

APPENDIX D

DECREES

No. 1

DECREE IN ORIGINAL SUIT (O. 20, rr. 6,7.)

(Title)

Claim for

THIS suit coming on this day for final disposal before in the presence of for the plaintiff and of for the defendant, it is ordered and decreed that and that the sum of Rs be paid by the to the on account of the costs of this suit, with interest thereon at the rate of per cent. per annum from this date to date of realization.

Given under my hand and the seal of the Court, this day of 20...

Judge.

Costs of Suit

Plaintiff				Defendant			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint.....				Stamp for power.....			
2. Do. for power.....				Do. for petition.....			
3. Do. for exhibits.....				Pleader's fee.....			
4. Pleader's fee on Rs.				Subsistence for witnesses...			
5. Subsistence for witnesses..				Service of process.....			
6. Commissioner's fee.....				Commissioner's fee.....			
7. Service of process.....							
Total				Total			

No. 2

SIMPLE MONEY DECREE

(Section 34)

(Title)

Claim for.....

THIS suit coming on this.....day for final disposal before.....in the presence offor the plaintiff and offor the defendant; It is ordered that the.....do pay to the..... the sum of Rs..... with interest thereon at the rate of.....per cent. per annum from.....to the date of realization of the said sum and do also pay Rs....., the costs of this suit, with interest thereon at the rate of.....per cent. per annum from this date to the date of realization.

Given under my hand and the seal of the Court, this day of20

Judge.

Costs of Suit

Plaintiff				Defendant			
	Rs.	A.	P.		Rs.	A.	P.
1. Stamp for plaint.....				Stamp for power			
2. Do. for power.....				Do. for petition			
3. Do. for exhibit.....				Pleader's fee			
4. Pleader's fee on Rs.....				Subsistence for witnesses			
5. Subsistence for				Service of process ...			
6. Commissioner's fee.....				Commissioner's			
7. Service of process.....							
Total				Total			

¹[No. 3

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2.—Where accounts are directed to be taken.)

(Title)

This suit coming on this.....day, etc.; It is hereby ordered and decreed that it be referred to.....as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due, and thereafter in reduction or discharge of the principal.

1. Subs. by Act 21 of 1929, s. 8 and Sch., for the original forms 3 to 11.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of..... and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the..... day of....., or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due, and the sum of Rs..... for the costs of the suit awarded to the plaintiff.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever or arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff shall be at liberty to apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[**No. 3A**

PRELIMINARY DECREE FOR FORECLOSURE

(Order XXXIV, rule 2.—Where the Court declares the amount due.)

(*Title*)

This suit coming on this..... day, etc.; It is hereby declared that the amount due to the plaintiff on his mortgage mentioned in the plaint calculated up to thisday of..... is the sum of Rs..... for principal, the sum of Rs..... for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs..... for the costs of this suit awarded to the plaintiff, making in all sum of Rs.....

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the.....day of.....or any later date up to which time for payment may be extended by the Court of the said sum of Rs.....,

1. Subs. by Act 21 of 1929, s. 8 and the Sch., for Forms 3 to 11.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree that the defendant shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 4

FINAL DECREE FOR FORECLOSURE

(Order XXXIV, rule 3.)

(Title)

Upon reading the preliminary decree passed in this suit on the..... day of..... and further orders (if any) dated the.....day of.....and the application of the plaintiff dated the.....day of.....for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the said mortgage.

It is hereby ordered and decreed that the defendant and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned; *[and (if the defendant be in possession of the said mortgaged property) that the defendant shall deliver to the plaintiff quiet and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the defendant up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharged and extinguished.

Schedule

(Description of the Mortgage Property).]

¹[No. 5

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.—Where accounts are directed to be taken.)

(Title)

This suit coming on this.....day, etc; It is hereby ordered and decreed that it be referred to.....as the Commissioner to take the accounts following:—

(i) an account of what is due on this date to the plaintiff for principal and interest on his mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the plaintiff or by any other person by the order or for the use of the plaintiff or which without the wilful default of the plaintiff or such person might have been so received;

1. Subs. by Act 21 of 1929, s. 8 and the Sch., for Forms 3 to 11.

* Words not required to be deleted.

(iii) an account of all sums of money properly incurred by the plaintiff up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or, failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the plaintiff which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the plaintiff under clause (iii), together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the plaintiff on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of....., and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the defendant do pay into Court on or before the.....day of.....or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs.....for the costs of the suit awarded to the plaintiff;

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quite and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient or payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule
Description of the mortgaged property.]

¹[No. 5A

PRELIMINARY DECREE FOR SALE

(Order XXXIV, rule 4.—When the Court declares the amount due.)

(Title)

This suit coming on this.....day, etc.; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this..... day of.....is the sum of Rs..... for principal, the sum of Rs.....for interest on the said principal, the sum of Rs..... for costs, charges and expenses (other than the costs of the suit) properly incurred by the plaintiff in respect of the mortgage-security, together with interest thereon, and the sum of Rs.....for the costs of the suit awarded to the plaintiff, making in all the sum of Rs

2. And it is hereby ordered and decreed as follows:—

(i) that the defendant do pay into Court on or before the..... day of..... or any later date up to which time for payment may be extended by the Court, the said sum of Rs.....;

(ii) that on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant, or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the defendant quite and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the plaintiff may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction herefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient or payment in full of the amount payable to the plaintiff as aforesaid, the plaintiff shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the defendant for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property.]

