

without the leave of the Judge in Chambers. Liberty to the Advocate General to apply to the lower Court as to a scheme.

Attorneys for appellants: *Messrs. Tyabji, Dayabhai & Co.*

Attorneys for respondents: *Messrs. Ardeshir, Hormasji, Dinsha & Co. and Messrs. Tyabji, Dayabhai & Co.*

W. L. W.

1905.

MOOSA HAJI
JOONAS
v.
HAJI ABDUL
RAHIM.

ORIGINAL CIVIL.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Batty.*

BHAGWANDAS NAROTAMDAS (DEFENDANT), APPELLANT, v. KANJI DEOJI AND ANOTHER (PLAINTIFFS), RESPONDENTS.*

1905.

July 21.

Contract—Pakki Adat—Incidents of the custom—Employment for reward.

The plaintiffs in Bombay bought and sold in Bombay cotton and other products on the orders of the defendant who traded at Shahada in Khândesh. In respect of the transactions sued on the plaintiffs before due date had entered into cross contracts of purchase with the merchants to whom they had originally sold goods on the defendant's account. The transactions were entered into on *pakki adat* terms.

The contract of a *pakka adatia* in the circumstances of this case is one whereby he undertakes or guarantees that delivery should, on due date, be given or taken at the price at which the order was accepted or differences paid: in effect he undertakes or guarantees to find goods for cash or cash for goods or to pay the difference.

The evidence in the case establishes the following propositions in connection with *pakki adat* dealings.

1. That the *pakka adatia* has no authority to pledge the credit of the up-country constituent to the Bombay merchant and that no contractual privity is established between the up-country constituent and the Bombay merchant.

2. That the up-country constituent has no indefeasible right to the contract (if any) made by the *pakka adatia* on receipt of the order, but the *pakka adatia* may enter into cross contracts with the Bombay merchant either on his own account or on account of another constituent, and thereby for practical purposes cancel the same.

3. The *pakka adatia* is under no obligation to substitute a fresh contract to meet the order of his first constituent.

Held, that the defendant knew of the custom, which was not unreasonable as it did not involve a conflict between the *pakka adatia's* interest and duty.

* Appeal No. 1388: Suit 544 of 1904.

1905.

BHAGWANDAS
v.
KANJI.

APPEAL from Chandavarkar, J.

The facts of this case found by the Court below were as follows:—

The plaintiffs, trading in Bombay under the name and style of Deoji Vassonji and Co., alleged in their plaint that for two years before suit they acted as the commission agents of the defendant, Bhagwandas Narotamdas, who traded at Shaháda in the Khándesh district under the name and style of Manecklal Jagjivandas; that, as such agents, they from time to time under his instructions entered into contracts in Bombay for the sale or purchase of cotton, rice, or other produce; that they also paid and received moneys on his behalf, honoured and paid hundis drawn by him and otherwise acted as his agents. The plaintiffs further alleged that in respect of their dealings and transactions on the defendant's behalf and as his agents in Samvat 1960, a sum of Rs. 7,217-10-3 had become due to them from the defendant, inclusive of interest up to the date of the filing of this suit; that before filing the suit they sent an account to the defendant on the 31st of March 1904, showing a balance of Rs. 7,228-9-3 due from him, but that he denied his liability in respect of a sum of Rs. 8,473-5-6 debited to him for damages paid for 400 bales of Broach-ginned cotton sold on his account, of which he had failed to give delivery. The plaintiffs aver that this amount was rightly debited in the account and ask for a decree for Rs. 7,217-10-3 with further reliefs mentioned in the plaint.

The defence was that the plaintiffs had wrongly debited the sum of Rs. 8,473-5-6 in their account.

The whole suit was fought out at the trial in respect of that sum, the history of which, according to the undisputed facts of the case, is as follows:—

On the 15th of December 1903, the plaintiffs, who acted as the defendant's *pakka adatias*, received instructions from him to sell 400 bales of Broach machine-ginned cotton, good class, for forward delivery, 25th March 1904.

