

“Receiver” in Act III of 1907. In my opinion the words “as hereinafter provided” qualify “Receiver” and not the verb “shall vest”; and there is no distinction in principle between the policy of all these enactments. The language of section 153 of 12 and 13 Vict., C. 106, is stronger as it used the words “with the leave of the Court, first obtained, upon application to such Court *but not otherwise.*” I do not see any reason why the cases above cited should not apply to the Act of 1907. The Appeal is therefore allowed, the decree of PHILLIPS, J., is reversed, and the case remanded to the Original Side for disposal according to law. The second appellant will have the costs of the Appeal. The costs of the first Court will abide the result.

OFFICIAL
RECEIVER OF
COIMBATORE
v.
KANGA.
RAMESAM, J.

Solicitors for respondents: *Short Bewes & Co.*

M.H.H.

APPELLATE CIVIL.

*Before Sir William Ayling, Kt., Officiating Chief Justice,
and Mr. Justice Odgers.*

KATTA RAMASAMI GUPTA (DEFENDANT), APPELLANT,

v.

KAMALAMMAL (PLAINTIFF), RESPONDENT.*

1921
September
14, 15, 16,
and 27.

Contract Act (IX of 1872), sec. 148—Bailment—Gratuitous bailment of jewels—Bailee whether trustee for bailor—Indian Trusts Act (II of 1882), Chapter IX—Bona fide purchaser for consideration from bailee—Trusts Act (II of 1882), sec. 96, and Contract Act (IX of 1872), ss. 108, 178, whether purchaser protected by.

In a gratuitous bailment the bailee is not a trustee for the bailor, within the meaning of Chapter IX of the Indian Trusts Act.

RAMASAMI
GUPTA
v.
KAMA-
LAMMAL.

A purchaser in good faith and for consideration from such bailee is not protected by the provisions of section 96 of the Indian Trusts Act or section 108 or 173 of the Indian Contract Act.

APPEAL against the judgment and decree of Mr. Justice COUTTS TROTTER passed in the exercise of the Ordinary Original Civil Jurisdiction of the High Court in C.S. No. 257 of 1919.

The facts are set out in the judgment.

G. Krishnaswami Ayyar for appellant.

C. Venkatasubbaramayya for respondent.

The Court delivered the following JUDGMENT:—

In this case the plaintiff lent certain jewels to one Meenakshi Ammal for the purpose, as the plaintiff says, of decking the latter's daughter for a prospective bridegroom. Meenakshi Ammal took the jewels and pledged them with Thangavelu Mudali and Chinnaswami Sah. The defendant after redeeming the jewels from the pledgees bought them from Meenakshi Ammal. The plaintiff brought the suit against the defendant for the recovery of the value of the jewels which was decreed to her. The defendant now appeals against this judgment.

Two points are raised on defendant's behalf, first, one of fact, that the sale to the defendant was with the consent of the plaintiff. We have examined the evidence with great care. It appears that the plaintiff, who is described as somewhat simple-minded, handed the jewels to Meenakshi Ammal without the knowledge of her husband but with the knowledge of one of her sons, a High Court vakil. Meenakshi Ammal, who was subsequently convicted in connexion with these jewels, contended that the jewels were given to her to sell or pledge in order to raise money for some theatrical business in which the plaintiff was interested. This story was, we think, quite

rightly discredited as improbable by the Judge, and on the evidence it is to our minds perfectly clear that the plaintiff did, in fact, lend the jewels to Meenakshi Ammal for the purpose of decking her daughter and for no other. This gratuitous bailment, for such it is in law, took place in 1917. The pledge by Meenakshi Ammal and the subsequent purchase by the defendant took place some six or seven months afterwards, i.e., in June 1918. On the facts we are of opinion that the sale to the defendant was not with the plaintiff's consent.