1. Subs. by Act 21 of 1929, s. 8 and the Sch., for Form 3 to 11.

¹[No. 6

FINAL DECREE FOR SALE

(Order XXXIV, rule 5.)

(Title)

Upon reading the preliminary decree passed in this suit on the.....day of..... and further orders (if any) dated the day of..... and the application of the plaintiff dated the.....day..... of for a final decree and after hearing the parties and it appearing that the payment directed by the said decree and orders has not been made by the defendant or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into the Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the plaintiff for such costs of the suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the defendant or other persons entitled to receive the same.]

¹[No. 7

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(Title)

This suit coming on this..... day, etc.; It is hereby ordered and decreed that it be referred to..... as the Commissioner to take the account following:—

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money property incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

2. It is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above together with interest thereon, shall be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

1. Subs. by Act 21 of 1929, s. 9 and the Sch., for Forms 3 to 11.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the.....day of....., and that upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of, or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, on such payment, and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit, and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property, in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all in-cumbrances created by the defendant or any person claiming under him or any person under whom he claims and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant shall be at liberty to apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 7A

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR
DECREE A DECREE FOR SALE IS PASSED

(Order XXXIV, rule 7.—Where accounts are directed to be taken.)

(Title)

This suit coming on thisday, etc.; It is hereby ordered and decreed that it be referred to as the Commissioner to take the accounts following :—

(i) an account of what is due on this date to the defendant for principal and interest on the mortgage mentioned in the plaint (such interest to be computed at the rate payable on the principal or where no such rate is fixed, at six per cent. per annum or at such rate as the Court deems reasonable);

(ii) an account of the income of the mortgaged property received up to this date by the defendant or by any other person by the order or for the use of the defendant or which without the wilful default of the defendant or such person might have been so received;

(iii) an account of all sums of money property incurred by the defendant up to this date for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security, together with interest thereon (such interest to be computed at the rate agreed between the parties, or failing such rate, at the same rate as is payable on the principal, or, failing both such rates, at nine per cent. per annum);

(iv) an account of any loss or damage caused to the mortgaged property before this date by any act or omission of the defendant which is destructive of, or permanently injurious to, the property or by his failure to perform any of the duties imposed upon him by any law for the time being in force or by the terms of the mortgage-deed.

1. Subs. by Act 21 of 1929, s. 8 and the Sch., for Forms 3 to 11.

2. And it is hereby further ordered and decreed that any amount received under clause (ii) or adjudged due under clause (iv) above, together with interest thereon, shall first be adjusted against any sums paid by the defendant under clause (iii) together with interest thereon, and the balance, if any, shall be added to the mortgage-money, or, as the case may be, be debited in reduction of the amount due to the defendant on account of interest on the principal sum adjudged due and thereafter in reduction or discharge of the principal.

3. And it is hereby further ordered that the said Commissioner shall present the account to this Court with all convenient despatch after making all just allowances on or before the day of....., and that, upon such report of the Commissioner being received, it shall be confirmed and countersigned, subject to such modification as may be necessary after consideration of such objections as the parties to the suit may make.

4. And it is hereby further ordered and decreed—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court, such sum as the Court shall find due and the sum of Rs. for the costs of the suit awarded to the defendant;

(ii) that, or such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom the claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

5. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

6. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in his suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.

7. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

(Description of the mortgaged property).]

¹[No. 7B

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE
FOR FORECLOSURE IS PASSED

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(Title)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of the mortgage-security together with interest thereon, and the sum of Rs. for the costs of the suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the..... day of or any later date up to which time for payment may be extended by the Court the said sum of Rs.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such cost of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff, or to such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims, and free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree that the plaintiff shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the defendant quiet and peaceable possession of the said property; and that the parties shall be at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 7C

PRELIMINARY DECREE FOR REDEMPTION WHERE ON DEFAULT OF PAYMENT BY MORTGAGOR A DECREE
FOR SALE IS PASSED

(Order XXXIV, rule 7.—Where the Court declares the amount due.)

(Title)

This suit coming on this day, etc.; It is hereby declared that the amount due to the defendant on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by the defendant in respect of mortgage-security together with interest thereon, and the sum of Rs. for the cost of this suit awarded to the defendant, making in all the sum of Rs.

2. And it is hereby ordered and decreed as follows:—

(i) that the plaintiff do pay into Court on or before the day of or any later date up to which time for payment may be extended by the Court the said sum of Rs. ;

1. Subs. by Act 21 of 1929, s. 8 and Sch., for Forms 3 to 11.

(ii) that, on such payment and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the defendant shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the plaintiff or such person as he appoints, and the defendant shall, if so required, re-convey or re-transfer the said property to the plaintiff free from the said mortgage and clear of and from all incumbrances created by the defendant or any person claiming under him or any person under whom he claims and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property.

