

APPELLATE CIVIL.

*Before Sir Arnold White, Chief Justice, and Mr. Justice
Krishnaswami Aiyar.*

GANGINENI KONDIAM (PLAINTIFF), APPELLANT,

v.

GOTTIPATI PEDDA KONDAPPA NAIDU (DEFENDANT),
RESPONDENT.*

1900.
November
17, 18, 25.

Limitation Act XV of 1877—Sch. II, arts. 49, 145—Where depositary refuses on demand to return thing deposited, art. 145 and not art. 49 applies.

Where moveable property is deposited and the depositary on demand by the depositor refuses to return the thing deposited, the period of limitation applicable to a suit to recover such property is that provided in article 145 and not that in article 49 of the Limitation Act.

The fact that the possession after demand and refusal is wrongful does not make article 49 applicable.

Obiter. Where a thing is deposited for safe custody, the depositor has the right to demand the return of the thing at any time, although the deposit might have been for a term.

SECOND APPEAL against the decree of T. M. Rangachariar, District Judge of Nellore, in Appeal Suit No. 144 of 1906, presented against the decree of R. Narasimham Aiyangar, District Munsif of Kavali, in Original Suit No. 170 of 1905.

The facts for the purpose of this case are sufficiently set out in the judgment.

K. Ramachundra Ayyar for the Hon. The Advocate-General for appellant.

T. V. Seshagiri Ayyar and *P. Nagabhushanam* for respondent.

JUDGMENT.—The question is whether article 145 or article 49 applies to the suit. It is assumed for the purpose of this judgment that there was a deposit by the plaintiff's father with the defendant of a certain jewel. It is found that there was a demand and refusal more than three years before suit. If article 49 applies, the suit is clearly barred. If, on the other hand, the article applicable is 145, the suit is in time. The decisions in *Administrator-General of Bengal v. Kristo Kamini Dasse*(1), and *Narmadabai v. Bhavani Shankar*(2), are clear authorities in favour

* Second Appeal No. 1055 of 1907.

(1) (1904) I.L.R., 31 Calc., 519.

(2) (1902) I.L.R., 26 Bom., 430.

of the applicability of article 145. It is argued for the respondent that article 145 has no application to a case where there has been a demand for the return of the deposit and a refusal by the depository. In such a case it is said the possession of the defendant which was lawful from the commencement of the deposit becomes wrongful on refusal to return, and therefore the suit becomes one "for other specific moveable property or for compensation for wrongfully detaining the same" and the period of three years provided by article 49 begins to run from the date when the detainer's possession becomes unlawful. We are unable to agree with this contention. Article 145 is the special article dealing with a suit against a depository to recover moveable property deposited and the period of thirty years provided by it runs from the date of the deposit. Article 49 on the other hand deals generally with a suit for other specific moveable property and it seems to us to have no application where the specific provision contained in article 145 applies. The former article was for the first time introduced into the Limitation Act of 1877. Article 48 of this Act replaced the provisions of articles 47 and 48 of the Limitation Act of 1871, with a slight modification. Assuming that article 49 of the Act of 1877 might cover certain of the cases which fell within the scope of article 48 of the Act of 1871, there is no doubt that it comprises within it several cases for which there was no provision in the specific articles dealing with moveable property in the Act of 1871. But the introduction of this practically new article into the category of articles dealing with the withholding of moveable properties whether such withholding was a tort or a breach of contract cannot be deemed to provide for the cases where the possession of moveable property is transferred to another by reason of a confidential relation such as is involved in a deposit. But apart from the foregoing reasoning it is *prima facie* clear that all actions for the recovery of a deposit of moveable property are, by the express words of article 145, comprised within it. No exception is made as regards deposits where demand and refusal make the continuance of possession unlawful. The article includes suits against a pawnee for recovery of moveable property. It cannot be contended for a moment that if a pawnee refuses to return the pledge on demand, and thereby makes his possession wrongful there is any other article applicable to the case. There is no reason therefore for

