? (sic) and (2) Could the transactions evidenced by the earlier mortgages Exs. 11 to 16 be reopened for the purpose of determining the amount due at the date of the mortgage in suit, namely, 30-3-1927?"

The learned Judge then observed :

> "On the first point, there is no direct authority though having regard to the phraseology of Section 8 of the Act, it would seem that the intention of the Legislature was to confer on an agriculturist judgment-debtor, the right to obtain amendment of subsisting decrees as distinguished from those which had been superseded. It does not, however, seem necessary to examine the point at this stage

> in view of the fact that on the second point I have decided to refer the ease to a Full Bench."

7. The learned Judge then proceeded to consider the second question. He referred to certain decisions of the Oudh Chief Court and also to a decision of the Judicial Committee of the Privy Council. Lastly, he referred to a very recent decision of this Court and came to the conclusion that there was a conflict of opinion between the late Chief Court of Oudh and this Court. In view of the importance of the question raised regarding the interpretation of the proviso to Section 9, Debt Redemption Act, he referred the case to the Full Bench.

8. We have heard learned counsel for the parties on the two questions noted above.

9. The first question has to be decided first. Section 8 (1), Debt Redemption Act, reads thus:

> "Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act, may apply to the civil Court which passed the decree or to which the execution of the decree has been transferred, for the amendment of the decree by reduction according to the provisions of this Act of the amount due under it, and on receipt of such application the Court shall, after notice to the opposite party, calculate the amount due from the applicant in accordance with the provisions of Section 9 and 10 and shall amend the decree accordingly."

10. The rest of the provisions are not material for purposes of this case.

11. In the present case the applicant had been found to be an agriculurist. The preliminary decree which he seeks to amend was, as mentioned above, passed before the commencement of the Debt Redemption Act. The crucial question, however, is whether the applicant is "liable to pay the amount due under the decree" which he seeks to amend. The plain language of the section makes it clear that at the date of the application the applicant must be liable to pay the amount due under the decree which he seeks to amend. A decree under which his liability to pay has for some reason or other ceased to exist is obviously not contemplated by the section e. g. a decree which has been wholly satisfied cannot be amended for the reason that the liability of the applicant under such a decree has ceased. Similarly, it would appear that a decree which is merely declaratory and does not impose a liability for payment cannot be amended. In this connection, reference may be made to the case of Harcharan Singh v. Mohammad Husain Khan, A. I. R. (30) 1943 Oudh 241 : (18 Luck. 668) decided by Bennett and Madeley JJ. It was held:

> "The expression "liable to pay the amount due under a decree" in Section 8 contemplates that the liability of the judgment-debtor must subsist at the time of his application. When a final decree for foreclosure has been passed no liability on the part of the judgment-debtor to pay any amount remains and consequently the decree cannot be amended under Section 8, even though possession has not been delivered."

(Italics are mine.)

12. The same view was taken by a learned single Judge of that Court in Swami Dayal v. Durga Prasad, A. I. R. (31) 1944 Oudh 102 : (211 I. C. 122).

13. Coming to the decisions of this Court, I may refer to the case of Ketki Kunwar v. Ram Saroop, 1942 A. L. J. 578 : (A. I. R. (29) 1942 ALL. 390 F. B.), decided by a Full Bench of three learned Judges of this Court. The principle underlying the decision supports the view that I am disposed to take in the present case. At p. 581 the Full Bench held :

> "In our opinion, the words 'liable to pay the amount due under a decree' used in Section 8, U. P. Debt Redemption Act, cannot be restricted to the ease where liability is personal and the words are sufficiently wide to include the liability which is on person and property both jointly or on person or property alone singly. There may be decrees against agriculturists who are minors which cannot be personally enforced against them. There may be decrees against agriculturists in which their property is only liable to sale. In both these cases and in all similar cases agriculturists are liable to pay the amount of the decree though the liability is not personal." (Italics are mine.)

14. Again, I may refer to the case of Mahomed Hasan Khan v. Narayan, A. I. R. (36) 1949 ALL. 210 : (1949 A. L. J. 171 F. b), decided by a Full Bench of three learned Judges of this Court, to which I was also a party. It was held :

> "The expression 'liable to pay the amount due under the decree' in Section 8 (1) refers not only to a liability that may be enforced by the execution of the decree but also to the ultimate liability for the payment of the amount decreed." (Italics are mine.)

15. Lastly, I may refer to the case of Abdul Saeed Khan v. Mohmood Ali, A. I. R. (37) 1950 ALL. 467 : (1950 A. L. J. 578 F. B.), decided by a Full Bench of five learned Judges of this Court. In that case, the question arose whether a decree passed under Section 33 (2), U. P. Agriculturists' Relief Act declaring, after taking necessary accounts, the amount due from an agriculturist debtor could be amended under the provisions of Section 8, U. P. Debt Redemption Act. It was held by all the learned Judges that such a decree could not be amended because under it there was no liability on the person seeking to amend the decree to pay any amount found due under it. On facts, that case may be different from the present one, but the principle underlying the decision is clearly applicable.

16. In view of the authorities mentioned above, I am clearly of opinion that an agriculturist debtor who invokes the aid of Section 8 can obtain relief only if he is, at the date of the application, liable to pay the amount due under the decree. Where the decree sought to be amended does not place on the applicant a liability to pay or has ceased to subsist by the date of the application, there can be no amendment under the section.

17. In the present case, under the preliminary decree passed on 26-8-1939, there was a liability to pay imposed upon the debtor-applicant, but the position materially altered after the passing of the final decree on 12-12-1942. The final decree superseded the preliminary decree. Thenceforward it is the final decree alone which determines the liability of the judgment-debtor to pay. Further execution proceedings and sale of the mortgaged property can take place only in enforcement of the final decree. It is clear, therefore, that the preliminary decree cannot be amended under Section 8, Debt Redemption Act. Again, if the final decree had been passed before the commencement of the Debt Redemption Act, i. e., before 1-1-1941, the judgment-debtor would have been entitled to the benefit of Section 8 of the Act, but in the present case, unfortunately for the judgment-debtor, the final decree was passed on 12-12-1942, that is, after the Debt Redemption Act had come into force. It is, clear, therefore, that the final decree also cannot be amended under Section 8. The applicant also seems to have realised this position for in the application for amendment the only relief sought was the amendment of the preliminary decree. I am therefore of the opinion that the answer to the first question must be in the negative.