3. And it is hereby further ordered and decreed that, in default of payment as aforesaid, the defendant may apply to the Court for a final decree for the sale of the mortgaged property; and on such application being made, the mortgaged property or a sufficient part thereof shall be directed to be sold; and for the purposes of such sale the defendant shall produce before the Court or such officer as it appoints all documents in his possession or power relating to the mortgaged property.

4. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under this decree and under any further orders that may be passed in this suit and in payment of any amount which the Court may adjudge due to the defendant in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to the same.

5. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for the payment in full of the amount payable to the defendant as aforesaid, the defendant shall be at liberty (where such remedy is open to him under the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against the plaintiff for the amount of the balance; and that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 7D

FINAL DECREE FOR FORECLOSURE IN A REDEMPTION SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR (Order XXXIV, rule 8.)

(Title)

Upon reading the preliminary decree in this suit on the day of and further order (if any) dated the day of , and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment as directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage.

It is hereby ordered and decreed that the plaintiff and all persons claiming through or under him be and they are hereby absolutely debarred and foreclosed of and from all right of redemption of and in the property in the aforesaid preliminary decree mentioned *[and (if the plaintiff be in possession of the said mortgaged property) that the plaintiff shall deliver to the defendant quit and peaceable possession of the said mortgaged property].

2. And it is hereby further declared that the whole of the liability whatsoever of the plaintiff up to this day arising from the said mortgage mentioned in the plaint or from this suit is hereby discharge and extinguished.

1. Subs. by Act 21 of 1929, s. 8 and Sch., for Forms 3 to 11.

* Words not required to be deleted.

¹[No. 7E

FINAL DECREE FOR SALE IN A REDEMPTION ON SUIT ON DEFAULT OF PAYMENT BY MORTGAGOR

(Order XXXIV, rule 8)

(Title)

Upon reading the preliminary decree in this suit on the day of and further order (if any) dated the day of , and the application of the defendant dated the day of for a final decree and after hearing the parties, and it appearing that the payment directed by the said decree and orders has not been made by the plaintiff or any person on his behalf or any other person entitled to redeem the mortgage;

It is hereby ordered and decreed that the mortgaged property in the aforesaid preliminary decree mentioned or a sufficient part thereof be sold and that for the purposes of such sale the defendant shall produce before the Court, or such officer as it appoints, all documents in his possession or power relating to the mortgaged property.

2. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and shall be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the defendant under the aforesaid preliminary decree and under any further orders that may have been passed in this suit and in payment of any amount which the Court may have adjudged due to the defendant for such costs of this suit including the costs of this application and such costs, charges and expenses as may be payable under rule 10, together with the subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to the plaintiff or other persons entitled to receive the same.]

¹[No. 7F

FINAL DECREE IN A SUIT FOR FORECLOSURE, SALE OR REDEMPTION WHERE THE MORTGAGOR PAYS THE AMOUNT OF THE DECREE

(Order XXXIV, rule 3, 5 and 8)

(Title)

This suit coming on this day for further consideration and it appearing that on the day of the mortgagor or , the same being a person entitled to redeem, has paid into Court all amounts due to the mortgagee under the preliminary decree dated the day of ; It is hereby ordered and decreed that:—

(i) the mortgagee do execute a deed of re-conveyance of the property in the aforesaid preliminary decree mentioned in favour of the mortgagor *[or, as the case may be, who has redeemed the property] or an acknowledgement of the payment of the amount due in his favour;

(ii) the mortgagee do bring into Court all documents in his possession and power relating to the mortgaged property in the suit.

2. And it is hereby further ordered and decreed that upon the mortgagee executing the deed of re-conveyance or acknowledgement in the manner aforesaid,—

(i) the said sum of Rs. be paid out of Court to the mortgagee;

(ii) the said deeds and documents brought into the Court be delivered out of Court to the mortgagor *[or the person making the payment] and the mortgagee do, when so required, concur in registering, at the cost of the mortgagor *[or other person making the payment], the said deed of re-conveyance or the acknowledgement in the office of the Sub-Registrar of; and

(iii) *[if the mortgagee, plaintiff or defendant, as the case may be, is in possession of the mortgaged property] that the mortgagee do forthwith deliver possession of the mortgaged property in the aforesaid

1. Subs. by Act 21 of 1929, s. 8 and Sch., for Forms 3 to 11.

* Words not required to be deleted.

preliminary decree mentioned to the mortgagor *[or such person as aforesaid who has made the payment].