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making any distinction in the case of the suit for return of the deposit. It is further necessary to bear in mind the provisions of article 133 of the Limitation Act. It runs as follows:—"To recover moveable property conveyed or bequeathed in trust, deposited or pawned and afterwards bought from the trustee, depository or pawnee for a valuable consideration twelve years from the date of the purchase." This is obviously an abridgment in favour of the purchaser for valuable consideration of the period provided in article 145 in cases of deposit and pledge, and an enactment of a special period of twelve years in the case of a purchaser from a trustee when under section 10 there would be no limitation at all in a suit against the trustee himself. (See Muttusami Ayyar, J., in *Muthu v. Kambalinga*(1) and Mitra on 'Limitation,' page 1009.) It is impossible to argue that against the purchaser from a depository or pledgee there is always a period of twelve years from the date of the purchase no matter whether there has been a demand and a refusal but that against the depository or pawnee himself who stands in a quasi-fiduciary relation the period of limitation is curtailed to three years under article 49, the detention becoming unlawful after demand and refusal. Articles 133 and 145 have come down from the Limitation Act of 1859 in which the corresponding provisions were section 5 and section 1, clause 15. It would have been impossible to suggest when the Limitation Acts of 1859 and 1871 were in force that the shorter period of six years under the residuary clause 16, section 1 of the Act of 1859 or article 118 of the Act of 1871 was applicable to a suit against a depository after demand and refusal. No change of legal theory is discernible in the mind of the legislature as regards such a suit in the Act of 1877. The conclusion therefore appears to be inevitable that in a case of deposit of moveable property whether there has been a demand and refusal or not, a suit for its recovery must fall within article 145. It was suggested however in the course of argument that such a view might involve the hardship of preventing the recovery of the deposit altogether where under the terms of the agreement of deposit the article was to remain with the depository for thirty years or more. If the depositor cannot claim back the deposit before the expiry of the

(1) (1889) I.L.R., 12 Mad., 316 at p. 318.

period, it must be admitted that the difficulty pointed out is real. But is he precluded from claiming back the deposit before the time stipulated? The answer to this question depends upon an exact understanding of the nature of deposit. A deposit is a gratuitous bailment. (See Halsbury's 'Laws of England,' Volume I, section 1074.) In Sohm's 'Institutes of Roman Law', page 292, it is said "Depositum arises when A delivers a moveable thing to B for the purpose of gratuitous safe custody," and again at page 293 "The depositary is not interested in the contract. He derives no benefit from the transaction. . . . The depositor on the other hand is interested in the transaction; it is for his benefit that the contract exists." In Sandar's 'Justinian' we have the following:—"Here (in deposit) the benefit is entirely on the side of the person who commits the thing to the care of one who receives it gratuitously . . . He has, however, no right to make use of the thing." It is further pointed out that "as it is deposited for the benefit of the person depositing it, that person can reclaim it *when he pleases* and need not like the *commodans* wait for the expiration of the time agreed on." Domat in his Civil Law in sections 691, 692 and 697 defines a deposit, and states it as the obligation of the depositary even when a term has been agreed upon to return it when demanded. He says "a deposit is a covenant by which one person gives to another something to keep which he is to restore whenever the depositor shall think fit to call for it. The deposit ought to be gratuitous for otherwise it would be a hiring and the letting to hire where the depositary would let out his care . . . Since it is the nature of the deposit that the things are not deposited for the behoof of the depositary, as things lent are for the use of the borrower, but for the bare advantage of the depositor, he may take back the thing deposited *whenever he pleases even although the time of restitution were regulated by the contract.*" (See also Halsbury's 'Laws of England,' Volume I, section 1084.) If this was the view adopted by the Indian Legislature as regards the relation between the depositor and the depositary there would be no place for the suggestion of the hardship already referred to in the case of a deposit for a term, for even in such a case it would be competent to the depositor to claim back the deposit the very next day after the deposit. The Indian Contract Act passed by the Indian Legislature shortly after the Limitation Act of 1871 gives no

