

## APPELLATE CIVIL.

*Before Mr. Justice Heald and Mr. Justice Maung Ba.*

1929

May 22.

S.A.L.S. CHETTYAR FIRM

*v.*

DAW SAW AND ANOTHER.\*

*Contract Act (IX of 1872), s. 198—Pledge by possessor of goods—Goods obtained by fraud—Untrue representation and dishonest intention in obtaining possession—Goods obtained from owner by fraud must be returned to true owner by even bonâ-fide pledgee.*

Where a person obtains jewellery from its owner on the pretext that he has a prospective purchaser and with the dishonest intention of raising money on it for himself, he obtains the goods by fraud. Consequently even a *bonâ-fide* pledgee of the goods from that person must return the goods to the true owner.

*R.M.P.A. Anamale Chetty v. Mrs. Basch, 11 L.B.R.—distinguished.*

*Aiyangar* for the appellant.

HEALD and MAUNG BA, JJ.—The main facts of this case are not now disputed and it is only the legal effect of those facts which is in question.

The second respondent Ma Ma Gyi went to the first respondent and induced her to hand over certain articles of jewellery on a pretence that she had a prospective purchaser who desired to have inspection of the jewellery. The first respondent handed the jewellery to the second respondent, who in fact had no prospective purchaser, and the second respondent pledged the jewellery next day to appellant. The second respondent was prosecuted and convicted of criminal breach of trust. The first respondent then sued appellant for the return of the jewellery, and a decree has been passed in her favour.

Appellant appeals on grounds that a person who is in possession of goods of any sort can make a

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\* Civil First Appeal No. 99 of 1929 from the judgment of the Original Side in Civil Regular No. 532 of 1928.

valid pledge of such goods provided that the person who accepts the pledge acts in good faith and that the goods have not been obtained from the owner by means of an offence or by fraud. He suggests that because the second respondent was convicted of criminal breach of trust and not of cheating the Magistrate must have found that she did not obtain possession of the jewellery by means of an offence. He cites the case of *Anamale Chetty v. Mrs. Basch* (1), in which a goldsmith to whom jewellery was entrusted for sale, pledged the jewellery and it was held that because the person who accepted the pledge acted in good faith he was entitled to retain the jewels in spite of the fact that the goldsmith was convicted of criminal breach of trust.

One of the questions to be decided in such cases is whether or not the goods were obtained from the owner by means of a criminal offence or fraud. If they were so obtained the pledge is invalid and the person who has accepted the pledge must return the goods to the true owner. It may be true, as appellant suggests, that such a provision of law is likely to cause serious loss and dislocation of business to money-lenders who act in good faith and with no suspicion that the person making the pledge has obtained the goods by means of an offence or fraud, but it is what section 178 of the Contract Act says, and it is therefore the law.

In this case we are satisfied that the second respondent obtained the jewellery from the first respondent by means of a fraudulent pretence that she actually had a prospective purchaser and with the dishonest intention of raising money on it for herself, and that therefore she obtained the jewellery by fraud. It

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follows that the pledge was invalid and that appellant cannot retain the jewellery.

We therefore dismiss the appeal.

## APPELLATE CIVIL.

*Before Mr. Justice Chari and Mr. Justice Brown.*

MAUNG SHWE HTEIN AND ANOTHER

v.

MA LON MA GALE. \*

1929

June 1.

*Partnership debt—Suit by surviving partner alone without joining legal representatives of deceased partner—Civil Procedure Code (Act V of 1908), O. 30, r. 4.*

A surviving partner is competent to file a suit to recover a partnership debt without joining the legal representatives of the deceased partner. Order XXX, rule 4 of the Civil Procedure Code provides that when two or more persons may sue or be sued in the name of a firm, the provisions of that order apply. It does not prevent a surviving partner alone to file a suit in respect of a partnership debt.

*K.V.P.L. Chetty v. Armuga Pather*, 4 L.B.R. 99—*referred to*.

*Ram Narain v. Ram Chundur*, 18 Cal. 86 ; *U Guna v. U Kyaw Gaung*, (1892-96) II U.B.R. 204—*dissented from*.

*Darwood* for the appellants.

*Basu* for the respondent.

CHARI and BROWN, JJ.—The facts of this case are very simple. The suit was instituted by Ma Lon Ma Gale against the defendants, who are husband and wife.

It is alleged in the plaint that the husband borrowed the sum of money for which the promissory note was executed for the family purposes and benefit of himself and his wife. The promissory note was in favour of two persons, namely, Ma Lon Ma Gale and Ma Mya Bu. These two were sisters and carried on a money-lending business in partnership.

\* Civil First Appeal No. 31 of 1929 from the judgment of the District Court of Henzada in Civil Regular No. 10 of 1928.