¹[No. 8

DECREE AGAINST MORTGAGOR PERSONALLY FOR BALANCE AFTER THE SALE OF THE MORTGAGED
PROPERTY

(Order XXXIV, rules 6 and 8A)

(Title)

Upon reading the application of the mortgagee (the plaintiff or defendant, as the case may be) and reading the final decree passed in the suit on the day of and the Court being satisfied that the net proceeds of the sale held under the aforesaid final decree amounted to Rs. and have been paid to the applicant out of the Court on the day of and that the balance now due to him under the aforesaid decree is Rs. ;

And whereas it appears to the Court that the said sum is legally recoverable from the mortgagor (plaintiff or defendant, as the case may be) personally;

It is hereby ordered and decreed as follows:—

That the mortgagor (plaintiff or defendant, as the case may be) do pay to the mortgagee (defendant or plaintiff, as the case may be) the said sum of Rs. with further interest at the rate of six per cent. per annum from the day of (the date of payment out of Court referred to above) up to the date of realisation of the said sum, and the costs of this application.]

¹[No. 9

PRELIMINARY DECREE FOR FORECLOSURE OF SALE

[Plaintiff 1st Mortgagee,

vs

Defendant No. 1 Mortgagor,

Defendant No. 2 2nd Mortgagee.]

(Order XXXIV, rules 2 and 4)

(Title)

The suit coming on this day, etc; It is hereby declared that the amount due to the plaintiff on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) incurred by the plaintiff in respect of the mortgage-security with interest thereon and sum of Rs. for the costs of this suit awarded to the plaintiff, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due to defendant No. 2 in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that the plaintiff is entitled to payment of the amount due to him in priority to defendant No. 2 *[or (if there are several subsequent mortgagees) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively:—].

3. And it is hereby ordered and decreed as follows:—

(i) (a) that defendants or one of them do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

1. Subs. by Act 21 of 1929, s. 8 and Sch., for Forms 3 to 11.

* Words not required to be deleted.

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to defendant No. 2; and

(ii) that, on payment of the sum declared to be due to the plaintiff by defendants or either of them in the manner prescribed in clause (i) (a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, the plaintiff shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned, and all such documents shall be delivered over to the defendant No. (who has made the payment), or to such person as he appoints, and the plaintiff shall, if so required, re-convey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by the plaintiff or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the defendant No. (who has made the payment) quiet and peaceable possession of the said property.

(Similar declarations to be introduced, if defendant No. 1 pays the amount found or declared to be due to defendant No. 2 with such variations as may be necessary having regard to the nature of his mortgage).

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid of the amount due to the plaintiff, the plaintiff shall be at liberty to apply to the Court for a final decree—

(i) **[in the case of a mortgage by conditional sale or an anomalous mortgage where the only remedy provided for in the mortgage-deed is foreclosure and not sale]* that the defendants jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver to the plaintiff quiet and peaceable possession of the said property; or

(ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale the plaintiff shall produce before Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property; and

(iii) **[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) in payment of the amount payable to the plaintiff under this decree and under any further orders that may have been passed in this suit and in payment of the amount which the Court may adjudge due to the plaintiff in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that if any balance be left, it shall be paid to the defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2 or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

* Words not required to be deleted.

5. And it is hereby further ordered and decreed—

(a) that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in the payment of the said amount, defendant No. 2 shall

*[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to defendant No. 2 quiet and peaceable possession of the said property;] or

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by defendant No. 2 in respect of the plaintiff's mortgage and the costs of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to defendant No. 2 in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of this suit and such costs, charges and expenses as may be payable to defendant No. 2 under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same: and

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Description of the mortgaged property

PRELIMINARY DECREE FOR REDEMPTION OF PRIOR MORTGAGE AND FORECLOSURE OR SALE ON
SUBSEQUENT MORTGAGE

(Order XXXIV, rules 2, 4, and 7)

* Words not required to be deleted.

(Title)

The suit coming on this day, etc.; It is hereby declared that the amount due to defendant No. 2 on the mortgage mentioned in the plaint calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) properly incurred by defendant No. 2 in respect of the mortgage-security with interest thereon and the sum of Rs. for the costs of this suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 1 to the plaintiff in respect of his mortgage if the mortgage-money due thereunder has become payable at the date of the suit.)

2. It is further declared that defendant No. 2 is entitled to payment of the amount due to him in priority to the plaintiff *[or (if there are several subsequent mortgages) that the several parties hereto are entitled in the following order to the payment of the sums due to them respectively :—]

3. And it is hereby ordered and decreed as follows:—

(i) (a) that the plaintiff or defendant No. 1 or one of them do pay into Court on or before the day of or any later date up to which time for payment has extended by the Court the said sum of Rs. due to defendant No. 2; and

(b) that defendant No. 1 do pay into Court on or before the day of or any later date up to which time for payment has been extended by the Court the said sum of Rs. due to the plaintiff; and

(ii) that, on payment of the sum declared due to defendant No. 2 by the plaintiff defendant No 1 or either of them in the manner prescribed in clause (i)(a) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, defendant No. 2 shall bring into Court all documents in his possession or power relating to the mortgaged property in the plaint mentioned and all such documents shall be delivered over to the plaintiff or defendant No. 1 (whoever made the payment), or to such person as he appoints, and defendant No. 2 shall, if so required, reconvey or re-transfer the said property free from the said mortgage and clear of and from all incumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and also free from all liability whatsoever arising from the mortgage or this suit and shall, if so required, deliver up to the plaintiff or defendant No. 1 (whoever has made the payment) quiet and peaceable possession of the said property.

