

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.

the 1st September 1901. On the 23rd June 1904 the plaintiff brought the present suit to recover Rs. 2,500 and Rs. 590-10-0, interest thereon, in all Rs. 3,090-10-0.

Defendant 1, who along with the other defendants was the heir of Sangappa, deceased, contended that the Nazir had no right to acknowledge the debt, his ward being dead at the time, that the acknowledgment was not binding on them and that the claim was time-barred.

The other defendants were absent.

The Subordinate Judge dismissed the suit as time-barred.

On appeal by the plaintiff, the Judge confirmed the decree on the following grounds:—

The first contention that the Nazir's acknowledgment was the starting point of a new period of limitation is unsound. The Nazir's ward being dead, he had nothing further to do with the estate and could not bind it.

The second question is whether the right to sue for a debt secured by a pledge is for six years from the date of the pledge or from some date. No other terminus *a quo* than the date of the original pledge is assignable on any conceivable grounds. Deposit of a pledge is better security than execution of a registered bond. Why should then the creditor claim a larger period of limitation in the first case than in the latter. I agree with the Subordinate Judge that the starting point for limitation in this suit was at the various dates on which the respective loans were contracted, the latest of which is 30th April 1896. The suit was not brought till 1904. It is, therefore, time-barred.

Plaintiff preferred a second appeal.

Rao Bahadur G. N. Nadkarni, for the appellant (plaintiff):—He contended that under section 176 of the Contract Act the personal liability of a pawner arises out of the amount of the sale proceeds proving less than the amount of the debt. The deficit was found on the 1st November 1901, therefore the suit was in time.

There was no appearance for the respondents (defendants).

JENKINS, C. J.:—This is a suit for money lent and none the less so, because the money lent was secured by a pledge. The period of limitation for such a suit is three years from the time the loan is made. The suit, therefore, is rightly held by the lower Court to be barred, and we confirm the decree, but as there is no appearance by the respondent, without costs.