Accordingly, the plaintiffs entered into four contracts of 100 bales each as follows:—

(1) On the 15th of December 1903, one contract with Shamji Ladha for the sale of 100 bales, at Rs. 257-8-0 (Ex. A2).

(2) On the 15th of December 1903, two contracts with Bhimji Shamji, each for the sale of 100 bales, at Rs. 257-12-0 (Exs. A1 & A3).

(3) On the 16th of December 1903, one contract with Dharamsey Jetha for the sale of 100 bales at Rs. 257-8-0 (Ex. A4).

All these contracts were entered in the plaintiffs' *Soda* diary book, and the entries relating to them have been put in. Below the said entries occurs the following entry:—

"400: Credited to the account of Maneklal Jagjivan Broach cotton, 400 bales; 200 at the rate of Rs. 257-8-0, 200 at the rate of Rs. 257-12-0."

On the 16th of December 1903 the plaintiffs sent the following telegram (Ex. D) to the defendant:—

"Received two telegrams. Sold 400 bales Broach 257-10. Market steady."

The rate mentioned in this telegram differed from the rate of each of the contracts; but Canji Dewji, the 1st plaintiff, examined as a witness for the plaintiffs, explained that Rs. 257-10 was mentioned in the telegram because it was the average rate of all the four contracts.

The plaintiffs did not inform the defendant, however, of the names of the persons with whom they had contracted to sell.

On the 26th of January 1904, the plaintiffs entered into cross contracts with two of these persons, for the same *vaida*, and the same quality and description of cotton as follows:—

(1) Contract with Dharamsey Jetha for the purchase of 100 bales at Rs. 285-8-0.

(2) Contract with Shamji Ladha for the purchase of 100 bales at Rs. 285-8-0.

The plaintiffs entered into these two cross contracts for and on account of another constituent of theirs, *viz.* Purshotam Dharamsey: and their effect, as explained by the first plaintiff, Canji Dewji, in his deposition was that on the due date, the 25th of March 1904, there was to be no delivery of the goods but only the payment of the difference by the party that might become liable.

Then there remained the contract with Bhimji Shamji. The plaintiffs settled these by entering into cross contracts on their own account with him on the 24th March 1904 at 295. The room rate—the rate fixed by the Cotton Association—was on

1905.

BHAGWANDAS

v.
KANJI.

this date 307, but the plaintiffs settled these two contracts at 225, because, as stated by the 1st plaintiff Canji Dewji, the payment was made by them in cash. It is admitted by Canji that this cross contract was not a written one and that there is no entry as to it in the plaintiffs' books, because, it was a *cash difference transaction*. But the payment of cash difference is proved by the entry in the plaintiffs' *Journal*.

The result was that the two contracts, with Bhimji Shamji, for the sale of 200 bales, delivery on the 25th of March 1904, were squared by the plaintiffs one day before that due date, by means of the cross contract.

The cross contracts were entered into by the plaintiffs without any instructions from the defendant.

The plaintiffs contended that the defendant nevertheless continued liable on the due date—the 25th of March 1904—to deliver to them 400 bales in accordance with his instructions of the 15th of December 1903: and that as he failed to deliver he was bound to pay them the difference between the contract rates and the room rate, 307, which prevailed on the due date.

The plaintiffs based this liability of the defendant upon the *mercantile custom* which they set up as governing the *pakki adat* system in the Bombay market. The custom alleged, was to this effect. A *pakka adatia* is not, in the proper sense of the word, an agent or even a *del credere* agent. The relation between him and his up-country constituent is substantially one of principal and principal. The up-country constituent looks to him and to him only for the carrying out of his orders and the fulfilment of his contracts: there is no privity whatever, direct or indirect, between the constituent and the Bombay shroff or merchant. On the one hand, the *pakka adatia* is responsible to the constituent and *vice versa*: so, on the other, the *pakka adatia* is responsible to the Bombay shroff or merchant and *vice versa*. That being the position of the *pakka adatia*, when he has received an order from an up-country constituent to buy or sell, he can either appropriate the order to himself in the first instance, or, at his option, after having entered into a contract with a Bombay merchant in accordance with the constituent's order or instructions, he can square that contract by entering before the due date into a cross contract either on his own account or on account of another constituent. In either

case, the first constituent, dealing as he does with the *pakka adatia*, continues liable to the latter to fulfil his order and in default to pay damages.

