

a share in it, and that therefore there should be appointed arbitrators who would divide the estate amongst all the persons." We have no reason to doubt the credibility of this evidence. It is consistent with the other facts which have been established by the plaintiff in connection with the arbitration proceedings, and we believe it to be true. It places beyond doubt the truth of the plaintiff's allegation that the award and the decree thereon were obtained by fraud and collusion. It appears to us that not merely was a gross fraud committed upon the plaintiff, but that a fraud was also practised upon the Court in suppressing the true state of facts when permission was given to Jai Dei, herself then a minor, to act as next friend of the plaintiff. We, for these reasons, entirely concur in the view expressed by the learned Subordinate Judge and have no hesitation in dismissing this appeal. Accordingly we dismiss the appeal with costs.

Appeal dismissed.

1902

BANSI LAL
v.
DHAFO.

Before Mr. Justice Banerji and Mr. Justice Aikman.

SAIYID ALI KHAN AND OTHERS (DEFENDANTS) v. DEBI PRASAD
(PLAINTIFF).*

1901

February 5.

Act No. IX of 1872 (Indian Contract Act), section 176—Pawnor and pawnee—Suit to recover balance of debt after sale of articles pawned—Limitation—Act No. XV of 1877 (Indian Limitation Act), schedule II, article 57.

Held, that the limitation applicable to a suit brought by a pawnee to recover the balance of his debt after accounting for the proceeds of the sale of the articles pledged is that prescribed by Article 57 of the second schedule to the Indian Limitation Act, 1877, namely, three years, and the *terminus a quo* the date of the loan. *Mulson Mohan Lal v. Kankai Lal* (1) and *Ram Chandra v. Antaji* (2) referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Pandit *Moti Lal Nehru* and Maulvi *Ghulam Mujtaba*, for the appellants.

The Hon'ble Mr. *Conlan* and Pandit *Sundar Lal*, for the respondent.

* First Appeal No. 90 of 1899 from a decree of Munshi Sheo Sahai, Officiating Subordinate Judge of Cawnpore, dated the 23rd March 1899.

(1) (1895) I. L. R., 17 All., 234. (2) Bom., P. J. 1896, p. 161

1901

SAYID
ALI KHAN
v.
DEBI
BASAD.

BANERJI and AIKMAN, JJ.—The first question we have to determine in this appeal is, whether the suit of the plaintiff-respondent was barred by limitation. The plaintiff stated that he had money dealings with the defendants who borrowed different sums of money from him from time to time since 1879. To secure these loans they pledged jewellery and other movable property. This property the plaintiff alleges has been sold by him under the power vested in him by section 176 of the Contract Act, and a balance is due, which he seeks to recover personally from the defendants. As has been stated above, the dealings began in 1879; the last advance actually made was on the 5th of November, 1886. Interest is said to have been paid from time to time, but no interest was paid after 1888. The present suit was brought on the 20th of December, 1897. The plea of limitation was set up by the defendants, but it was overruled by the Court below, which decreed the claim. It is contended on behalf of the appellants that the article of schedule ii of the Limitation Act applicable to the suit is article 57. The Court below has applied article 120, being of opinion that no other specific article of the schedule is applicable. It has computed the period of limitation from the 23rd of February, 1897, when the plaintiff sent a notice to the defendants demanding payment of the balance alleged to be due by them. The learned counsel for the respondent admits that that date cannot be regarded as the date on which the plaintiff's right to sue accrued. But he urges that the right came into existence on the date on which, after the sale of the movable property pledged to him, the plaintiff discovered that there was a balance still due. It has been held by this Court that a suit to recover personally from the debtor the amount of a loan for which movable property is pledged is governed by article 57 of schedule ii of the Limitation Act.—*Madan Mohan Eal v. Kanhai Lal* (1). It was also held in that case that the six years' limitation prescribed by article 120 applies to a claim to enforce the pledge. This is admittedly not a suit to enforce a pledge. In our opinion the claim is one to recover the unpaid balance of a loan, that is to say, it is a suit for money payable to the plaintiff for money lent by him, a suit

(1) (1895) I. L. R., 17 All., 284.

which is specifically provided for by article 57. The fact that movable property was pledged as collateral security does not, in our judgment, render the suit a suit of any other description than that to which the article referred to above applies. This view is supported by the ruling of the Bombay High Court in *Ram Chandra v. Antaji* (1) cited in Rivaz on the Limitation Act, p. 122. There it was held that a suit by a pawnee to recover the balance due on his debt after accounting for the proceeds of the sale of the articles pledged must be brought within three years from the date of the loan. That case is on all fours with the present, and we agree with the view adopted in it. The learned Subordinate Judge thinks that section 176 of the Contract Act conferred a new right on the plaintiff, and this was the contention of the learned advocate for the respondent. In our opinion this view is erroneous. What the plaintiff seeks to recover is the balance of the loan given by him to the defendants. That loan was secured by the pledge of movable property. Section 176 of the Contract Act gives the pawnee the right to bring a suit on the debt, retaining the article pledged as collateral security. It also empowers him to sell the thing pledged after giving reasonable notice, and to recover the balance of the debt, if any, remaining after such sale. The original contract of loan is not put an end to or superseded, and no right which did not exist before has accrued by the sale. In the present case, as the last item of loan was, as already stated, given in 1886, and as the suit was brought long after the expiry of three years from that date, or from the latest payment of interest, it is clearly beyond time. This is sufficient for the disposal of the appeal. We set aside the decree of the Court below, and dismiss the plaintiff's suit with costs in both Courts.

Appeal decreed.

(1) Bom. P. J., 1886, p. 161.

1901

SAYYID
ALI KHAN
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DEBI
PRASAD.