was intended rather to draw into the net of the jurisdiction of the British Indian Courts cases, which *notwithstanding the full use of sections* 179 *to* 184, could not be brought within the jurisdiction of any British Indian Court than to restrict by its first proviso the extended jurisdictional privileges conferred by sections 178 to 184 on Courts which according to the ordinary rule of section 177 would not have had jurisdiction. The proviso to section 188 will come into operation only when the British Indian Court cannot get jurisdiction under sections 179 to 184 and has to depend on the first part of section 188 to get such jurisdiction. I therefore, with great respect, dissent from the dicisions in *Imperator* v. *Tribhun*(1) and *Sessions Judge, Tanjore* v. *Sundara Singh*(2). As regards the decision in *Re the Sessions Judge, Trichinopoly*(3) while it could be distinguished (as pointed out by my learned brother) as affecting only section 180 of the group of sections 179 to 184, I feel loath to make any such distinction as no difference in principle can be made between the extended jurisdiction conferred by section 180 and the extended jurisdiction given by the other sections.

I therefore respectfully dissent from that decision also and refuse to accept the Sessions Judge's reference.

APPELLATE CIVIL.

Before Mr. Justice Seshagiri Ayyar.

SESHAPPIER (THIRD DEFENDANT), PETITIONER

v.

SUBRAMANIA CHETTIAR AND TWO OTHERS (PLAINTIFF AND DEFENDANTS NOS. 1 AND 2), RESPONDENTS.*

1914. February 12 and 13.

Limitation Act (*IX of* 1908), *arts.* 48 *and* 49—*Suit for goods misappropriated*—*Indian Contract Act* (*IX of* 1872), *ss.* 108 *and* 178.

One *K* took a jewel of the plaintiff in May 1907, to find a purchaser for it, stating that he would settle the price in the presence of the plaintiff; but instead of doing so, *K* in June 1907 pledged it with the third defendant who

(1) (1912) 13 Cr. L.J., 530. (2) (1910) M.W.N., 143.
(3) Civil Miscellaneous Petition No. 97 of 1911.
* Civil Revision Petition No. 122 of 1912.

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bonâ fide lent, on its security, Rs. 175. Plaintiff came to know of *K*'s conversion in 1909 and sued in 1911 for the jewel or its value, the third defendant and the widow and son of *K* who died at the end of 1907.

Held that article 48 and not 49 of the Limitation Act (IX of 1908) was applicable and that the suit was not barred by limitation.

Held, also that the *bonâ fides* of the third defendant does not preclude the plaintiff from recovering the jewel without paying the third defendant the amount of loan.

Effect of sections 108 and 178 of the Indian Contract Act, considered.

PETITION under section 25 of the Provincial Small Cause Courts Act (IX of 1887), praying the High Court to revise the decree of J. S. GNANIYAR NADAR, the temporary Subordinate Judge of Negapatam, in Small Cause Suit No. 1023 of 1911.

One Kolandaswami took a jewel of the plaintiff in May 1907 to find a purchaser for it, stating that he would settle the price in the presence of the plaintiff; but instead of doing so, Kolandaswami, in June 1907, pledged it with the third defendant who *bonâ fide* lent, on its security, Rs. 175. The plaintiff came to know of Kolandaiswami's conversion in 1909 and sued in 1911 for the jewel or its value, the third defendant and the widow and the son of Kolandaswami who died at the end of 1907.

The Subordinate Judge allowed the suit but without costs. The third defendant preferred this revision petition and the plaintiff filed a memorandum of objections for costs.

R. Kuppuswami Ayyar and *V. Vaidhyanatha Ayyar* for the petitioner.

T. V. Gopalaswami Mudaliar for the Respondents.

SESHAGIRI AYYAR, J.

JUDGMENT.—The plaintiff's case is that he gave the jewel in dispute to one Kolandaswami Pathar, the husband of the first defendant and the father of the second defendant, on the 19th May 1907, on the representation of Kolandaswami that "there was a demand for the said jewel, that he would show it and bring it back and that if the purchaser liked the jewel he would settle the price in the presence of the plaintiff." Kolandaswami did not act up to his representations; on the 20th June 1907, he pledged it with the third defendant and received from him a sum of Rs. 175. Kolandaswami not having redeemed the jewel from the third defendant, the latter asked the plaintiff to sell this jewel for him. The plaintiff then came to know that it was his own jewel and asked the third defendant to restore it to him. The third defendant refused. Hence the suit. I ought to

mention that Kolandaswami died two or three months after the jewel was given to him.

The plea of the third defendant is that the suit is barred by limitation, in as much as the pledge to him was on the 20th June 1907; the present suit was instituted in 1911. His second plea is that under any circumstances he is entitled to be repaid the money given by him to Kolandaswami with interest, before the plaintiff can claim to recover the jewel.