The defendant contended that the *pakka adatia* was a *del credere* agent. He guarantees to his constituent the solvency of the Bombay shroff or merchant, and to the shroff or merchant the solvency of the constituent. He is no doubt entitled, according to the mercantile usage of the *pakki adat* system, to enter into a cross contract on behalf of a constituent after having entered into a contract on behalf and on account of another constituent and to square this latter by the cross contract; but he is bound in that case to substitute a fresh contract for the squared contract so that the constituent, for whom it was entered into, may have a contract to get performed or to perform, as the case may be, on the due date. If the *pakka adatia* squares the contract without such substitution, he cannot hold liable on the due date the constituent for whom the first contract was entered into.

The defendant contended further that in any case he was not liable, because on the 9th February 1904 he sent the following telegram from Nandurbár to the plaintiffs:—

“Buy Broach March gin 400 bales marketably profitably.”

It was conceded by the plaintiffs that the meaning of this telegram was:—

“Buy 400 bales of machine gin cotton for the March *vidda* at the best rates obtainable in the market.”

The defendant argued that the plaintiffs were bound to carry out this order and square the order of the defendant sent on the 15th of December, but that they failed to do so, and having failed they could not fall back on the original order of the defendant and hold the defendant liable.

To this the plaintiffs' answer was that:—At the time the plaintiffs received this second order (Ex. N) from the defendant, their credit in the market was weak on account of some rumours affecting their solvency. In consequence of that, people were hesitating to enter into forward contracts with them, and they could not buy as desired by the defendant because they could not get the goods. Accordingly, as soon as the plaintiffs received the telegram (Ex. N) they sent a letter (Ex. O), dated the 10th

1905.

LHAGWANDAS
v.
KANJL.

1905.

BHAGWANDAS
v.
KANJI.

February 1904, to the defendant's address at Nandurbár, whence the telegram had come, informing him of their inability to carry out his second order, and that he might instruct somebody else to carry it out. The mercantile usage prevailing as to the *pakki adat* system was that, when after a *pakka adatia* has entered into a contract under an order from his constituent, a second order is received from the same constituent to square that contract by a cross-contract before the due date, the *pakka adatia* is not bound to carry out the second order, if, owing to loss of credit or some other reasonable cause, he is not able to carry it out; and all he is bound to do is to inform the constituent of his inability so as to enable the latter to give the order to somebody else and get the contract squared.

The defendant, on the other hand, denied that a *pakka adatia* had any right to refuse to carry out the second order. But, apart from that, even assuming that the *pakka adatia* had such a right, the plaintiffs in this case did not inform him of their inability as they allege they did and that he received neither the letter of the 20th of February nor any of the others relied upon by the plaintiffs in support of their case on this question of inability. Further, that even if the Court should hold that the mercantile usage set up by the plaintiffs to be proved, he was not aware of it and did not deal nor intend to deal with the plaintiffs on its basis. Should the Court, however, hold he had been aware of the custom, the custom should be declared invalid on the ground that it was unjust and unreasonable.

The learned Judge held the custom of *pakki adat* proved and passed a decree in favour of the plaintiffs.

From this decree the defendant appealed.

Settled with *Raikes* (Acting Advocate General) for the appellant.

Strangman with *Padshah* for the respondents.

JENKINS, C. J.:—The plaintiffs carry on business in partnership at Bombay as commission agents under the style of Dewji Vassonji, and the defendant trades at Sháháda Sultánpur in the name of Manecklal Jugjiwandas. The plaintiffs have, from time to time on the defendant's order, sold and bought cotton, rice and other products, and they allege that the result of their dealings is that there is due to them from the defendant a sum of

Rs. 7,217-10-3 with interest at 9 per cent. per annum from the 2nd of August 1904. The defendant denies that there is anything due from him, and on the contrary asserts that the plaintiffs are his debtors.