The more serious defence is that the defendant was a purchaser for value without notice of any defect in the title of Meenakshi Ammal to these jewels and that he is therefore protected either as falling within the Trusts Act or secondly by the provisions of sections 108 and 178 of the Contract Act. To take the first of these ; it was strenuously argued by Mr. G. Krishnaswami Ayyar on the defendant's behalf, that as Meenakshi Ammal was a bailee she was therefore a trustee : if not an express trustee at least as falling within Chapter IX of the Trusts Act, and that the defendant as purchaser from her was therefore protected by section 96 of the Trusts Act. Now, although a bailee may be in some respects in a fiduciary position as regards his bailor it is a very different thing from saying that a bailee is a trustee pure and simple. To begin with, the definition of a "trust" in section 3 of the Indian Act is that it is an obligation annexed to the ownership of property whereas a "bailment" is a contract where the ownership in the chattel bailed does not pass to the bailee, and the fact that fiduciary relationship may exist between the bailee and the bailor does not necessarily make the bailee a trustee within the meaning of the Trusts Act. Now, although a bailee may have sufficient interest in the property bailed to be able to maintain an action against

RAMASAMI
GUPTA
v.
KAMA-
LAMMAL.

a third person in respect of the property, still once the bailment is terminated owing to the tortious act of the bailee, there can be no doubt that the bailor is at once reinvested with the full ownership of the property bailed, and there is thus no bailment if the thing delivered is not to be specifically returned or accounted for, i.e., no bailment where the whole property is transferred. Now, with regard to Chapter IX of the Trusts Act, it is headed "of certain obligations in the nature of trusts." Of those obligations sections 81 to 86 are examples of what is known in the English law as "resulting trusts"; those from section 87 to section 94 are cases of "constructive trusts." There is no illustration appended to the sections nor has any authority been quoted to us to cause us to include bailment among the obligations set out in this Chapter. The contention seems to have been derived from the fact that in *In re Hallett's Estate*(1), THESIGER, L. J., at page 722, says that

"the principles relating to the following of trust property are equally applicable to the case of a trustee, and to the case of factors, bailees, or other kinds of agents . . . wherever a specific chattel is entrusted by one man to another . . . then, either the chattel itself, or the proceeds of the chattel, whether the chattel has been rightfully or wrongfully disposed of, may be followed at any time."

This extract from the judgment of the learned Lord Justice does not in our opinion, warrant the larger assumption that bailments are to be included in Chapter IX of the Trusts Act so as to afford the defendant in this case protection under section 96. Further, in Halsbury, Volume I, page 563, paragraph 1142, it is said:

"Further, where the bailee, by a wrongful dealing with the chattel, has determined the bailment, all third persons, however innocent, who purport in any way to deal with the property in the chattel, are guilty of conversion and liable to the bailor."

(1) (1880) 13 Ch. D., 696.

This disposes of the first contention under this head.

Now, with regard to the sections of the Contract Act, the learned Judge below held that the defendant was not protected as, although he may have acted in good faith, he did not satisfy the second part of section 178, that the goods had not been obtained from their lawful owner by means of an offence or fraud. With regard to this we think with respect that it may have escaped the attention of the learned Judge that, although the bailment was in November, the pledge by Meenakshi Ammal did not take place till a very considerable length of time had elapsed. If she had represented to the plaintiff that the jewels were wanted for decking her daughter when all the time she intended to raise money on them by pledge, that would clearly be obtaining the goods by false pretences or criminal breach of trust within the meaning of section 410 of the Indian Penal Code. It is said for the plaintiff that illustration (a) to section 108 of the Contract Act covers this case. But we would point out that the illustration only applies to cases of theft. Here the jewels were obtained with the consent of the owner and the illustration does not apply. It may, however, be that Meenakshi Ammal did, in fact, borrow them for the purpose she stated, but that owing to the negligence of the plaintiff in recovering the jewels from her within a reasonable time afterwards she conceived the notion of converting the jewels to her own use. We cannot, therefore, say there is reliable evidence that the goods were obtained by fraud. It appears to us that this is a case of conversion like that in *Seshappier v. Subramania Chettiar*(1). Now, with regard to section 108, exception 1, the question turns on the meaning of the word "possession"—"when any person is, by the consent of the owner,

RAMASAMI
GUPTA
J.
KAMMA-
LAMMAL.

