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DAS  
v.  
PURAN.

Mr. A. P. Sen, for the applicant.

STUART, C. J. and RAZA, J. :—After having examined the note written in the account we are of opinion that the entry can only be read as a memorandum of agreement within the terms of article 5 of the Schedule in the Stamp Act, and in the circumstances the Munsif was right in directing it to be stamped with an eight anna stamp and he rightly charged a penalty of Rs. 5. As the stamp duty and the penalty have already been paid the applicant is under no further liability, but his suggestion that the entry is not liable to stamp duty cannot be upheld. The view which we take upon the point is to all intents the same view as the view taken by a Bench of the Allahabad High Court in *Mahadeo Kori v. Sheoraj Ram Teli* (1). The result is that this application is dismissed. The applicant will pay his own costs. The other side has incurred no costs.

*Application dismissed.*

### APPELLATE CIVIL.

*Before Mr. Justice Wazir Hasan and Mr. Justice  
Bisheshwar Nath Srivastava.*

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July, 24.

THE MUNICIPAL BOARD, LUCKNOW (PLAINTIFF-  
APPELLANT) v. ABDUL RAZZAQ AND OTHERS (DEFENDANTS-  
RESPONDENTS.)\*

*Indian Contract Act (IX of 1872), sections 153 and 162—  
Bailment—Liability of the estate of a deceased bailee  
for loss due to wrongful act of the bailee.*

In the case of a bailment on general principles of law and also according to the provisions of section 153 of the Indian Contract Act the liability of the bailee, whether the

\*Second Civil Appeal No. 445 of 1928, against the decree of Mirza Munim Bakht, Subordinate Judge of Malihabad at Lucknow, dated the 10th of September, 1928, upholding the decree of Babu Mahabir Prasad Verma, Munsif North, Lucknow, dated the 30th of November, 1927, dismissing the plaintiff's suit.

(1) (1918) I.L.R., 41 All., 169.

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bailment is gratuitous or for consideration, arises if he does any act with regard to the goods bailed which causes loss to the bailor, and this liability cannot fall within the principle of the maxim, *actio personalis moritue cum persona*, and there can be no doubt that on the death of the bailee his estate is liable for the loss. The object of section 162 is simply to bring out the general principle of law on the surface that the heir of a bailee, when the bailment is gratuitous, does not occupy on the death of such bailee the character of a bailee, but the section does not do away with the principle of law that such an heir occupies the character of a constructive trustee in regard to the subject matter of the bailment.

The Municipal Board distrained some moveable property of their debtor *A* and delivered it in the custody of *B* who subsequently surrendered possession of it to *A* and died some time after. The Municipal Board then brought a suit claiming the value of the distrained property from the heirs of *B*. *Held*, that there can be no doubt that *B* occupied the character of a trustee even if he was not technically a trustee in relation to the goods which were placed in his custody on behalf of the plaintiff and it could not be inferred from section 162 of the Contract Act that the liability for the wrong caused by the bailee in respect of the goods bailed and therefore causing loss to the bailor came to an end with the death of the bailee where the bailment is gratuitous and so the estate of *B* was liable for the loss suffered by the Municipal Board. *Jwaladutt R. Pillani v. Raja Bahadur Bansilal Motilal* (1), and *Montford v. Lord Cadogan* (2), referred to.

Mr. *J. N. Chak*, holding brief of Mr. *S. S. Narain Tankha*, for the appellant.

Mr. *G. N. Mukerji*, for the respondents.

HASAN and SRIVASTAVA, JJ. :—This is a second appeal from the decree of the Subordinate Judge of Malihabad, Lucknow, dated the 10th of September, 1928, upholding the decree of the Munsif (North), Lucknow, dated the 30th of November, 1927.

The appeal has come for decision before us on a reference by a learned Judge of this Court, the late

(1) (1929) 27 A.L.J., 579.

(2) (1810) 34 E.R., 188.

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Mr. Justice GOKARAN NATH MISRA. The facts are as follows :—

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For the purpose of satisfying a certain claim the Municipal Board of Lucknow distrained some moveable property belonging to one Mohammad Nazir. On the completion of the distraint the distrained property was delivered into the custody of one Mohammad Hadi.