The facts that have given rise to this litigation can be briefly stated. On the 15th of December 1903 the defendant telegraphed to the plaintiffs: "Sell 200 bales Broach March marketably." A similar telegram was sent on the same day directing the sale of 200 more bales. The plaintiffs thereupon sold to Bhimji Shamji & Co. 200 bales by two separate contracts at Rs. 257 $\frac{3}{4}$ per candy: they also sold 100 bales to Shamji Ludha & Co. at Rs. 257 $\frac{1}{2}$ per candy, and 100 to Dharamsi Jetha & Co. at the same price. On the same date they telegraphed to the defendant: "Received 2 telegrams, sold 400 bales Broach 257/10, market steady."

On the 16th December the plaintiffs wrote to the defendant: "Your letter and telegram have been received. Agreeably to what you wrote 400 bales of Broach (cotton) of March *várida* have been sold on your account. The particulars thereof (are as follows):—

200 bales (of) Broach ginned cotton were sold at Rs. 257 $\frac{1}{2}$.

200 bales of Broach ginned cotton were sold at Rs. 257 $\frac{3}{4}$.

"In this manner the bales have been sold on your account. Please note down the same."

On the 26th of January the plaintiffs bought from Dharamsi Jetha and Shamji Ludha 100 bales apiece, and the entry made, in respect of the purchase from Dharamsi Jetha, is as follows:—

"1,575 bales 100 weighing candies 50 were sold at the rate of Rs. 257 $\frac{1}{2}$ per candy. The same were purchased back at the rate of Rs. 289 per candy. The difference in respect of the same at the rate of Rs. 31 $\frac{1}{2}$ per candy amounts to Rs. 1,575."

An entry to the same effect was made of the purchase from Shamji Ludha. In like manner 200 bales were purchased back from Bhimji Shamji on the 24th of March 1904 at the rate of Rs. 295 per candy. According to the plaintiffs' evidence the sales of the 15th of December were thereby cancelled, and there can be no doubt that this is how the matter would be regarded by business men. It is on this ground that the defendant resists the plaintiffs' claim, for he urges that he can come under

1905.

BHAGWANDAS

v.
KANJI.

1905.

BIHAGWANDAS
v.
KANJI.

no liability in respect of his order of December, as the contracts then made were not kept open till due date : the plaintiffs' claim, it is argued, is really one of indemnity, and as the contracts of December were not kept intact, the plaintiffs have no right to the relief they seek.

Here it becomes necessary to determine what the contract was, into which the parties entered in December. It is profitless to look at the pleadings, for admittedly they give little or no clue to the rival contentions of the parties, and by common consent the case was fought in the lower Court without reference to them. The issues ultimately adopted were as follows :

(1) Whether the defendant is liable to be debited with Rupees 8,473-5 6 as plaintiffs seek to do in the account annexed to the plaint?

(2) Whether the plaintiffs were not bound to carry out defendant's instructions given in the defendant's telegram of the 9th February 1904?

(3) Whether the sum claimed in the plaint or any other and what sum is due by the defendant to the plaintiffs?

(4) Whether the defendant is entitled to a decree for his counter-claim made in paragraph 3 of his written statement?

(5) Whether the commission and the brokerage charges are properly charged to the defendant?

[Counsel subsequently intimated that there was no dispute as to this.]

(6) Whether according to the custom prevailing in the Bombay market, plaintiff is entitled to square the contracts of the Bombay merchants on his own account keeping the contract with the constituent open until the due date?

(7) Whether in the event of the *pakka adatia* entering into cross contracts with the Bombay merchant or shroff, he is obliged to forthwith substitute another contract to meet that of his first constituent?