18. Some arguments have been addressed to us on the question whether the debtor-applicant can claim amendment of the preliminary decree, apart from the provisions of Section 8, under the provisions of Section 9, Debt Redemption Act. Stress has been laid on the expression "in a suit to which this Act applies" in Section 9 (1) of the Act. This expression clearly applies to suits which are pending at the date of the application. Suits on mortgages like the present one are undoubtedly deemed to be pending till the final decree is passed.

19. In this connection I may refer to the case of Anmol Singh v. Hari Shankar Lal, A. I. R. (17) 1930 ALL. 779: (52 ALL. 910), where it was held :

> "Under the Civil Procedure Code, now in force suit does not terminate by the passing of the preliminary decree, but continues till it is finally and completely disposed of by the passing of the final decree."

20. Again in Sat Parkash v. Bahal Rai, A. I. R. (18) 1931 ALL. 386 : (53 ALL. 283 F. B.) a Full Bench of three learned Judges of this Court held :

> "There can be no question that the suit does not come to an end when the Court passes a preliminary decree and the passing of the final decree is a further proceeding in that very suit."

21. But, in the present case, the application for amendment was made not while proceedings for preparation of the final decree were pending, but long after the final decree had been passed. It is, therefore, clear that the applicant cannot get the benefit of Section 9 of the Act as well.

22. The result, therefore, is that the applicant cannot get the benefit of either Section 8 or Section 9, Debt Redemption Act. In these circumstances, the application for amendment must fail altogether.

23. In view of my answer to the first question, it is really not necessary for the disposal of the appeal to decide the second question, but inasmuch as the primary object of the reference to the Full Bench was to secure the decision of the second question upon which there is a conflict of opinion and since that point also has been fully argued before us by learned counsel for the parties, I deem it desirable to express my opinion on the second question as well.

24. The second question directly involves the determination of the principal amount due under the mortgage of 30-3-1927. As noted above, in the present case the mortgage of 30-3-1927 was preceded by no less than six other mortgagees between the same parties. The total amount for which the mortgage was executed on 30-3-1927 was Rs. 1428. Undoubtedly, by far the greater portion of this amount was made up of interest due under the earlier mortgages. How much of the total amount of Rs. 1428 is to be treated as principal under the deed of 30-3-1927, is the all important question.

25. Section 9, Debt Redemption Act, lays down certain principles which the Court has to follow in the accounting and in the determination of the amount due. Section 9 (1), in substance, provides that the Court, in the first instance, shall determine the amount of the principal and thereafter take into account the sums paid or, in the case of a mortgage with possession, the profits which were actually realised by the mortgagee, or which, with the exercise of ordinary diligence, might have been realised by him. In determining the final amount due from the debtor, however, the Court has to keep in view certain provisions contained in Sub-sections (2), (3) and (4) of the section.

26. The proviso to Section 9 (1), however, is most important. The proviso runs thus :

> "Provided that for the purposes of determining the principal the Court shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract in the course of the transaction made before the 1st January 1917, but shall treat as interest any accumulated interest which has been converted as aforesaid at any such statement, settlement or contract made on or after that date."

27. Under the proviso all accumulated interest which has been converted into principal in the manner indicated in the proviso, prior to 1-1-1917, is to be treated as the principal. In the present case, it is to be noted, there is no question of any "statement or settlement of account," between the parties. The sole question is; was there any contract between the parties made in the course of the transaction before 1-1-1917 for converting the accumulated interest into principal ? Each of the six earlier mortgage deeds contains a stipulation to the effect that in case of default in payment of interest for any period of six months, interest is to be added to the principal and thenceforward interest is to run on the total amount. The question arises whether stipulation entered in the earlier mortgage deeds amounts to a "contract made in the course of the transaction." The answer to this question depends entirely upon the interpretation which is to be put on that expression as it occurs in the proviso.

28. Before proceeding further, it is convenient to state that the phraseology employed in the proviso appended to Section 9 (1), Debt Redemption Act is, in all material particulars, the same, though not

quite identical, as that in Section 14 (5), Encumbered Estates Act. Section 14 (5), Encumbered Estates Act of 1934, before the amendment of that Act in 1939, read as follows :

> "For the purpose of ascertaining the principal under el. (a) of Sub-section (4) the Special Judge shall treat as principal 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 transaction before 31-12-1916."

29. The question whether the contract referred to in Section 14 (5), Encumbered Estates Act, would cover a stipulation contained in a deed of mortgage for compound interest, came up for consideration before a Bench of the late Chief Court of Oudh in Sunder Lal v. Mt. Kaniz Zohra Begam, 14 Luck. 430 : (A.I.R. (26) 1939 Oudh 110) decided by Thomas C. J. and Ziaul Hasan J. The learned Judges discussed the meaning of the words "course" in the expression "in the course of the transaction." They did not, however, discuss the meaning of the word "transaction," "such a contract it was held in that case, must be a contract subsequent to the transaction : In this view of the matter the learned Judges reached the conclusion that a stipulation in the deed for converting interest as it fell due and was not paid, did not amount to a contract made "in the course of the transaction." In the result, therefore, it was held in that case that the interest which fell due before 31-12-1916 could not be treated as principal.

30. Shortly after the decision in the above-mentioned case of Sunder Lal, (14 Luck. 430 : A. I. R. (26) 1939 Oudh 110) the provisions of Section 14 (5), Encumbered Estates Act were amended by the Legislature. The words "on or" before the words "before 31-12-1916" were added. Further an explanation was appended to Section 14 (5) of the Act which runs thus :

> "Interest which on or before 31-12-1916, became part of the principal under the express terms of original contract shall, for the purposes of this section, be deemed to be principal."

This amendment came into force in September 1930 (sic) (1939?). The very next year the D. P. Debt Redemption Act (XIII [13] of 1940) was enacted. It came into force on 1-1-1941. Although the language of the proviso to Section 9 (1), Debt Redemption Act was very similar to that, employed in Section 14 (5), Encumbered Estates Act, yet the Legislature did not consider it necessary to add to it an explanation like the one appended to Section 14 (5), Encumbered Estates Act. The crucial question, therefore, is: Should similar provisions in the two enactments be interpreted in the same sense? On this question there is a clear conflict of judicial opinion between the late Chief Court of Oudh on the one hand and the Allahabad High Court on the other.

