

Act No. IX of 1872. The plaintiff comes here in second appeal and contends that Kishan Dat was not in possession of the jewelry pawned within the meaning of section 178 of Act No. IX of 1872 and that neither Kishan Dat nor Lachhmi Nandan had any authority to pawn the jewelry. The case has been very ably argued by the learned advocate for the appellant and our attention has been called to several rulings. None of these is exactly on all fours with the circumstances of the present case, and there is no ruling that we can find by this Court. The section is undoubtedly a difficult one to construe, especially when taken in connection with the language of section 179 of the same Act. Having regard to the findings by the lower appellate Court we think that the case does fall within the provisions of section 178 and that the pawnees are protected by the provisions of that section. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burdett.

JANKI PRASAD SINGH (PLAINTIFF) v. BALDEO PRASAD AND OTHERS
(DEFENDANTS).*

Act No. IX of 1872 (*Indian Contract Act*), sections 69 and 70—“Person interested in the payment of money”—*Volunteer—Civil Procedure Code, section 283.*

The plaintiffs, alleging themselves to be the purchasers of the mortgagees' rights in certain land, paid the amount of a decree against the mortgagees in order to save the property from sale. But it had been already found in a suit under section 283 of the Code of Civil Procedure, that the sale to the plaintiffs was fictitious and inoperative. *Held* that the plaintiffs were not entitled to recover the amount paid as above described from their vendors. *Ram Tukul Singh v. Bisenwar Lall Sahoo* (1) and *Chedi Lal v. Bhagwan Das* (2), referred to.

THE defendants in this case executed a sale deed purporting to convey to the plaintiffs their mortgagees' rights in certain lands in manza Khampar. One Bhikari Teli in execution of a money decree against the defendants attached their mortgagee interest. The plaintiff objected in the execution department, but their

* Second Appeal No. 1118 of 1906, from a decree of R. L. H. Clarke, District Judge of Gorakhpur, dated the 30th of August 1906, confirming a decree of Laddi Prasad, Mansif of Deoria, dated the 25th of June 1906.

(1) (1875) L. R., 2 I. A., 131. (2) (1839) I. L. R., 11 All., 234.

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objection was disallowed. They then filed a suit under section 283 of the Code of Civil Procedure, but that suit was decided against them on the finding that the sale under which they claimed was purely fictitious, and that decree became final. Notwithstanding this, the plaintiffs paid up the amount of Bhikari Teli's decree, and then brought the present suit against their vendors to recover the sum so paid. The Court of first instance (Munsif of Deoria) dismissed the suit, and this decree was in appeal affirmed by the District Judge. The plaintiff appealed to the High Court.

Mr. W. Wallach and Munshi Gulzari Lal, for the appellant.

Mr. M. L. Agarwala and Munshi Govind Prasad, for the respondent.

STANLEY, C.J., and BURKITT, J.—We think that the decision of the Courts below is correct. The plaintiff appellant has been able to establish no such relationship existing between him and the defendants as would justify the payment of the money which he now seeks to recover. It has been found by the Courts below that the assignment made to him of the mortgagee rights of the defendants was fictitious and collusive, and consequently the judgment creditors of the assignors had a right to sell those mortgagee rights in execution of their decree. We do not think that section 69 or section 7Q of the Contract Act helps the appellants. As regards section 69, a party who makes a payment on behalf of another, before he can recover the amount so paid, must show that he had an interest in making the payment. Their Lordships of the Privy Council in dealing with the rights of parties making payments observed, in the case of *Ram Tukul Singh v. Biseswar Lall Sahoo* (1):—"It is not in every case in which a man has benefited by the money of another that an obligation to repay that money arises. The question is not to be determined by nice considerations of what may be fair and proper according to the highest morality. To support such a suit there must be an obligation express or implied to repay. It is well settled that there is no such obligation in the case of a voluntary payment by A of B's debt." Now in this case, in view of the facts which have been found by the Courts below, we cannot

discover that there was any obligation, either express or implied on the part of the appellant to pay the debt of the respondents. The case therefore does not fall within the purview of section 69 of the Contract Act. Nor does it fall within section 70. In the case of *Chedi Lal v. Bhagwan Das* (1), it was held by a Bench of this Court that by the use of the word "lawfully" in section 70 of the Contract Act, the Legislature had in contemplation cases in which a person held such a relation to another as either directly to create, or such as would justify, the inference that by some act done for another person, the person doing the act was entitled to look for compensation to the person for whom it was done. In his judgment Straight, J., observed:—"If the plaintiffs as mere volunteers chose to put their hands into their pockets and to pay a sum of money, not for the defendants but for themselves, that was their own look-out, and they cannot now claim the benefit of section 70." We think upon the facts, therefore, that the payment made by the appellant was a purely voluntary payment, and possibly was made, as is suggested by the Courts below, with some sinister object. We dismiss the appeal with costs.

Appeal dismissed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

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LACHMAN DAS (PLAINTIFF) v. ABPARKASH (DEFENDANT) *

Civil Procedure Code, section 503—Arbitration—Order of reference not fixing a period within which the award is to be made—Appeal.

Where an order of reference to arbitration made by a Court omits to fix a date for the delivery of the award, such omission is not a mere irregularity, but is a defect fatal to the order and to all subsequent proceedings founded thereon. *Chuha Mal v. Hari Ram* (2) followed. *Raja Har Narain Singh v. Chaudhrai Bhagwant Kuar* (3) referred to.

IN this case after evidence had been given in a suit between the parties to this appeal and some of the issues in the case had been determined by the Court, and there remained two issues only for determination, by consent of the parties the matters in

* First Appeal No. 30 of 1906 from a decree of Chajju Mal, Subordinate Judge of Aligarh, dated the 26th of September 1905.

(1) (1888) I. L. R., 11 All., 234. (2) (1866) I. L. R., 8 All., 548

(3) (1891) L. R., 18 I. A., 55.