

1934

*Present : Macdonell C.J. and Driberg J.*NEIYAPPA CHETTIAR *v.* SEYADU LEBBE *et al.*23—*D. C. Kandy, 43,236.*

*Money Lending Ordinance—Action on mortgage bond—Application for relief after decree—Power of Court—Ordinance No. 2 of 1918, s. 2 (1).*

The power given to a Court to re-open a transaction under section 2 (1) of the Money Lending Ordinance cannot be exercised after decree in the action.

**A** PPEAL from an order of the District Judge of Kandy.

*H. V. Perera*, for first defendant, appellant.

*Weerasooria*, for respondent.

July 31, 1934. MACDONELL C.J.—

This is an application for relief under section 2 (1) of the Money Lending Ordinance, No. 2 of 1918. The outline of the case was this. The plaintiff having from the defendants a mortgage bond put the same in suit on December 13, 1932. Summons was served on the first defendant, who is the present appellant, on January 30, 1933. He then obtained time to file proxy and answer on February 17. He obtained various extensions of time for the filing of proxy and answer, and the reason he gave for not filing answer was that no summons had been yet served on the second defendant and that he wanted to make a joint defence with the second defendant, but it appeared later that the

second defendant professed to have interest adverse to his. Eventually on August 14, 1933, when proxy and answer were due, his proctor appeared in Court and said he had no instructions. The case was then fixed for *ex parte* hearing and on September 7, 1933, the plaintiff obtained decree absolute. Then on October 6, 1933, the first defendant, the present appellant, moved for an accounting under the Money Lending Ordinance, No. 2 of 1918. The matter coming on before the learned Judge he refused the petition in a considered judgment of December 14, 1933. The section sought to be invoked, 2 (1) of Ordinance No. 2 of 1918, states that where proceedings are taken in any Court for the recovery of any money lent, and there is evidence which satisfies the Court of the existence of one or more of the mischiefs set out in sub-sections (a), (b), and (c), then the Court may "re-open a transaction", and take an accounting between the lender and the person sued. The section also gives certain powers consequential thereto. But the scope of the section clearly seems to refer to a stage in the action before the decree has been obtained. It gives the Court power after action is brought to re-open the transaction but there does not seem to be anything in the section to give the Court power to re-open a decree which it has made in a mortgage bond suit or on any other claim for money lent. In the absence of any such power given by the section the District Court had no power to interfere with its own decree. This is an appeal from a refusal of the District Court to interfere with its own decree, and it is sufficient to say that that refusal was right, and if so, this appeal must be dismissed with costs.

DRIEBERG J.—I agree.

*Appeal dismissed.*