(1) (1917) I.L.R., 40 Mad., 678.

RAMASAMI
GUPTA
v.
KAMA-
LAMMAL.

in possession of any goods, etc.," and it is urged for the defendant that Meenakshi Ammal being in possession of these goods was able to pass the ownership of the goods to himself as he acted in good faith and there was nothing to show him that Meenakshi Ammal had no right to sell. The possession alluded to in exception 1 is of course the possession of a factor or an agent for sale. Section 178 contains very similar words, but omits the words "by consent of the owner" and "notwithstanding any instructions of the owner to the contrary." As Pollock points out in his commentary on the Contract Act the absence of those expressions in section 178 has no bearing on the section and does not warrant any inference that the word "possession" is used in a different sense to what it is in section 108. In fact, in *Naganada Davay v. Bappu Chettiar*(1), BODDAM, J., held that the possession in the two sections was similar. It may be remarked that in a note on *Naganada Davay v. Bappu Chettiar* (1), Pollock remarks :

"It is impossible to hold that the Act meant to authorize pledge in such a case; yet the hirer surely has possession and not bare custody. The language of the Act seems incautiously wide."

The cases cited to us seem clearly to show the nature of possession alluded to in the two sections, and from the authorities we can deduce no other inference than that the defendant is not protected in the present case. The earliest case *Greenwood v. Holquette*(2) was a case of a hire of a piano on the instalment system which was sold by the hirer and purchased by the defendant in good faith. It was held that section 108, exception 1, does not apply where there is only a qualified possession, e.g., that of a hirer, or where the possession is for a specific purpose. Such possession is of a different nature from

(1) (1904) I.L.R., 27 Mad., 424.

(2) (1873) 12 B. L.R., 42.

the unqualified possession referred to in the exception to the section where the owner has power to give instructions. Again, in *Shankar Murlidhar v. Mohanlal Jaduram*(1), it was held that where detention is allowed for a limited purpose it is not within the exception, and that in the case of a gratuitous bailment of a chattel, the possession remains constructively with the owner. *Naganada Davay v. Bappu Chettiar*(2), alluded to above, was a case of a jewel hired to the defendant who pledged it with another the latter acting in good faith; Held that he was not protected by section 178 or 179 as the possession of the hirer was not that contemplated by section 178. *Seshappier v. Subramania Chettiar*(3), which was subsequently reversed in *Seshappier v. Subramaniam Chettiar*(4), turned on a question of evidence, i.e., as to whether the husband of the defendant was in fact an agent for sale or simply entrusted with a jewel to find a purchaser and settle the price in the presence of the plaintiff. SESHAGIRI AYYAR, J., who first tried the case held on the evidence that he was the latter. The learned Judges who heard the Letters Patent Appeal decided on the evidence that he was an agent for sale. This cannot affect the question of law involved in this case. It seems, therefore, clear on the authorities, and none were quoted *contra* that the defendant here cannot avail himself of either section 108 or section 178 of the Contract Act though he purchased the jewellery in good faith from Meenakshi Ammal, since she had only qualified possession and possession as we find on the evidence for a specific purpose, viz., that of decking her daughter for a bridegroom. We, therefore, affirm the decision of the learned trial Judge and dismiss the Appeal with costs.

M.H.U.

(1) (1887) I.L.R., 11 Bom., 704.

(2) (1904) I.L.R., 27 Mad., 424.

(3) (1915) I.L.R., 38 Mad., 733.

(4) (1917) I.L.R., 40 Mad., 678.