31. On the one hand in Fateh Singh v. Rameshwar, A. I. R. (31) 1944 oudh 242 : (219 I. C. 347), a Bench of two learned Judges of the Late Chief Court of Oudh Bennett and Ghulam Hasan JJ., had occasion to interpret the provisions of Section 9, Debt Redemption Act. In the course of their judgment the learned Judges observed that by addition of the explanation to Section 14 (5), Encumbered Estates Act "the Legislature made it clear that the intention from the very outset was to treat all interest which had accumulated on or before 31-12-1916, as part of the principal under the

terms of the original contract."

Owing to the close similarity of language employed in the proviso appended to Section 9 (1), Debt Redemption Act, and that employed in Section 14 (5), Encumbered Estates Act, the learned Judges felt that the intention of the Legislature in enacting the proviso to Section 9 (1), Debt Redemption Act was that the accumulated interest by force of the original contract must be deemed to be the principal within the meaning of Section 9 (1). The same view appears to have been tacitly accepted as correct in Ram Naresh Misr v. Mt. Maharaji Misrain, Civil Revn. No. 180 of 1945, recently decided by the Lucknow Bench.

32. On the other hand in the case of Ram Chandra v. Bishambhar, A. I. R. (36) 1949 ALL. 737 : (1949 A. L. J. 212), a Bench of two learned Judges of this Court took a different view. It expressly dissented from the view taken by the Bench of the late Chief Court of Oudh in Fateh Singh's case, (A. I. R. (31) 1944 Oudh 242 : 219 I. C. 347) and the Bench held that it was only where the accumulated interest is converted into principal by a subsequent agreement, that the Court is to treat accumulated interest as part of the principal. Further, the learned Judges held that the proviso to Section 9 (1), Debt Redemption Act, did not contemplate any automatic conversion of interest into principal, i. e. by reason of the stipulations contained in the original contract of mortgage. The learned Judges, in substance, took the same view as was taken by a Division Bench of the late Chief Court of Avadh in the case of Sundar Lal v. Kaniz Zohra, Begam, (14 Luck. 430 : A. I. R. (26) 1939 Oudh 110), (ubi supra) in which the question related to the interpretation of the provisions of Section 14 (5), Encumbered Estates Act.

33. It may be noted in passing that the case of Fateh Singh v. Rameshwar Bakhsh Singh, (A. I. R. (31) 1944 Oudh 242 : 219 I. C. 347) (ubi supra) was decided before the recent decision of their Lordships of the Judicial Committee of the Privy Council in Rajendra Bahadur Singh v. Dalip Singh, 20 Luck 551 : (A. I. R. (32) 1945 P. C. 103). The learned Judges in that case could, therefore, not have the benefit of the decision of the Judicial Committee. But the case of Ram Chandra v. Bishambhar, (A. I. R. (36) 1949 ALL. 737 : 1949 A. L. J. 212), (ubi supra) was decided in 1949, long after that decision. It appears, however, that the decision of the Judicial Committee of the Privy Council was not brought to the notice of the learned Judges who decided the case of Ram Chandra, (A. I. R. (36) 1949 ALL. 737 : 1949 A. L. J. 212), as there is no reference made to that case in the course of their judgment. The question arises whether the interpretation put by the Bench of the late Chief Court of Avadh in the case of Fateh Singh, (A. I. R. (31) 1944 Oudh 242 : 219 I. C. 347), on the proviso to Section 9 (1) is the correct one or the interpretation put by the Bench of this Court in the case of Ram Chandra v. Bishambhar, (A. I. R. (36) 1949 ALL. 737 : 1949 A. L. J. 212) is to be accepted.

34. In support of the view taken by the Bench of the late Chief Court of Avadh it has been strongly urged before us that there is the decision of the Judicial Committee of the Privy Council in the case of Rajendra Bahadur Singh, (20 Luck. 551 : A. I. R. (32) 1945 P. C. 103) (ubi supra) on the interpretation of Section 14 (5), Encumbered Estates Act, the language of which, as already mentioned, is almost identical with the language employed in the proviso to Section 9 (1), Debt Redemption Act. On the other hand, in support of the view taken by this Court, it has been urged

that the decision of the Judicial Committee in the case referred to above ought not to be taken as a guide in interpreting the language, though very similar, of another statute. The question therefore, arises: How far is the decision of the Judicial Committee in the case of Rajendra Bahadur Singh, (20 Luck. 551 : A. I. R. (32) 1945 P. C. 103) (ubi ,supra) to be accepted as a guide in interpreting the very similar provision contained in a different statute ? In support of the contention that the interpretation put upon the provisions of one statute is no guide to the interpretation of the provisions, though very similar, of another statute, reliance has been placed on certain observations made by their Lordships of the Judicial Committee in the case of Mt. Ramanandi Kuer v. Mt. Kalawati Kuer, A. I. R. (15) 1928 P. C. 2 : (7 Pat. 221). At p. 4 their Lordships have observed :

> "It has often been pointed out by this Board that where there is a positive enactment of the Indian Legislature the proper course is to examine the language of that Statute and to ascertain its proper meaning, uninfluenced by any consideration derived from the previous state of the law--or of the English law upon which it may be founded."

35. It seems to me that these observations of the Judicial Committee have really no bearing upon the question before us. Here the ease is very different. There is no principle of English law which is sought to be invoked in interpreting the positive enactment of an Indian Legislature. Nor is here any endeavour to ascertain the proper meaning of an existing Statute by reference to the previous state of the law.

36. Next reference has been made to the case of Nippon Yusen Kaisha v. Ramjiban, A. I. R. (25) 1938 P. C. 152 : (32 S. L. R. 502), decided by their Lordships of the Privy Council. In delivering the judgment of the Board, Lord Wright is reported to have observed at page 158 :

> "Decisions under other statutes have been cited, but it is always dangerous to seek to construe one statute by reference to the words of another."

