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1936. The period of limitation being reduced to six years by the Limitation of Actions Law, 1945, and by virtue of special proviso in the said Law the respondent wife being enabled within two years from the date of enactment to pursue her claim for dower, her right to institute an action for such dower eventually expired in September, 1947, and it has been lost since that date.

The third ground of the cross-appeal turns on the question of the defendant's claiming the custody of two of the children who are just over 9 years of age. There was evidence before the trial Court that the father was in a position to take care of all the four children and also to arrange for their education. There is nothing to support the contention that the children or two of them will be happier or that it would be conducive to the welfare of the children if they were put under the custody of the mother, a mother who deserted them without reasonable cause.

*The judgment of the lower Court therefore is varied in the way indicated above. That is a decree of divorce to be issued on the grounds of adultery and desertion. That the respondent be ordered to pay £250 as compensation to the appellant; and that the respondent do pay full costs to the appellant here and in the Court below.*

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[HALLINAN, C.J., AND GRIFFITH WILLIAMS, J.]

(October 6, 1953)

ATHINA TELEVANTOU OF NICOSIA, *Appellant*,  
v.  
EVRYDIKI HOLMES OF NICOSIA, *Respondent*.

(Civil Appeal No. 4031.)

*Pledge—Return of pledge to pledgor—Sale by pledgor to bona fide purchaser—Pledgee cannot recover against purchaser.*

The plaintiff lent her husband £300 and took his motor-car as a pledge, but promptly returned it, the husband undertaking "to keep it as a loan for use in my custody and as agent of my creditor". He later sold it to the defendant a *bona fide* purchaser for value. The trial Court dismissed the plaintiff's claim against the purchaser for damages for detainue, conversion and trespass.

*Held:* Where a pledgee returns the pledge to the pledgor, the special property of the pledgee cannot prevail over the right of a *bona fide* purchaser for value from the pledgor. *Babcock v. Lawson*, 1880, 5 Q.B.D., 284 followed.

Appeal dismissed.

Appeal by plaintiff from the judgment of the District Court of Nicosia (Action No. 1128/51).

*Char. Ioannides* for the appellant.

*Ant. Indianos* for the respondent.

The judgment of the Court was delivered by :

HALLINAN, C.J. : In this case the appellant was at the material times the wife of a man who was the registered owner of a Fiat car. The wife, the appellant, gave a loan of £300 to her husband on the 14th November, 1949, and a document, Exhibit 1, was then executed by the husband acknowledging the receipt of the loan and pledging his Fiat car as security. The document further states : " After the delivery the said car was returned to me " (that is to say the husband) " on my application as a loan for use and I shall keep it as a loan for use in my custody and as agent of my creditor and shall be bound to return it to her on her first demand ". The husband before the time for repayment of the loan sold the car on the 4th September, 1950, to the respondent.

The sole question for decision is whether the appellant, the wife, lost her special property as a pledgee, or whether the right still exists and defeats the claim of the respondent who, as is conceded by the appellant, is or was a *bona fide* purchaser for value.

The case upon which the Court below relied was *Babcock v. Lawson*, 1880, 5 Q.B.D. page 284. In that case the firm of *Denis Daly and Sons* pledged some flour to *Babcock* in consideration for an advance of money from *Babcock* to *Daly*. Later on *Daly* purported to make a second pledge of this flour to *Lawson* and the firm of *Daly* then went to *Babcock* and represented to *Babcock* that if the flour were released to them they would sell it to *Lawson* and bring the proceeds back to *Babcock* in discharge of the advance.

On these facts the Court held that the right of the *bona fide* purchaser for value, *Lawson*, prevailed over the right of *Babcock*, that is to say that *Babcock* in re-delivering the flour to *Daly* the owners had parted with their special property as pledgees.