(8) Whether in any event the *pakka adatia* is entitled to sue upon the contract with the constituent where he has a contract open at due date with either a Bombay shroff or merchant or another constituent to meet the contract of his first constituent?

(9) Whether, according to the custom alleged by the plaintiff, a *pakka adatia* is entitled to deal with his up-country constituents as if he were a principal?

(10) Whether the defendant was aware of the custom set up in issues Nos. 6, 7, 8 and 9 or of any and which of them?

(11) Whether such a custom is valid in law?

(12) The general issue.

The documentary evidence in the case taken alone points to the relation of principal and commission agent, as was held

in a similar case of *Chandulal Suklal v. Sidhruthrai*⁽¹⁾. But here we have what was absent there, a large body of evidence called to show that the relations between the parties were governed by the usage of the Bombay market known as the *pakki adat* system which, it is alleged, allowed the plaintiffs to deal with the December contracts in the way they did without prejudicing their claims against the defendant. It accordingly is necessary to examine this evidence and to see what it proves.

There are points, on which the evidence leaves no doubt; thus it is clear that the contract between the plaintiffs and the defendant was on *pakki adat* terms: then again it is amply proved that, where that is so, there is no privity between the up-country constituent and the Bombay merchant; both look to the *pakka adatia* alone. That is shown by the defendant's as well as the plaintiff's evidence. It is further established that the up-country constituent has not an indefeasible right to the contract or contracts into which the *pakka adatia* may enter on the receipt of the order to buy or sell, as the case may be. This is practically involved in Mr. Davar's admission even as narrowed down. But it further rests on the surer basis of the evidence given by the witnesses called in the case.

Mr. Bhaidass Narottamdass, who was called by the defendant to prove that the *pakka adatia* cannot enter into cross contracts, as the operation is termed, was emphatic in his examination-in-chief and also in the earlier part of his examination in support of the defendant's contention, but when in response to Mr. Strangman's request he produced his books, he was constrained to admit that he entered into cross contracts with Bombay merchants on his own responsibility on behalf of another constituent. Later he says "If I get a telegram at night to buy or sell there is nothing wrong if I appropriate the order to myself. . . . It is the custom among the *pakka adatias* to appropriate the orders to themselves or to enter into cross contracts on account of other constituents. They are entitled to do so on their own responsibility. No constituent has disputed with me his liability to pay merely because I had squared the contract I had entered into on his instructions by another contract under another

1905.

BHAGWANDAS

KANJI.

(1) (1905) 29 Bom. 291.

1905.

BHAGWANDAS

v.

KANJI.

constituent's instructions. Numbers of constituents knew that I had done so."

Turning then to the plaintiffs' witnesses we have the evidence of Mr. Raghunath Lalji, a partner in a firm that sells or buys as much as eighty or ninety thousand bales. He speaks to the custom of entering into cross contracts; "I can give," he says, "instances where I have entered into cross contracts on my own account in Bombay without informing the constituents up-country and have paid or recovered from them as the case might be according to the room rate prevailing on the due date. This is frequently done and that with the knowledge of the constituents up-country." Later on in his cross-examination he says, "when a *pakki adat* agent receives orders for sale on due date he is bound to find a corresponding order for purchase for that date from another constituent or merchant. In my case, however, it is necessary to do that because I don't trade on my own account; but where the *pakki adat* agent is himself a trader it is not necessary when he adopts the contract himself."

Evidence to the like effect is given by the representatives of several native firms, *e. g.* Messrs. Ludha Dossa, Padamsey Pasvi, Shivmukhrai Chunilal, and Shridham Gopinath [His Lordship referred to their evidence].

Of the representatives of European Houses I will first take Mr. Chrystal; speaking from a wide experience he says "According to the custom I am entitled to become the buyer or seller if I choose to. The constituent has nothing whatever to do with that question...Supposing I make a contract for sale with a Bombay merchant in execution of the order of an up-country constituent and after that another constituent gives me an order to buy and I buy from the said Bombay merchant so as to square the contract, I am not bound to substitute another contract for the original order...The custom I have spoken to is well known to up-country constituents. A *pakki adatia* cannot properly speaking be said to guarantee the solvency of either the constituent or the Bombay merchant; the word guarantee is a misnomer in such a case because the *pakki adatia* is himself primarily responsible to either....Up-country constitu-

ents of my firm settle business with me by letters; we use no printed forms."