The Subordinate Judge came to the conclusion that the suit was not barred by limitation. He held that article 48 of the Limitation Act was applicable to the suit and that, as the suit was brought within three years of the plaintiff's knowledge that the jewel was in the possession of the third defendant, it was within time. Mr. Kuppuswami Ayyar argued that the proper article applicable to the case was article 49. I cannot accede to this contention. There is no doubt that this is a case of conversion. The original undertaking which was a lawful one was to show the jewel to persons willing to purchase it. It was on the 20th June 1907 when Kolandaswami conceived the idea of treating the property as his own and of pledging it that he converted to his own use the plaintiff's jewel. *Arunachalam Pillai* v. *Alagianambia Pillai*(1) has no bearing upon this question. The observations of the learned Judges in *Ram Lal* v. *Ghulam Husain*(2) go to show that in the case of a specific moveable property which was originally obtained lawfully but has since been unlawfully retained, that the proper article applicable would be article 48. *Gopalasami Iyer* v. *Subramania Sastri*(3) is also an authority for that position. See also *Nandlal Thakersey* v. *The Bank of Bombay*(4), and *Nandlal Thakersey* v. *The Bank of Bombay*(5). I therefore agree with the Subordinate Judge that the suit was in time.

The second question is not altogether free from difficulty. Mr. Kuppuswami Ayyar relied upon section 178 of the Contract Act and contended that the pawnee in this case got the jewel in good faith and that consequently he had acquired a good title for the payment of the money which Kolandaswami had taken from

(1) (1893) 3 M.L.J., 324. (2) (1907) I.L.R., 29 All., 579.
(3) (1912) 22 M.L.J., 152. (4) (1909) 11 Bom. L.R., 826.
(5) (1910) 12 Bom. L.R., 316.

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SESHAGIRI AYYAR, J.

him; he argued that the proviso to section 178 had no application to this case as the jewel was not obtained by his client or by Kolandaswami by means of an offence or fraud. Before I refer to the decided cases on the point, I may observe that sections 108 and 178 of the Contract Act, as well as section 41 of the Transfer of Property Act and the sections dealing with reputed ownership in the various Insolvency Acts, proceed upon the principle that *primâ facie* the rights of the legal owner should be protected unless he has done something to induce innocent purchasers or pledgees into the belief that the intermediate possessor is the true owner: mere *bonâ fides* on the part of the purchaser or pledgee is not enough: he will have to prove that by some act or omission the true owner has forfeited his right to recover possession. It is therefore incumbent upon the party resisting the claim of the true owner to adduce strict proof of the equities which have arisen in his favour, and of the laches on the part of the owner which have led him to advance the money. It was pointed out in *Greenwood* v. *Holquette*(1) that section 108 of the Contract Act applies only to cases where the intermediate possessor is entitled to a legal dominion over the property, and not to cases where he has simply the custody of the property; and it was further pointed out that the person in possession in order that he may give a good title must have a qualified ownership over the property, and that if the property was given to him for a particular time or for a stated purpose, such possession will not enable him to give a good title. That is also the view taken by Sir LAWRENCE JENKINS, C.J., in *Seager* v. *Hukma Kessa*(2). The learned Chief Justice points out that, unless there is juridical possession in a person, he cannot confer any title on a third party. The only Madras case cited in argument is *Naganada Davay* v. *Bappu Chettiar*(3). That case concurs with the view taken in *Greenwood* v. *Holquette*(1). The observations in that judgment are opposed to the contention of the learned vakil for the petitioner that under section 178 all that need be proved is physical possession in the pawnor and *bonâ fides* on the part of the pawnee; whereas under section 108, it is necessary to show further that the pawnor was the ostensible owner of the article.

(1) (1873) 12 Beng. L.R., 42 (2) (1900) I.L.R., 24 Bom., 458.
(3) (1904) I.L.R., 27 Mad., 424.

Naganada Davay v. *Bappu Chettiar*(1) was no doubt one of gratuitous bailments but the principles laid down by the learned Judges apply to cases of entrustment for a particular purpose. It has been strenuously argued before me that the possession of Kolandasami was that of an agent for sale and that he had a right to retain possession of the jewel, and that therefore he cannot be said to have come into possession of the property by means of an offence or fraud. I have gone through the evidence fully and I am satisfied that the statement in the plaint that Kolandasami was given the jewel only for the purpose of showing it to intending purchasers has been established. The sale price was to be settled in the presence of the plaintiff; I cannot accede to the contention that Kolandasami was an agent for the sale of the jewel. I have, therefore, come to the conclusion that this plea of the defendant that he has got a right to be paid back his money before he can be asked to deliver the jewel is unsustainable. I hold that upon both the points the Subordinate Judge was right and I dismiss the petition with costs.

As regards the memorandum of objections, I do not think that the plaintiff can claim any costs against the third defendant. He acted honestly throughout. As defendants Nos. 1 and 2 are not before me, I do not think it necessary to vary the order of the Subordinate Judge in this respect. The memorandum of objections is also dismissed. No costs.

(1) (1904) I.L.R., 27 Mad., 424.