37. The case before their Lordships did not relate to the interpretation of Statutes in pari materia.

38. On the other hand, in support of the contention that the decision of the Judicial Committee in the case of Rajendra Bahadur Singh, (20 Luck. 551 : A. I. R. (32) 1945 P. C. 103) (ubi supra) should be accepted as a guide in interpreting similar provisions contained in the proviso to Section 9 (1), Debt Redemption Act, we have been referred to Maxwell's "The Interpretation of Statutes" (1946) 9th Edn., chap, 1, Section 4, under the Caption "Exposition of one Act by language of another" at page 35 :

> "Probably, the rule as to the exposition of one Act by the language of another is satisfactorily and most comprehensively laid down in the broad statement of Lord Mansfield, that : Where there are different Statutes in pari materia, though made at different times, or even expired and not referring to each other, they shall be taken and construed together, as one system and as explanatory to each other."

This was with reference to what was laid down in R. v. Loxdale, (1758) 1 Burr. 446 : (97 E. R. 394) adopted in the C. A., Goldsmith Co. v. Wytt, (1907) 76 L. J. K. B. 166 at p. 169 : (1907-1 K. B. 95) but in R. v. Titterten, (1895) 2 Q. B. 61 at p. 67 : (64 L. J. M. C. 202), Lord Russell of Killowen C. J. observed : "It is proper to refer to earlier Acts in pari materia only where there is an ambiguity."

39. Next, at pp. 40 and 41 of the same book it is stated :

> "The construction which has been put upon Acts of similar scope, on similar subjects, even though the language should be different, may for a similar reason foe referred to..... But where the Acts are not in pari materia, it is fallacious to take the construction which has been put upon one as controlling the construction of another."

40. Lastly, at p. 71 it is stated : "Even where the usual meaning of the language falls short of the whole object of the Legislature, a more extended meaning may be attributed to the words, if they are fairly susceptible of it. The construction must not, of course, be strained to include cases plainly omitted from the natural meaning of the words."

41. Again, in the case of Moolji Jaitha & Co. v. K.S. & W. Mills Co., Ltd., A. I. R. (37) 1950 F. C. 83 : (1949 P. C. R. 849) B. K. Mukherjea J. at page 118 held :

> "In cases where there is doubt about the meaning of words used in a statute, a recognised method of construction is to take the words in the sense in which they would harmonise with the subject of the enactment and the object which the Legislature had in view : Maxwell on Interpretation of Statutes, Edn. 9, page 20."

42. There can be no doubt whatsoever that the object of both the Encumbered Estates Act of 1934 as well as the Debt Redemption Act of 1940 was to afford relief from indebtedness to landlord agriculturist-debtors and workmen. The two statutes, although enacted on two different dates, can, therefore, be looked upon as statutes in pari materia. As such, in my view, they should receive a uniform construction. In this connection, I may refer to the case of Sham Singh v. Vir Bhan, A. I. R. (29) 1942 Lah. 102 : (I. L. R. (1942) Lah. 349 F.B.) decided by a Full Bench of that Court. Tek Chand J. who delivered the leading judgment, observed at p. 103 :

> "It is a settled rule of interpretation that where there are different Statutes in pari materia, though made at different times, they ought to receive a uniform construction. Mercey Docks v. Cameron, (1865) 11 H. L. C. 443 at p. 480."

43. To my mind, from the decision of their Lordships of the Privy Council in the case of Rajendra Bahadur v. Dalip Singh, (20 Luck. 551: A. I. R. (32) 1945 P. C. 103) (ubi supra) it is quite clear that by dissenting from the view taken by the late Chief Court of Avadh in the case of Sundar Lal v. Mt. Kaniz Zohra Begam, (14 Luck. 430 : A. I. R. (26) 1939 oudh 110) (ubi supra) their Lordships gave a clear indication that the expression "contract made in the course of the transaction" was not confined to a contract made subsequently. In other words, their Lordships of the Judicial

Committee made it clear that the expression "contract made in the course of the transaction" included not only the completed transaction of mortgage, but also all stipulations and contracts made while the mortgage was being carried through. In the present case each of the six earlier mortgage-deeds contains a stipulation for the conversion of interest into principal in certain circumstances. All these deeds were, executed before 1-1-1917.

44. In the light of the interpretation put by their Lordships of the Judicial Committee upon a similar expression in Section 14 (5), Encumbered Estates Act, it would appear that the relevant stipulation for conversion of interest into principal in each one of these deeds can be looked upon as a "contract made in the course of the transaction." As such the stipulation would have the effect of converting accumulated interest into principal to each of the six deeds in the present case.

45. All the accumulated interest up to and including 31-12-1916 must, therefore, be regarded as interest converted into principal. The result, therefore, is that the view taken by the Bench of this Court in the case of Ram Chandra Sahai, (A.I.R. (36) 1949 ALL. 737: 1949 A.L.J. 212) (ubi supra) cannot be considered to be good law. On the other hand, the view taken by the late Chief Court of Avadh in the case of Fateh Singh, (A. I. R. (31) 1944 Oudh 242 : 219 I. C. 847) (ubi supra) should be considered to be sound.

46. The result, therefore, is that the appeal must be allowed. The application for amendment of the decree must be dismissed. The appellant is entitled to his costs in all the Courts".

Kidwai, J.

47. Shyam Sunder Lal executed six mortgage-deeds for a total sum of Rs. 550 in favour of Sarju Prasad, grandfather of Ram Kishore Tandon, appellant, hypothecating two houses in the town of Gonda and five groves in village Gird Gonda for various sums of money. In all the deeds interest at the rate of 12 per cent. compoundable half yearly was stipulated. The mortgage-deeds were as follows : (1) Dated 26-4-1915, for Rs. 250 ; (2) dated 17-7-1915 for Rs. 50 ; (3) dated 20-5-1916, for Rs. 50 ; (4) dated 20-6-1916, for Rs. 50 ; (5) dated 24-6-1916 for Rs. 50 ; (6) dated 23-10-1916, for Rs. 100.

48. Subsequently on 30-3-1927, Shyam Sunder Lal executed a mortgage-deed in favour of Ram Kishore (since his grandfather was dead) for Rs. 1,428 at 6 per cent. interest compoundable half yearly. The money due under the old deeds was paid off and very little was realised in cash.