And this brings me to the evidence of Mr. Campbell, the manager of Bruel & Co, who has had about 25 years' experience in Bombay. His evidence is all in favour of the custom, and Chandavarkar, J., evidently was much impressed with it. I in no way doubt the correctness of the learned Judge's appreciation. The only comment this witness' evidence invites is that his firm do their business on a form of contract which on its face shows them to be buyers or sellers, as the case may be, and so, apart from the custom the incidents to which he speaks would follow from its express terms. But making every allowance for this I still think the plaintiffs can justly claim that their case gains strong support from Mr. Campbell's evidence. The plaintiffs have thus called a considerable body of evidence to establish the custom they allege; nor is that all: for prior to closing his case Mr. Strangman addressed the Court as follows:

"I have a great many other witnesses to call to prove the custom, but I have made so far a selection to save time and if those already examined are not believed then I take it the Court may not feel inclined to believe the rest. So I do not propose to call the remaining witnesses. The Court may call if necessary or I will call if the Court requires. Subject to that I close my case."

To that the learned Judge replied: "If necessary I will tell you but at present I leave the matter where you leave it."

The evidence then appears to me to establish the following propositions in connection with *pakki adat* dealings in circumstances such as we have in this case:

1. That the *pakka adatia* has no authority to pledge the credit of the up-country constituent to the Bombay merchant, and that no contractual privity is established between the up-country constituent and the Bombay merchant.
2. That the up-country constituent has no indefeasible right to the contract (if any) made by the *pakka adatia* on receipt of the order; but the *pakka adatia* may enter into cross contracts with the Bombay merchant either on his own account or on account of another constituent, and thereby for practical purposes cancel the same.
3. The *pakka adatia* is under no obligation to substitute a fresh contract to meet the order of his first constituent.

1905.

BHAGWANDAS

v.
KANJI.

But it is urged that though the evidence may establish these incidents, still effect cannot be given to them, for they disclose an unreasonable custom, as they involve a conflict between the *pakka adatia's* interest and duty. But that depends on what the duty is. The evidence does not (in my opinion) show that the relations between the *pakka adatia* and the up-country constituent is that of mere seller and buyer. Thus the contract makes provision for commission, and that, it has been said, is conclusive to show that to some extent there was the relation of principal and agent: *Armstrong v. Stokes* ⁽¹⁾. Then again there runs through the evidence the idea that the word *guarantee* is not inappropriate, though some of the witnesses under the stress of a skilful cross-examination repudiate its aptness. Guarantee in the strict legal sense there can be none; the absence of privity with the Bombay merchant excludes it. (See section 126 of the Contract Act). But I doubt whether there was occasion to be so shy of the word in its non-technical sense. On the other hand I do not think there was the relation of principal and agent pure and simple.

I would say here as I did in *Paul Beier v. Chotalal* ⁽²⁾: "the case is (in my opinion) not one to be decided by an attempt to bring the contract within the one or the other of the two categories of sale or agency; the provisions of the document are equivocal, some lean towards the one relation, some to the other. Therefore we must examine the document as a whole and in its several parts, and also the surrounding circumstances."

I think the contract between the parties was one of employment for reward, and the incidents proved appear to me to converge to the conclusion that the contract of a *pakka adatia* in circumstances like the present is one whereby he undertakes, or—to use the word in its non-technical sense as business men on occasion do use it (see *Barker v. M'Andrew* ⁽³⁾)—*guarantees* that delivery should, on due date, be given or taken at the price at which the order was accepted, or differences paid: in effect he undertakes or guarantees to find goods for cash or cash for goods or to pay the difference.