Now, the appellant has chiefly relied on three cases : the first, *Reeves v. Capper*, 50 Revised Reports, page 634, where a chronometre owned by a ship's captain was pledged to the owners of the ship and the owners of the ship as pledgees allowed the captain to use the chronometre in their, the owners', ship. Later, after the voyage, the captain pledged it to another party. It was held that the right of the shipowners, the first pledgees, prevailed over the right of the second pledgees. It is to be noted that the Court in *Reeves'* case was not dealing with a *bona fide* purchaser for value at all, but with the conflicting claims

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of pledgees. It is an old case decided in 1838 and (in view of Babcock's case) might not be decided in the same way were the same point raised to-day.

Both in the second case, *North Western Bank Ltd. v. John Poynter, Son & Macdonalds*, 1895, Appeal Cases p. 56, and in the third case, the *Official Assignee of Madras v. Mercantile Bank of India Limited*, 1935, Appeal Cases, p. 53, the pledgees permitted the pledgor to obtain delivery of the goods for the purpose of having them sold so that advances made by the pledgees to the pledgors might be repaid. It was held that the delivery to the pledgors did not destroy the special property of the pledgee.

Both in the second and the third cases the question of the right of a *bona fide* purchaser for value without notice was not in issue.

An attempt was made on behalf of the appellant to establish the proposition that where the pledged property is re-delivered to the pledgor as the agent or gratuitous bailee of the pledgee, the pledgee has not parted with the legal possession and this fact entitles the pledgee to assert her right over a *bona fide* purchaser for value. On the true interpretation of Exhibit 1 it is doubtful whether the pledgor was in fact agent for his wife, the appellant, because the property undoubtedly was re-delivered to him for his own use and not for the purposes of his wife, the appellant. But in my view that question is immaterial. It is clear from the facts in Babcock's case that Babcock in restoring the flour to Denis Daly & Sons intended Denis Daly & Sons to act as agents so that the flour be sold and the proceeds paid back to Babcock to discharge the advance. So that in fact Babcock's case is an authority for the proposition that even where the possession of the pledgor when he sells to a *bona fide* purchaser is merely that of an agent, nevertheless the pledgee by parting with the bare custody of the goods pledged, cannot assert her special property therein as against a *bona fide* purchaser.

We have been referred to section 114 of the Contract Law which provides that where a person is by the consent of the owner in possession of goods he may sell the same and give a good title to a buyer who acts in good faith. Counsel for the appellant has submitted that the kind of possession referred to in that section does not include a possession by an agent or hirer. It is not, I think, necessary in this case to decide the meaning of the word "possession" in section 114: for there the person selling is not the owner of the property; he is a person selling with the consent of the owner. In my view where it is the owner himself who sells, no fine distinctions should be drawn with regard to the nature of his possession.

The grounds for the decision in Babcock's case, as I understand it, are that where a man is the owner of property and pledges it to another and that other delivers it back to the pledgor, it would be inequitable that a *bona fide* purchaser from the owner should not be protected; and these grounds apply with particular force in the present case, because the owner of the Fiat car was actually registered as the owner.

For the reasons given I am unable to see why the principle of the decision in Babcock's case should not be applied in the present case. *In my opinion this appeal should be dismissed with costs.*

GRIFFITH WILLIAMS, J. : I am of the same opinion and I am inclined to think that the principle laid down in our Contract Law (Cap. 192) section 114 applies. There it says :

"No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases"—

here follow a number of exceptions. This case seems to me to come under the first exception, viz :

"When any person is, by the consent of the owner, in possession of any goods".

In the present case the husband to whom the car was delivered was the owner but he was also pawnor to his wife and the consent here was the consent of his wife, the pawnee, who had not even an equal property in the goods to that of an owner. The section states :

"When any person is, by the consent of the owner, in possession of any goods . . . he may transfer the ownership of the goods of which he is so in possession, . . . to any other person and give such person a good title thereto notwithstanding any instructions of the owner to the contrary. Provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of the goods . . . has no right to sell the goods".

In the present case not only does no reasonable presumption exist that the person in possession had no right to sell, but as he was actually the owner as well as the pledgor of the motor car and was by the pledgee permitted to remain in possession of the car as the registered owner, there was nothing to put the purchaser on her guard, or to raise any doubt in her mind that the person who sold to her had not got the right to do so.

*I agree that this appeal should be dismissed with costs.*