49. The money due under this mortgage was not paid and the mortgagee instituted a suit for its recovery. He obtained a preliminary decree for sale of the mortgaged property on 26-8-1939.

50. In December 1940, the U. P. Debt Redemption Act was enacted and it came into force on 1-1-1941. On 12-12-1942, the preliminary mortgage-decree was made final. The mortgagor did not make any claim to a fresh calculation of interest under the provisions of the Debt Redemption Act nor did he appeal.

51. On 2-2-1944, the mortgagor-judgment-debtor applied for amendment of the preliminary decree under Sections 8 and 9, Debt Redemption Act. Ram Kishore contested this application on a large number of grounds and also made a declaration under Section 4, U. P. Debt Redemption Act.

52. The learned Munsif held that the applicant was shown to be an agriculturist and that declaration was infructuous as it ought to have been made before the final decree was passed since the suit was still pending when the Debt Redemption Act was passed. He did not consider the question whether the preliminary decree could be amended after the passing of a final decree and he directed the amendment of the-decree by altering the interest from 6 per cent. to 41/2 per cent. on the sum of Rs. 1428 from the date of the loan, but he refused to (re-open ?) this transaction.

53. The judgment-debtor appealed praying for a reopening of the transaction and calculation on the basis of the original decrees. The decree-holder also appealed challenging the amendment of the preliminary decree after the passing of a final decree and the reduction of interest.

54. The learned Additional Civil Judge of Gonda held that the entire transaction could be reopened and that calculations should be based on the original loans after reducing interest to 41/2 per cent. He also held that in spite of the passing of the final decree after the commencement of the U. P. Redemption Act, both the preliminary decree and the final decree could be amended. He accordingly recalculated the amount due under the mortgage in accordance with the provisions of the Debt. Redemption Act and drastically reduced the decretal amount.

55. The decree-holder appealed to the Chief Court of Avadh and the appeal was heard by our learned brother, Misra J. He was of opinion that two points arose for consideration namely:

> "(1) Does Section 8, Debt Redemption Act, contemplate amendment of a preliminary decree when that decree has already matured into a decree absolute passed after 1-1-1940 ? (1941 ?) and (2) Could the transactions evidenced by the earlier mortgages Exs. 11 to 16 be reopened for the purpose of determining the amount due at the date of the mortgage in suit, namely, 30-3-1927 ?"

56. On these questions our learned brother observed :

> ''On the first point there is no direct authority, though, having regard to the phraseology of Section 8 of the Act, it would seem that the intention of the Legislature was to confer on an agriculturist judgment-debtor the right to obtain amendment of subsisting decrees as distinguished from those which had been superseded. It does not, however, seem necessary to examine the point at this stage in view of the fact that on the second point I have decided to refer the case to a Full Bench."

57. The judgment then notes that there is a difference between a Bench of two Judges of the Chief Court of Avadh and a Bench of two Judges of this Court but that the latter case was decided without considering a relevant Privy Council decision. It was accordingly ordered that the case be laid before

the Hon'ble Chief Justice for being laid before a larger Bench and the present Full Bench has accordingly been constituted.

58. The learned advocates of the parties have argued both the points noted above but the first point calls for decision first. Section 8, U. P. Debt Redemption Act, reads as follows :

> "(1) Notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree to which this Act applies passed before the commencement of this Act, may apply to a civil Court which passed the decree or to which the execution of the decree has been transferred, for the amendment of the decree by reduction according to the provisions of this Act of the amount due under it, and on receipt of such application, the Court shall, after notice to the opposite-party calculate the amount due from the applicant in accordance with the provisions of Sections 9 and 10 and shall amend the decree accordingly".

59. The words of the section make it perfectly clear that it is not every decree passed before the commencement of the U. P. Debt Redemption Act that can be amended under Section 8: it is only decrees under which an agriculturist or a workman is liable to pay. Thus for instance decrees which have been wholly paid up cannot be reopened, not because of any limitation as to time, because the section provides for the re-opening of decrees notwithstanding the provisions of any law, but because the liability of the agriculturist or workman under such decrees has ceased.

60. Similarly if the decree is merely declaratory and does not create a liability to pay it cannot be amended. In Abdul Saeed Khan v. Mohmood Ali, A. I. R. (37) 1950 ALL. 467 : (1950 A. L. J. 578 F. B.) the question was whether a decree passed under Section 33 (1), Agriculturists' Relief Act, declaring after accounting the amount due from an agriculturist debtor could be amended under the provision of Section 8, U. P. Debt Redemption Act. All the five learned Judges composing the Full Bench held that such a decree could not be amended because there was no liability on the person seeking to amend the decree to pay any amount found due under the decree.

61. The present case is not on all fours but the reasoning is fully applicable. Even if it is considered that under a preliminary decree; passed in a mortgage suit for sale of the mortgaged property, there is a liability to pay by reason of the direction to pay, once the final decree has been passed it is the final decree alone that determines the liability to pay. The amount mentioned in the preliminary decree may have been partly paid off or it may have increased by the addition of interest and costs. It is not the amount that is entered in the preliminary decree which the judgment-debtor is liable to pay but only the amount entered in the final decree. Further execution and sale of the property can take place in enforcement of the final decree. Thus the liability is for the amount due under the final decree and any liability that may have existed for payment of the money due under the preliminary decree has ceased. It was, therefore, not possible to amend the preliminary decree under Section 8, U. P. Debt Redemption Act, and Section 9 of the Act has no application to that decree which was passed before the Act came into force.

62. The final decree was passed after the Act came into force. Section 8 can, therefore, not apply to it. Any relief based on Section 9 of the Act should have been asked for in the proceedings for making the decree final which was merely a continuation of the suit. Thus the final decree too cannot be touched now.

63. This is sufficient to dispose of the appeal but since the appeal was ordered to be laid before the Full Bench principally for a decision of the second point upon which there is a conflict of opinion and since that point too has been fully argued, I propose to indicate my views with regard to it.