(Similar declarations) to be introduced, if defendant No. 1 pays the amount found or declared due the plaintiff with such variations as may be necessary having regard to the nature of his mortgage.)

4. And it is hereby further ordered and decreed that, in default of payment as aforesaid, of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court that the suit be dismissed or a final decree—

(i) *[in the case of a mortgage by conditional sale or an anomalous mortgage where the or remedy provided for in the mortgage-deed is foreclosure and not sale] that the plaintiff and defendant No. 1 jointly and severally shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall; if required, deliver to the defendant No. 2 quiet and peaceable possession of the said property; or

* Words not required to be deleted.

(ii) **[in the case of any other mortgage]* that the mortgaged property or a sufficient part thereof shall be sold; and that for the purposes of such sale defendant No. 2 shall produce before the Court such officer as it appoints, all documents in his possession or power relating to the mortgaged property and

(iii) **[in the case where a sale is ordered under clause 4 (ii) above]* that the money realised such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of sale) in payment of the amount payable to defendant No. 2 under the decree and any further orders that may be passed in this suit and in payment of the amount which the Court may adjudge due to defendant No. 2 in respect of such costs of the suit and such costs, charges and expenses as may be payable to plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall applied in payment of the amount due to the plaintiff and that, if any balance be left, it shall be paid defendant No. 1 or other persons entitled to receive the same; and

(iv) that, if the money realised by such sale shall not be sufficient for payment in full of the amounts due to defendant No. 2 and the plaintiff, defendant No. 2 or the plaintiff or both of them, as the case may be, shall be at liberty (when such remedy is open under the terms of their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amounts remaining due to them respectively.

5. And it is hereby further ordered and decreed,—

(a) that, if the plaintiff pays into Court to the credit of this suit the amount adjudged due to defendant No. 2 but defendant No. 1 makes default in the payment of the said amount, the plaintiff shall be at liberty to apply to the Court to keep defendant No. 2's mortgage alive for his benefit and to apply for final decree *(in the same manner as the defendant No. 2 might have done under clause 4 above)*—

**[(i) that defendant No. 1 shall thenceforth stand absolutely debarred and foreclosed of and from all right to redeem the mortgaged property described in the Schedule annexed hereto and shall, if so required, deliver up to the plaintiff quiet and peaceable possession of the said property];*
or

**[(ii) that the mortgaged property or a sufficient part thereof be sold and that for the purposes of such sale the plaintiff shall produce before the Court or such officer as it appoints, all documents in his possession or power relating to the mortgaged property;]* and

(b) (if on the application of defendant No. 2 such a final decree for foreclosure is passed), that the whole of the liability of defendant No. 1 arising from the plaintiff's mortgage or from the mortgage of defendant No. 2 or from this suit shall be deemed to have been discharged and extinguished.

6. And it is hereby further ordered and decreed *(in the case where a sale is ordered under clause 5 above)*—

(i) that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount paid by the plaintiff in respect of defendant No. 2's mortgage and the cost of the suit in connection therewith and in payment of the amount which the Court may adjudge due in respect of subsequent interest on the said amount; and that the balance, if any, shall then be applied in payment of the amount adjudged due to the plaintiff in respect of his own mortgage under this decree and any further orders that may be passed and in payment of the amount which the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable to the plaintiff under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be paid to defendant No. 1 or other persons entitled to receive the same; and

* Words not required to be deleted

(ii) that, if the money realised by such sale shall not be sufficient for payment in full of the amount due in respect of defendant No. 2's mortgage or the plaintiff's mortgage, defendant No. 2 shall be at

liberty (where such remedy is open to him under the terms of his mortgage and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 1 for the amount of the balance.

7. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court from time to time as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule

Description of the mortgaged property]

¹[No. 11

PRELIMINARY DECREE FOR SALE

Plaintiff	Sub or derivative mortgagee
	vs.	
[Defendant No. 1	Mortgagor,
Defendant No. 2	Original Mortgagee.]

(Order XXXIV, rule 4)

(Title)

This suit coming on the day, etc.; It is hereby declared that the amount due to defendant No. 2 on his mortgage calculated up to this day of is the sum of Rs. for principal, the sum of Rs. for interest on the said principal, the sum of Rs. for costs, charges and expenses (other than the costs of the suit) in respect of the mortgage-security together with interest thereon and the sum of Rs. for the costs of the suit awarded to defendant No. 2, making in all the sum of Rs.

(Similar declarations to be introduced with regard to the amount due from defendant No. 2 to the plaintiff in respect of his mortgage.)

2. And it is hereby ordered and decreed as follows:—

(i) that defendant No. 1 do pay into Court on or before the said day of or any later date of up to which time for payment may be extended by the Court the said sum of Rs. due to defendant No. 2;

(Similar declarations to be introduced with regard to the amount due to the plaintiff, defendant No. 2 being at liberty to pay such amount.)