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WHITE, C.J., definition of deposit though it is one of the species of bailments
 AND dealt with in chapter IX of the Act. Section 162 refers to
 KRISHNA- the termination of a gratuitous bailment by the death of the
 SWAMI bailor or bailee. Section 158 refers to bailment for safe custody
 AIYAR, J. where the bailee is to receive no remuneration. But neither
 of these sections has anything to say as to the time at which
 GANGINENI the bailee is bound to return the thing bailed. Section 159,
 KONDIAH v. of these sections has anything to say as to the time at which
 GOTIPATI the bailee is bound to return the thing bailed. Section 159,
 PEDDA however, goes on to provide that the lender of a thing *for use*
 KONDAPPA may at any time require its return if the loan was gratuitous
 NAIDU. even though he lent it for a specified time or purpose. It is
 an *a fortiori* case that the bailee is bound to return a mere deposit
 for safe custody at any time irrespective of the time specified in
 the contract. If this view be correct, there can be no doubt that
 the suggested hardship, in the application of article 145 to cases
 of deposit for a term exceeding thirty years, cannot possibly arise.
 In Pollock and Mulla's notes to section 159, a query is put
 whether an express *contract not to recall* a thing gratuitously lent
 before the expiration of a certain term, would not be good in
 British India notwithstanding the section. It is true that there
 would be no difficulty about the consideration in such a case for
 the mere acceptance of the deposit would be a sufficient consid-
 eration for the promise not to recall it before the expiration of the
 term. The question whether in the case of a bailment upon a
 promise not to recall the thing gratuitously lent for thirty years or
 more, the application of article 145 may not create a hardship,
 need not make us pause in the application of the article to all
 cases of suits for the return of moveable property deposited. The
 above conclusion is no doubt opposed to the *obiter dictum* of
 Collins, C.J. and Benson, J., in *Ramakrishna Reddy v. Panaya*
Goundan(1). But we are unable for reasons already set forth to
 agree with it. *Subbappa v. Maruppakkala*(2) has no bearing on
 the question now under consideration.

Reference was made in the course of the argument to the
 English Law. There is no provision in the English Law corre-
 sponding to article 145. The statute 21 Jac.I., Ch. 15, provides
 a period of six years next after the cause of action in all actions
 of detinue. Under this provision a depositary whose detention of
 the goods becomes wrongful on refusal to deliver after demand, can

(1) (1899) 9 M.L.J., 51.

(2) (1892) I.L.R., 15 Mad., 157.

plead the statute successfully if six years have elapsed from the time when the cause of action arises. In *Wilkinson v. Verity*(1) approved of by the Court of appeal in *Miller v. Dell*(2), it was held that where goods were bailed by the plaintiffs to the defendant for safe custody and the defendant wrongfully sold them, the time ran from the date of the demand for the return of the goods which the defendant refused. This view is in accordance with the opinion of the celebrated Jurist, Pothier. (See 'Pothier on Contracts' by Evans, Volume II, page 126.) He says "where a man deposits money in the hands of another to be kept for his use the possession of the custodier ought to be deemed to be the possession of the owner until an application and refusal or other denial of the right; for until then there is nothing adverse and I conceive that upon principle no action should be allowed in these cases without a previous demand; consequently that no limitation should be computed further back than such demand." This was accepted by North, J., in *re Tidd*(3), as a correct statement of the English Law on the subject. However correct this may be as a statement of the principle on which a rule of limitation should rest as regards an action against a depositary for the return of the deposit, there can be no question that it is not the foundation on which the article 145 of the Limitation Act rests. We have to apply the Law in India as we find it. We must therefore hold that the District Judge is wrong in dismissing the suit as barred by Limitation.

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The decision of the lower Appellate Court is reversed and the suit remanded for disposal according to law. The costs will abide and follow the result.

(1) (1871) L.R., 6 C.P., 206.

(2) (1891) 1 Q.B., 468.

(3) (1893) 3 Ch., 154 at p. 156.