64. In order to determine the second question it is necessary to ascertain what is the sum which, under the provisions of Section 9, U. P. Debt Redemption Act, is to be treated as principal. Is it the amount which is entered in the deed of 1927 although admittedly the larger portion of that sum was credited towards earlier debts, principal and interest, of the same creditor or is the amount originally borrowed by the debtor under the various debts due to be treated as principal and accounts calculated on that basis? The answer to this question depends upon the proviso to Section 9 (1), U. P. Debt Redemption Act. That proviso reads as follows:

> "Provided that for the purpose of determining the principal, the Court shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract in the course of the transaction made before 1-1-1917, but shall treat as interest any accumulated interest which has been converted as aforesaid at any such statement, settlement or contract made on or after that date."

65. Thus the point for determination is whether the provisions in the various mortgage deeds executed before 1917 stipulating that if default is made in the payment of interest due for any six monthly period (sic) (it?) is to be added to the principal and interest is to run on it, are "contracts in the course of the transaction made before 1-1-1917," by which "any accumulated interest. . . has been converted into principal." The proviso to Section 9 (1), Debt Redemption Act, uses language which is very similar to, though not identical with, the provisions of Section 14 (5), Encumbered Estates Act, which, before the amendment of that Act in 1939, read as follows :

> "For the purpose of ascertaining the principal under Clause (a) of Sub-section (4) the Special Judge shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract made is the course of the transaction before 31-12-1916.

66. This provision was the subject of interpretation by a Bench of the Chief Court of Avadh in Sundar Lal v. Mt. Kaniz Zohra Began, 1939 O. W. N. 146 : (A. I. R. (26) 1939 Oudh 110). In that case it was laid down that a stipulation in the deed evidencing the contract of mortgage for converting interest, as it fell due in future, was not a contract made in the course of the transaction and consequently, in spite of such a provision interest which fell due before 31-12-1916, could not be treated as principal. The learned Judges discussed at great length the meaning of the words used and gave full reasons for their decision.

67. After this decision became known the Legislature amended the provisions of Section 14 (5), Encumbered Estates Act, by inserting the words "on or" before the words "before 31-12-1916" and adding an explanation in the following terms :

> "Interest which on or before 31-12-1916,-became part of the principal under the express terms of the original contract shall, for the purposes of this section, be deemed to be principal."

68. No such explanation was, however, added to the proviso of Section 9 (1), U. P. Debt Redemption Act, when it came to be enacted in December 1940, and it might well be a question whether in the face of this omission, the words employed in the two statutes, although identical in their terms, have the same meaning.

69. This matter came up for consideration in Fateh Singh v. Rameshwar Bakhsh Singh, 1944 O. W. N. 177 : (A. I. R. (31) 1944 Oudh 242), when a Division Bench of the Chief Court held, relying upon Section 20A (1) (iv) also added to the Encumbered Estates Act by the amending Act of 1939, that the Legislature had made it clear that its intention from the very outset had been to treat all interest which had accumulated on or before 31-12-1916, as part of the principal under the terms of the original contract. The learned Judges then pointed out the fact that the language of the proviso to Section 9 (1), Debt Redemption Act, is almost identical with that of Section 14 (5), Encumbered Estates Act, and say:

> "It is true that no explanation has been added to this proviso, but we see no reason to interpret the proviso in a sense other than that to which the Legislature gave effect by the addition of an explanation to sub-s. (5) of Section 14, Encumbered Estates Act."

70. In 1949 the same question arose and a Bench of this Court in Ram Chandra v. Bishambhar, A. I. R. (36) 1949 ALL. 737 : (1949 A.L.J. 212), did not accept the correctness of the decision in Fateh Singh v. Rameshwar Bakhsh Singh, 1944 O. W. N. 177 : (A. I. R. (31) 1944 Oudh 242) and took a contrary view relying upon the absence of an explanation to the proviso to Section 9 (1), Encumbered Estates Act. This is no doubt a very material consideration particularly when it is remembered that the "explanation" added to Section 14 (5), Encumbered Estates Act, does not in fact explain any words or phrases used in that sub-section but confines its operation "for the purposes of this section."

71. If this were all, I would not have been prepared to differ from the view of the Division Bench of this Court but unfortunately the attention of the learned Judges was not drawn to the decision of their Lordships of the Judicial Committee in Rajendra Bahadur Singh v. Dalip Singh, 20 Luck. 551 : (A. I. R. (32) 1945 P. C. 103). In that case their Lordships considered the provisions of Section 14 (5), Encumbered Estates Act, as it stood before the addition of the proviso when the material words were identical. Their Lordships considered that the decision in Fateh Singh v. Rameshwar Bakhsh Singh, 1944 O. W. N. 177: (A. I. R. (31) 1944 Oudh 242) was open to serious criticism and they held that "a contract for a mortgage is usually preceded by negotiations in which the amount to be advanced, rate of interest, and the nature of the security are arranged, and their Lordships think that when

such negotiations result in a mortgage contract, the mortgage contract can be correctly described as made in the course of the transaction."

They accordingly held that in order to determine the principal under Section 14 (4), Encumbered Estates Act, all the interest which fell due before 31-12-1916, had to be added to the original principal by reason of a stipulation in the original contract for this being done.

72. It is true that their Lordships were not considering the provisions of the U. P. Debt Redemption Act but of the U. P. Encumbered Estates Act. The relevant provisions are however identical and exactly the same reasoning applies. There is, therefore, no reason for not giving the words used in the proviso to Section 9 (1), Debt Redemption Act, the same meaning which has been given by their Lordships of the Judicial Committee to identical words used in Section 14 (5), Encumbered Estates Act.

73. It was suggested that the remarks made by their Lordships were obiter. It is true that their Lordships might have arrived at the same conclusion if they had adopted a different line of reasoning, which, later in their judgment, they did adopt. This does not, however, make their remarks obiter because they were specially called upon to consider the true interpretation of the relevant words used in Section 14 (5), Encumbered Estates Act. Thus the interpretation placed by their Lordships upon the words which have to be construed in this case also--though in a different statute -- and which in any case is entitled to the greatest respect, cannot be rejected on the ground that it is an obiter dictum. The result is that the opinion expressed in Ram Chandra v. Bishambhar, A. I. R. (36) 1949 ALL. 737 : (1949 A. L. J. 212), cannot be considered good law and the position taken in Fateh Singh v. Rameshwar Bakhsh Singh, 1944 O. W. N. 177 : (A. I. R. (31) 1944 Oudh 242) must be upheld.