(ii) that, on payment of the sum declared due to defendant No. 2 by defendant No. 1 in the manner prescribed in clause 2 (i) and on payment thereafter before such date as the Court may fix of such amount as the Court may adjudge due in respect of such costs of the suit and such costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908 the plaintiff and defendant No. 2 shall bring into Court all documents in their possession or power relating to the mortgaged property in the plaint mentioned, and all such documents (except such as relate only to the sub-mortgage) shall be delivered over to defendant No. 1, or to such person as he appoints, and defendant No. 2 shall, if so required, re-convey or re-transfer the property to defendant No. 1 free from the said mortgage clear of and from all encumbrances created by defendant No. 2 or any person claiming under him or any person under whom he claims, and free from all liability arising from the mortgage or this suit and shall, if so required, deliver up to defendant No. 1 quiet and peaceable possession of the said property; and

1. Subs. by Act 21 of 1929, s. 8 and Schedule, for Forms 3 to 11.

* Words not required to be deleted.

(iii) that, upon payment into the Court by defendant No. 1 of the amount due to defendant No. 2 the plaintiff shall be at liberty to apply for payment to him of the sum declared due to him together with any subsequent costs of the suit and other costs, charges and expenses, as may be payable under rule 10, together with such subsequent interests as may be payable under rule 11, of Order XXXIV of the First Schedule to the Code of Civil Procedure, 1908; and that the balance, if any, shall then be paid to defendant No. 2; and that if the amount paid into the Court be not sufficient to pay in full the sum due to the plaintiff, the plaintiff shall be at liberty (if such remedy is open to him by the terms of the mortgage and is not barred by any law for the time being in force) to apply for a personal decree against as defendant No. 2 for the amount of the balance.

3. And it is further ordered and decreed that if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, the plaintiff shall bring into the Court all documents, etc., [as in sub-clause (ii) of clause 2].

4. And it is hereby further ordered and decreed that, in default of payment by defendant Nos. 1 and 2 as aforesaid, the plaintiff may apply to the Court for a final decree for sale, and on such application being made the mortgaged property or a sufficient part thereof shall be directed to be sold; and that for the purposes of such sale the plaintiff and defendant No. 2 shall produce before the Court or such officer as it appoints, all documents in their possession or power relating to the mortgaged property.

5. And it is hereby further ordered and decreed that the money realised by such sale shall be paid into Court and be duly applied (after deduction therefrom of the expenses of the sale) first in payment of the amount due to the plaintiff as specified in clause 1 above with such costs of the suit and other costs, charges and expenses as may be payable under rule 10, together with such subsequent interest as may be payable under rule 11, of order) XXXIV of the First Schedule to the Code of Civil Procedure, 1908, and that the balance, if any, shall be applied in payment of the amount due to defendant No. 2; and that, if any balance be left, it shall be paid to defendant No. 1 or other persons entitled to receive the same.

6. And it is hereby further ordered and decreed that, if the money realised by such sale shall not be sufficient for payment in full of the amounts payable to the plaintiff and defendant No. 2, the plaintiff or defendant No. 2, or both of them, as the case may be, shall be at liberty (if such remedy is open under their respective mortgages and is not barred by any law for the time being in force) to apply for a personal decree against defendant No. 2 or defendant No. 1 (as the case may be) for the amount of the balance.

7. And it is hereby further ordered and decreed that, if defendant No. 2 pays into Court to the credit of this suit the amount adjudged due to the plaintiff, but defendant No. 1 makes default in payment of the amount due to defendant No. 2, defendant No. 2 shall be at liberty to apply to the Court for a final decree for foreclosure or sale (as the case may be)—(*declarations in the ordinary form to be introduced according to the nature of defendant No. 2's mortgage and the remedies open to him thereunder*).

8. And it is hereby further ordered and decreed that the parties are at liberty to apply to the Court as they may have occasion, and on such application or otherwise the Court may give such directions as it thinks fit.

Schedule
Description of the mortgaged property]
No. 12
DECREE FOR RECTIFICATION OF INSTRUMENT
(Title)

IT is hereby declared that , dated the day of 20 , does not truly express the intention of the parties to such

And it is decreed that the said be rectified by

Here insert name of proper officer.

No. 13

DECREE TO SET ASIDE A TRANSFER IN FRAUD OF CREDITORS

(Title)

IT is hereby declared that the , dated the day of 20 , and made between and , is void as against the plaintiff and all other the creditors, if any, of the defendant

No. 14

INJUNCTION AGAINST PRIVATE NUISANCE

(Title)

LET the defendant , his agents, servants and workmen, be perpetually restrained from burning, or causing to be burnt, any bricks on the defendant's plot of land marked B in the annexed plan, so as to occasion a nuisance to the plaintiff as the owner or occupier of the dwelling-house and garden mentioned in the plaint as belonging to and being occupied by the plaintiff.

No. 15

INJUNCTION AGAINST BUILDING HIGHER THAN OLD LEVEL

(Title)

LET the defendant , his contractors, agents and workmen, be perpetually restrained from continuing to erect upon his premises any house or building of a greater height than the buildings which formerly stood upon his said premises and which have been recently pulled down, so or in such manner as to darken, injure or obstruct such of the plaintiff's windows in his said premises as are ancient lights.