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Mohammad Hadi accepted delivery in writing about the 26th of July, 1925. Mohammad Hadi subsequently surrendered possession of this property into the hands of the original debtor Mohammad Nazir. Mohammad Hadi afterwards died in or about September, 1926. The plaintiff, that is, the Municipal Board of Lucknow, claim the value of the distrained property, from the heirs of the deceased Mohammad Hadi, in the suit out of which this appeal arises. The estimated value of property is Rs. 194-14-0.

The suit has been dismissed by the courts below on the sole ground that having regard to the provisions of section 162 of the Indian Contract Act, 1872, the estate of Mohammad Hadi is not liable for the loss suffered by the Municipal Board on account of the wrongful act of Mohammad Hadi. The argument in appeal before us is that the provisions of section 162 mentioned above do not lead to any such result as the courts below have attributed to it. We are of opinion that the argument is correct and must be accepted. Section 162 is as follows :—

“A gratuitous bailment is terminated by the death either of the bailor or of the bailee.

We are unable to infer that the liability for the wrong caused by the bailee in respect of the goods bailed and thereby causing loss to the bailor also comes to an end with the death of the bailee, where the bailment is gratuitous. In the case of a bailment on general

principles of law and also according to the provisions of section 153 of the Indian Contract Act the liability of the bailee, whether the bailment is gratuitous or for consideration, arises if he does any act with regard to the goods bailed which causes loss to the bailor. We do not see how this liability can fall within the principle of the maxim *actio personalis moritue cum persona* and there can be no doubt in our opinion that on the death of the bailee his estate is liable for the loss. It has repeatedly been pointed by their Lordships of the Judicial Committee that the provisions of the Indian Contract Act embodied in chapter IX relating to bailment are not exhaustive. The most recent case on the point decided by their Lordships is *Jwaladutt R. Pillani v. Raja Bahadur Bansilal Motilal* (1). In the case of *Lord Montford v. Lord Cadogan* (2), the Master of Rolls Sir WILLIAM GRANT quoted with approval the following passage from the decision of Lord REDESDALE in the case of *Adair v. Shaw* :—

“It has been the constant habit of courts of equity to charge persons in the character of trustees with the consequence of a breach of trust; and to charge their representatives also, whether they derive benefit from the breach of trust or not.”

We think there can be no doubt that Mohammad Hadi occupied the character of a trustee, even if he was not technically a trustee, in relation to the goods which were placed in his custody on behalf of the plaintiff. It appears to us that the object of section 162 is simply to bring out the general principle of law on the surface that the heir of a bailee, when the bailment is gratuitous, does not occupy on the death of such bailee the character of a bailee. The section does not do away with the principle of law that such an

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heir occupies the character of a constructive trustee in regard to the subject-matter of the bailment.

The claim of the Municipal Board for the satisfaction of which the distraint was effected was a claim for a sum of Rs. 70 due from Mohammad Nazir on account of arrears of rent of a certain shop which he occupied as a tenant of the Board. It is agreed now that Mohammad Nazir eventually sold the distrained property for a sum of Rs. 150. We have already said that the Municipal Board claims recovery from the heirs of Mohammad Hadi of the estimated price of the distrained goods, that is Rs. 194-14-0. If we allow the whole of the claim of the Municipal Board it will necessitate a further litigation against the Board for the difference between the amount of their original claim of Rs. 70 and the sum which may now be decreed in favour of the Board. We accordingly think that the proper course will be to decree the plaintiff's suit to the extent of Rs. 70 only. Accordingly we set aside the decrees of the courts below and grant a decree in favour of the plaintiff-appellant for a sum of Rs. 70 against the defendants. The sum decreed hereby shall be realised from the assets of the deceased Mohammad Hadi. In these circumstances we think that the Municipal Board should not be saddled with costs of the claim in suit to the extent to which we have disallowed it. We, therefore, give the Board costs on the sum of Rs. 70 for which they have obtained a decree from us in all courts. The costs hereby awarded to the Municipal Board will be realisable by them from the defendants' person also.

*Appeal partly allowed.*