74. In the present case this would make some, though not much, difference, because it is only interest which accrued due upto 1-1-1917, that can be added to the principal and not interest that fell due subsequently. This is, however, immaterial because of the decision on the first point that the application does not lie for amendment either of the preliminary or of final decree.

75. The result is that I would allow this appeal and dismiss the judgment-debtor's application for amendment of the decree. The appellant shall be entitled to his costs of all the Courts.

Chandiramani, J.

76. I have read the judgment of my learned brother, Kidwai J. The full facts have been stated there and only two questions arise for decision :

> 1. Does Section 8, Debt Redemption Act, contemplate amendment of a preliminary decree when that decree has already matured into a decree absolute passed after 1-1 1941 ? and

2. Could the transactions evidenced by the earlier mortgages Exs. 11 to 16 be reopened for the purpose of determining the amount due at the date of the mortgage in suit, namely, 30-3-1927 ?

The first question is whether in the presence of the final decree a preliminary decree can be amended under Section 8, Debt Redemption Act. Section 8 provides that notwithstanding the provisions of any decree or of any law for the time being in force, an agriculturist or a workman liable to pay the amount due under a decree passed before 1-1-1941, when the Debt Redemption Act came into force, may apply for amendment of the decree. From the plain language of the section it is clear that : (1) the decree to be amended must be one passed before 1-1-1941; and (2) one under which the liability to pay subsists. That the decree should be one under which the liability to pay subsists is also clear from Harcharan Singh v. Mohammad Hussain Khan, 1943 O. W. N. 71: (A. I. R. (20) 1943 Oudh 24l) and Swami Dayal v. Durga, Prasad, 1943 C. W. N. 481 : (A. I. R. (31) 1944 Oudh 102). This position has been further recognised and accepted in the Full Bench decision of this Court in Abdul Saeed Khan v. Mohammad Ali, A. I. R. (37) 1950 ALL. 467 : (1950 A. L. J. 578 F. B.) when dealing with the question whether a decree under Section 33, Agriculturists' Relief Act, secured by a debtor is one to which Section 8, Debt Redemption Act, applies. Thus it is clear that the decree to which Section 8 applies must be one under which the liability to pay subsists.

77. In the present case there is no doubt that the liability to pay was created by the preliminary decree passed on 26-8-1989, but unfortunately for the debtor, the matter has not rested there. The preliminary decree has been superseded by the final decree and it is this decree under which the liability to pay subsists. If this final decree was passed before 1-1-1941, then the debtor will be entitled to the benefit under Section 8. Unfortunately for the debtor, the final decree in the present case was passed on 12-12-1942, that is, after the Debt Redemption Act came into force, and so the final decree cannot be amended under Section 8.

78. There is no doubt that under Section 9 the debtor would be entitled to get the preliminary decree amended as, till the final decree is passed, all the proceedings are still proceedings in a pending suit. (See Sat Parkash v. Bahal Rai, A. I. R. (18) 1931 ALL. 386 : (53 ALL. 283 F. B.)). The prayer for amendment must be made while the suit is pending as otherwise the principle of constructive res judicata will apply. In the present case the claim for amendment was made not before the final decree was passed but long after the final decree was passed and so the debtor cannot get the benefit of Section 9, Debt Redemption Act, either. It is clear, therefore, that the debtor respondent cannot' in this case get the benefit of either Section 8 or Section 9, and the final decree could not be amended at all. The application for amendment should have been dismissed. The appeal must succeed.

79. In the view taken above it is not necessary to decide the second question, but since it is on this very point that the case was referred to us, and we have heard learned counsel at considerable length, I consider it desirable to indicate my opinion.

80. Section 9, Debt Redemption Act, lays down the principles on which the amount due is to be determined and Sub-section (1) provides for the case in which accumulated interest is to be treated

as principal. Sub-section (2) deals with the rate of interest payable on the principal and Sub-section (3) deals with the maximum interest that is payable on the date of determination of the amount due by the debtor.

81. In the present case the question arises whether in the six mortgage deeds, Exs. 11 to 16, executed before 31-12 1916, which were subsequently substituted by a mortgage of 30-3-1927, the provision about compound interest is enforceable and, if so, up to what date. The relevant law is contained in the proviso to Section 9 which reads as follows :

> "Provided that for the purposes of determining the principal the Court shall treat as principal any accumulated interest which has been converted into principal at any statement or settlement of account or by any contract in the course of the transaction made before the first day of January, 1917, but shall treat as interest any accumulated interest which has been converted as aforesaid at any such statement, settlement or contract made on or after that date."

The second part of the proviso makes it perfectly clear that there can be no compound interest from and after 1-1-1917.

82. The first part of the proviso as to the accumulated interest which shall be treated as principal is, in all material particulars, the same as Section 14 (5), U. P. Encumbered Estates Act, before the addition of the Explanation on 30-9-1939, by the U. P. Encumbered Estates (Amendment) Act (XI [11] of 1939). Section 14 (5) before the addition of the Explanation came up for consideration in Sundar Lal's case before the Chief Court, Sundar Lal v. Kaniz Zohra Begum, 1939 O. W. N. 146 : (A. I. R. (26) 1939 Oudh 110), and it was held :

> "The expression 'any contract made in the course of the transaction" in Sub-section (5) of Section 14, Encumbered Estates Act, does not mean 'any contract made at the time, of the transaction,' and compound interest on every debt that had accumulated upto 31 12-1916, cannot under the sub-section be treated as principal. The use of the word "course" shows that what was intended by the Legislature was that the contract by which a certain amount of interest should have been converted into principal should have been made at a time subsequent to the original transaction, while that transaction was in force, but before 31-12-1916. Both proviso (1) to Section 3 (1), Usurious Loans Apt, and sub-Section (5) of Section 14, Encumbered Estates Act, deal with renovations of contract and not with the original contract."