No.16

INJUNCTION RESTRAINING USE OF PRIVATE ROAD

(Title)

LET the defendant his agents, servants and workmen, be perpetually restrained from using or permitting to be used and part of the lane at , the soil of which belongs to the plaintiff, as a carriage-way for the passage of carts, carriages or other vehicles, either going to or from the land marked B in the annexed plan or for any purpose whatsoever.

No. 17

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT

(Title)

IT is ordered that the following accounts and inquiries be taken and made; that is to say :—

In creditor's suit—

1. That an account be taken of what is due to the plaintiff and all other the creditors of the deceased.

In suits by legatees—

2. That an accounts be taken of the legacies given by the testators will,

In suits by next-of-kin—

3. That an inquiry be made and account taken of what or of what share, if any, the plaintiff is entitled to as next-of-kin [*or one of the next-of-kin*] of the intestate.

[After the first paragraph, the decree will, where necessary, order, in a creditor's suit, inquiry and accounts for legatees, heirs-at-law and next-of-kin. In suits by claimants other than creditors, after the first paragraph, in all cases, an order to inquire and take an account of creditors will follow the first paragraph and such of the others as may be necessary will follow, omitting the first formal words. The form is continued as in a creditor's suit.]

4. An account of the funeral and testamentary expenses.
5. An account of the movable property of the deceased come to the hands of the defendant, or to the hands of any other person by his order or for his use.
6. An inquiry what part (if any) of the movable property of the deceased is outstanding and undisposed of.
7. And it is further ordered that the defendant do, on or before the day of next, pay into, Court all sums of money which shall be found to have come to his hands, or to the hands of any person by his order or for his use.
8. And that if the * shall find it necessary for carrying out the objects of the suit to sell any part of the movable property of the deceased that the same be sold accordingly, and the proceeds paid into Court.
9. And that Mr. E. F. be receiver in the suit (*or* proceeding) and receive and get in all outstanding debts and outstanding movable property of the deceased, and pay the same into the hands of the *(and shall give security by bond for the due performance of his duties to the amount of rupees).
10. And it is further ordered that if the movable property of the deceased be found insufficient for carrying out the objects of the suit, then the following further inquiries be made, and accounts taken, that is to say—
 - (a) an inquiry what immovable property the deceased was seized of or entitled to at the time of his death;
 - (b) an inquiry what are the encumbrances (if any) affecting the immovable property of the deceased or any part thereof;
 - (c) an account, so far as possible, of what is due to the several incumbrancers, and to include a statement of the priorities of such of the incumbrancers as shall consent to the sale hereinafter directed.
11. And that the immovable property of the deceased, or so much thereof as shall be necessary to make up the fund in Court sufficient to carry out the object of the suit, be sold with the approbation of the Judge, free from incumbrances (if any) of such incumbrancers as shall consent to the sale and subject to the incumbrances of such of them as shall not consent.
12. And it is ordered that G. H. shall have the conduct of the sale of the immovable property, and shall prepare the conditions and contracts of sale subject to the approval of the * and that in case any doubt or difficulty shall arise the papers shall be submitted to the Judge to settle.
13. And it is further ordered that, for the purpose of the inquiries hereinbefore directed, the *shall advertise in the newspapers according to the practice of the Court, or shall make such inquiries in any other way which shall appear to the *to give the most useful publicity to such inquiries.
14. And it is ordered that the above inquiries and accounts be made and taken, and that all other acts ordered to be done be completed, before the day of and that the* do certify the result of the inquiries, and the accounts, and that all other acts ordered are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of

* Here insert name of proper officer.

15. And, lastly, it is ordered that this suit [or proceedings] stand adjourned for making final decree to the day of

[Such part only of this decree is to be used as is applicable to the particular case.]

No. 18

FINAL DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE

(Title)

1. It is ordered that the defendant do, on or before the day of pay into Court the sum of Rs., the balance by the said certificate found to be due from the said defendant on account of the estate of , the testator and also the sum of Rs. for interest, at the rate of Rs. per cent. per annum, from the day of to the day of, amounting together to the sum of Rs.

2. Let the* of the said Court tax the costs of the plaintiff and defendant in this suit, and let the amount of the said costs, when so taxed, be paid out of the said sum of Rs. ordered to be paid into Court as aforesaid, as follows:—

(a) The costs of the plaintiff to Mr., his attorney [or pleader] or and the costs of the defendant to Mr., his attorney [or pleader].

(b) And (*if any debts are due*) with the residue of the said sum of Rs. after payment of the plaintiff's and defendant's costs as aforesaid let the sums, found to be owing to the several creditors mentioned in the schedule to the certificate, of the *, together with subsequent interest on such of the debts as bear interest, be paid; and, after making such payments, let the amount coming to the several legatees mentioned in the schedule, together with subsequent interest (to be verified as aforesaid), be paid to them.