(1) (1872) L. R. 7 Q. B. 598 at p. 604.

(2) (1904) 30 Bom. 1 at p. 13; 6 Bom. L. R. 948 at p. 950.

(3) (1865) 34 L. J. C. P. 191 at p. 194.

I do not say that there is no relation of principal and agent between the parties at any stage; there may be up to a point, and that this is legally possible is shown by Mellish L. J. in *Ex parte White* ⁽¹⁾ where he speaks of "a person who is an agent up to a certain point." So here there may have been that relationship in its common meaning for the purpose of ascertaining the price at which the order was to be completed, and to this point of the transaction all the obligations of that relation perhaps apply. But when that stage is passed, I think the relation is not that of principal and agent, but of the nature I have indicated. Into this contract there is imported by the evidence of custom no such element of unreasonableness as would compel us to reject it on that score. It has been urged before us for the defendant that it is not open to us to find such a contract, as no issue was framed on the point. But to decide this suit, which is based on contract, we are bound to find what the contract was, and in finding the terms of the contract I am not going outside the four corners of the case. The issues were directed to ascertaining whether or not certain incidents belonged to the contract between the parties. I have come to definite conclusions as to those incidents, and on that basis I have endeavoured to cast into legal shape the relations between the parties. But lest the defendant should be prejudiced, he was offered an opportunity of further investigation; he however declined, and I must do the best I can with the materials I have. I accordingly adhere on the evidence before us in this case to the propositions I have stated, and I further hold that they do not import into the contract a custom that is unreasonable.

There is one more aspect of the case which calls for brief notice. The defendant had prior to the suit dealt for some considerable time with the plaintiffs as *pakka adatis*, and the plaintiff, Canji Devji, after stating that the defendant came very often to Bombay and used to put up at the plaintiff's place, deposes "I can say myself that he was well aware of the custom spoken to by my witnesses."

The defendant never went into the witness-box to deny this knowledge, and I agree with the learned Judge that the reason given for his abstention cannot be accepted.

(1) (1870-71) L. R. 6 Ch. 397 at p. 403.

1905.

BHAGWANDAS

v.
KANJI.

1905.

BHAGWANDAS
v.
KANJI.

I hold, therefore, with Chandavarkar, J., that the defendant was aware of the custom on which the plaintiffs rely.

BATTY, J.:—I concur.

Decree confirmed.

Attorneys for appellants: *Messrs. Mansukhlal, Jamselji and Hiratal.*

Attorneys for respondents: *Messrs. Payne & Co.*

W. L. W.

APPELLATE CIVIL.

1905.

August 28.

*Before Sir Lawrence Jenkins, K.C.I.E., Chief Justice, and
Mr. Justice Aston.*

YELLAPPA *bin* PARASHARAMAPPA (ORIGINAL PLAINTIFF), APPELLANT, *v.* DESAYAPPA *bin* KHALILAPPA AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Money secured by a pledge—Suit for money lent—Limitation—Three years from the time of the loan.

A suit for the recovery of money secured by a pledge is a suit for money lent. The period of limitation is three years from the time the loan is made.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Bijapur, confirming the decree of D. A. Idgunji, Subordinate Judge of Bagalkot.

One Sanganbasappa pledged certain ornaments to the plaintiff for sums amounting to Rs. 4,850 at dates between the 2nd October 1890 and the 30th April 1896. Sanganbasappa died in March 1897 and the Nazir of the Court was appointed guardian of his minor son Sangappa, who died in April 1901. On the 28th September 1901 the Nazir reported Sangappa's death to the Court and stated that there would be a dispute as to heirship and received the Court's permission to sell the pledged ornaments. After the sale the Nazir reported that Rs. 7,630-10-0 were due to the plaintiff, that Rs. 5,140 were the proceeds of the sale, that Rs. 20-10-0 were remitted by the plaintiff, that the balance of Rs. 2,500 was still due to the plaintiff, and that for the said balance he had passed to the plaintiff an acknowledgment dated

* Second appeal No. 219 of 1905.