As a result of this decision, the Encumbered Estates Act was amended and an explanation was added to Sub-section (5) of Section 14 to the effect that interest which on or before 31-12-1916, became part of the principal under the express terms of the original contract shall, for the purposes of this section, be deemed Co be principal. Sundar Lal's case, 1939 O. W. N. 146 : (A. I. R. (26) 1939 Oudh 110) came up for consideration before their Lordships of the Privy Council in Rajendra Bahadur Singh v. Dalip Singh, 20 Luck. 551 : (A. I. R. (32) 1945 P. C. 103) and it was criticised, and the interpretation of Section 14 (5) by the Chief Court was not accepted, and it was held, that a

contract providing for compound interest made on or before 31-12 1916, which at a later date was itself renewed, is sufficient by itself to capitalise interest payable under it, (the mortgage made before 1-1-1917) down to and including 31-12-1916, as principal. Thus even without the explanation added in 1939, Section 14 (5) did mean that there would be automatic conversion of interest into principal up to 31-12-1916, should a contract therefor have been executed before 1-1 1917.

83. The proviso to Section 9, Debt Redemption Act, came up for consideration before the late Oudh Chief Court in Fateh Singh v. Rameshwar Bakhsh Singh, 1944 O. W. N. 177 : (A. I. R. (31) 1944 Oudh 242) and it was held that all interest which had accumulated on or before 31-12-1916, shall be treated as principal under the terms of the original contract. The interpretation of the Chief Court in Sundar Lal's case, 1939 O. W. N. 146 : (A. I. R. (26) 1939 Oudh 110) of the similar provision in Section 14 (5), Encumbered Estates Act, was not accepted as correct and it was pointed out that the Explanation added to Section 14 (5) after the decision in Sundar Lal's case, 1939 O. W. N. 146: (A. I. R. (26) 1939 Oudh 110) made it clear what the intention of the Legislature was.

84. This provision of the Debt Redemption Act again came up for consideration before a Bench of this Court in Ram Chandra Sahai V. Bishambhar, A. I. R. (36) 1949 ALL. 737 : (1949 A. L. J. 212) and it was held that no automatic conversion of interest into principal is contemplated under Section 9, Debt Redemption Act. Their Lordships observed on p. 737, Col. 2 :

> "What learned counsel for the appellants has argued is that interest, accruing by virtue of a contract made prior to 1917, will have to be included in the principal where the original contract provides for compound interest. Our interpretation of Section 9 is that it is only where by a subsequent agreement the accumulated interest has been converted into principal that the Court shall be bound to treat the accumulated interest as part of the original principal. This is clear from the language of the proviso itself."

Their attention was drawn to Fateh Singh's case, 1944 O. W. N. 177 : (A. I. R. (31) 1944 oudh 242) and they observed :

> "The principle laid down in that case was that interest before 31-12-1916 becoming part of the principal under the original contract must be treated as principal. In arriving at this conclusion the learned Judges were influenced by the fact that the language of the proviso to Section 9 (1), U. P. Debt Redemption Act, was almost identical in terms with Sub-section (5) of Section 14, Encumbered Estates Act. Admittedly no explanation to "the proviso such as is to be found in Sub-section (5) of Section 14, Encumbered Estates Act, finds a place in Section 9, U. P. Debt Redemption Act. For this vital reason, we think we would not be justified in imputing to the Legislature an intention similar to that which must have prompted it when it enacted Sub-section (5) of Section 14. We are not, for this reason, prepared to agree with the law laid down in the ruling to which we have just invited attention."

85. The learned Judges took a different view because the Explanation to Section 14 (5) does not occur in the proviso to Section (9) 1, Debt Redemption Act. Now it is well settled that an Explanation does not enlarge the scope of the original section which it seeks to explain, See Kishan Singh v. Prem Singh, A. I. R. (26) 1939 Lah. 587 : (I. L. R. (1940) Lah. 223). The Explanation added in 1939 merely made the meaning clear beyond dispute. It negatived the interpretation placed upon the section by the Chief Court in Sundar Lal's case, (1939 O.W.N. 146 : A.I.R. (26) 1939 Oudh 110). It did not introduce any new law. Further the attention of the learned Judges was not invited to the decision of the Privy Council in Rajendra Bahadur v. Dalip Singh, 20 Luck. 551 : (A. I. B. (32) 1945 P. c. 103).

86. The purpose of both the Encumbered Estates Act and the Debt Redemption Act is to afford relief to the landlord and agriculturist debtors. Both are of similar scope on similar subjects. In Maxwell's Interpretation of statutes 5th Edn.) it is stated on p. 498 that "When the Legislature puts construction on an Act a subsequent cognate enactment in the same terms would prima facie be understood in the same sense."

In Sham Singh v. Vir Bhan, A. I. R. (29) 1942 Lah. 102 : (I. L. R. (1942) Lah 349 F B), it has been held that where there are different statutes in pari materia, though made at different times, they ought to receive a uniform construction. Again Maxwell in his Interpretation of Statutes (5th Edn.) on p. 501 says that even where Acts are not in pari materia the meaning notoriously given to expressions in the earlier may be taken to be that in which they are used in the later Act. In these circumstances the legislature must have meant the proviso in Section 9, Debt Redemption Act, regarding conversion of interest into principal to mean exactly what Section 14 (5), Encumbered Estates Act, meant with the Explanation. It has already been pointed out that the Explanation did not give a new meaning to Section 14 (5). It was quite unnecessary in the circumstances for the Legislature to add an Explanation similar to that which was added in Section 14 (5).

87. The Privy Council decision in Rajendra Bahadur v. Dalip Singh, 20 Luck. 551: (A.I.R. (32) 1945 P. C. 103) clearly shows what the meaning is of Section 14 (5), Encumbered Estates Act, and according to that compound interest must be granted upto 31-12-1916 if the contract made on or before that date provides for compound interest.

88. For the reasons given above, my answer to question No. 2 is that the transactions Exs. 11 to 16 can be re-opened for determining the amount due on 30-3-1927, the date of the mortgage in suit, but compound interest would be payable on the mortgages Exs. 11 to 16 till 31-12-1916, and thereafter on the principal so found due interest would be calculated and allowed according to the provisions of Sub-sections (2) and (3) of Section 9.

89. For the reasons given above I agree with my learned, brother Kidwai J. I also agree with him that in view of our decision that the preliminary decree in this case cannot be amended, the appeal must be allowed. The application for amendment must be dismissed and the appellant should get his costs of all the Courts.

90. By the Court.--For the reasons given in our separate but concurrent judgments, we allow the appeal, set aside the decrees passed by the Courts below and dismiss the application for amendment

with costs throughout.