3. And if there should then be any residue, let the same be paid to the residuary legatee.

No. 19

PRELIMINARY DECREE IN AN ADMINISTRATION-SUIT BY A LEGATEE, WHERE AN EXECUTOR IS HELD PERSONALLY LIABLE FOR THE PAYMENT OF LEGACIES

(Title)

1. It is declared that the defendant is personally liable to pay the legacy of Rs. bequeathed to the plaintiff. —

2. And it is ordered that an account be taken of what is due for principal and interest on the said legacy.

3. And it is also ordered that the defendant do, within weeks after the date of the certificate of the *, pay to the plaintiff the amount of what the * shall certify to be due for principal and interest.

4. And it is ordered that the defendant do pay the plaintiff his costs of suit, the same to be taxed in case the parties differ.

* Here insert name of proper officer.

No. 20

FINAL DECREE IN AN ADMINISTRATION-SUIT BY NEXT OF KIN

(Title)

1. LET the * of the said Court tax the costs of the “plaintiff and defendant in this suit, and let the amount of the said plaintiff’s costs, when so taxed, be paid by the defendant to the plaintiff out of the sum of Rs. , the balance, by the said certificate found to be due from the said defendant on account of the personal estate of E.F., the *intestate*, within one week after the taxation of the said costs by the said *and let the defendant retain for her own use out of such sum her costs, when taxed.

2. And it is ordered that the residue of the said sum of Rs. after payment of the plaintiff’s and defendant’s costs as aforesaid, be paid and applied by defendant as follows:—

(a) Let the defendant, within one week after the taxation of the said costs by the * as aforesaid, pay one-third share of the said residue to the plaintiffs A.B., and C.D., his wife, in her right as the sister and one of the next-of-kin of the said E.F., the *intestate*.

(b) Let the defendant retain for her own use one other third share of said residue, as the mother and one of the next-of-kin of the said E.F., the *intestate*.

(c) And let the defendant, within one week after the taxation of the said costs by the * as aforesaid, pay the remaining one-third share of the said residue to G. H., as the brother and the other next- of-kin of the said E.F. the *intestate*.

No. 21

PRELIMINARY DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNTS

(Title)

It is declared that the proportionate shares of the parties in the partnership are as follows:—

It is declared that this partnership shall stand dissolved [or shall be deemed to have been dissolved] as from the day of and it is ordered that the dissolution thereof as from that day be advertised in the Gazette, etc.

And it is ordered that be the receiver of the partnership-estate and effects in this suit and do get in all the outstanding book-debts and claims of the partnership.

And it is ordered that the following accounts be taken:—

1. An account of the credits, property and effects now belonging to the said partnership;
2. An account of the debts and liabilities of the said partnership;
3. An account of all dealings and transactions between the plaintiff and defendant, from the foot of the settled account exhibited in this suit and marked (A), and not disturbing any subsequent settled accounts.

And it is ordered that the goodwill of the business heretofore carried on by the plaintiff and defendant as in the plaint mentioned; and the stock-in-trade, be sold on the premises, and that the *may, on the application of any of the parties, fix a reserved bidding for all or any of the lots at such sale, and that either of the parties is to be at liberty to bid at the sale.

And it is ordered that the above accounts be taken, and all the other acts required to be done be completed, before the day of , and that the * do certify the result of the accounts, and that all other acts are completed, and have his certificate in that behalf ready for the inspection of the parties on the day of And, lastly, it is ordered that this suit stand adjourned for making a final decree to the day of

* Here insert name of proper officer.

No. 22

FINAL DECREE IN A SUIT FOR DISSOLUTION OF PARTNERSHIP AND THE TAKING OF PARTNERSHIP ACCOUNT

(Title)

IT is ordered that the fund now in Court, amounting to the sum of Rs. , be applied as follows:—

1. In payment of the debts due by the partnership set forth in the certificate of the * amounting the whole to Rs.

2. In payment of the costs of all parties in this suit, amounting to Rs. [*These costs must be ascertained before the decree is drawn up.*]

3. In payment of the sum of Rs. to the plaintiff as his share of the partnership-assets, of the sum of Rs. , being the residue of the said sum of Rs. now in Court, to the defendant as his share of the partnership-assets.

[Or, And that the remainder of the said sum of Rs. be paid to the said plaintiff (or defendant) in part payment of the sum of Rs. certified to be due to him in respect of the partnership-accounts.]

4. And that the defendant [or plaintiff] do on or before the day of pay to the plaintiff [or defendant] the sum of Rs. being the balance of the said sum of Rs. due to him, which will then remain due.

No. 23

DECREE FOR RECOVERY OF LAND AND MESNE PROFIT

(Title)

IT is hereby decreed as follows:—

1. That the defendant do put the plaintiff in possession of the property specified in the schedule hereunto annexed.

2. That the defendant do pay to the plaintiff the sum of Rs. with interest thereon at the rate of per cent. per annum to the date of realization on account of mesne profits which have accrued due prior to the institution of the suit.

Or

2. That an inquiry be made as to the account of mesne profits which have accrued due prior to the institution of the suit.

3. That an inquiry be made as to the amount mesne profits from the institution of the suit until [the delivery of possession to the decree-holder] [the relinquishment of possession by the judgment-debtor with notice to the decree-holder through the Court] [the expiration of three years from the date of the decree].

Schedule

* Here insert name of proper officer.