

1930
 RAM PEAREY
 v.
 MUSAMMAT
 KAILASHA.

unworthy of credit, and the plaintiff has failed to prove remarriage in accordance with that form, the plaintiff's case based on the alleged remarriage must fail.

Srivastava
 and
Pullan, JJ.

The result is that the appeal fails and is dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

*Before Mr. Justice Bisheshwar Nath Srivastava
 and Mr. Justice A. G. P. Pullan.*

1930
 April, 15.

CHATURGUN (DEPENDANT-APPELLANT) v. SHAHZADEY
 (PLAINTIFF-RESPONDENT).*

Indian Limitation Act (IX of 1908) articles, 49, 115, 120 and 145—Lending of ornaments by plaintiff to defendant for use in Ram Lila procession—Ornaments stolen through defendant's negligence from his keeping—Suit for recovery of value of ornaments—Article 120, Limitation Act, when to be applied—Limitation Act, article 115, starting point of limitation under—Bailment—Contract Act (IX of 1872), sections 46, 148 and 160.

Where the plaintiff handed over to the defendant certain ornaments for use in a Ram Lila procession to be celebrated on a particular day and they were stolen from the defendant's keeping owing to his negligence and a suit was brought by the plaintiff for recovery of money representing the value of the ornaments held, that article 145 has no application there being no question of trust or quasi-trust, nor did article 49 apply as the property was not wrongfully taken or injured or detained by the defendant but was stolen, but the case was governed by the residuary article 115.

Per Srivastava, J.: When the defendant borrowed the ornaments for the Ram Lila procession he must be deemed to have made an implied contract for the return of the goods to the plaintiff and therefore there was a breach of the contract,

*Second Civil Appeal No. 356 of 1929, against the decree of Babu Sitla Sahai, Additional Subordinate Judge of Unao, dated the 1st of September, 1929, modifying the decree of Babu Gulab Chand Srimal, Munsif, Purwa, at Unao, dated the 11th of August, 1928.

according to section 160 of the Contract Act when they were not returned after completion of the Ram Lila and the limitation under article 115 began to run from that time.

Per Pullan, J.: The transaction is one of bailments as defined by section 145 of the Contract Act and no time being stipulated for the return of the ornaments the date when the defendant reported to the police the theft may be taken as the date when the defendant should under his implied contract have returned the ornaments to the plaintiff and limitation under section 115 began to run from that date.

As long as there is a contract between the parties which is not in writing and which can be covered by article 115, article 120 cannot be applied. Indeed it should never be invoked if there is any other article in the schedule which, upon reasonable interpretation of its language, seems to cover the particular suit with which the court is dealing. *Balakrishnudu v. Narayanasawmy Chetty* (1) and *Kishtappa Chetty v. Lakshmi Ammal* (2), referred to.

Mr. *Radha Krishna*, for the appellant.

Mr. *Ram Bharose Lal*, for the respondent.

PULLAN J.:—The facts of this case as decided by the findings of the court below which are not now in appeal are as follows. On the 24th of October, 1924, the plaintiff handed over to the defendant four gold ornaments for use in the Ram Lila procession which was to be celebrated that day. The ornaments were stolen from the keeping of the defendant owing to the latter's negligence. The defendant did not at first deny liability and it appears that he made some attempts to recover the stolen articles. However on the 27th of February, 1928, the defendant made a statement in which he denied liability for the return of the ornaments, and the plaintiff filed the present suit on the 5th of May, 1928. In this second appeal we have only to consider whether the suit is or is not within limitation. In order to determine this question we have to

(1) (1912) I. L. R., 37 Mad., 175. (2) (1923) 44 M. L. J., 481.

1930

CHATURGUN
2.
SHAHZADEY

Pullan, J.

decide the nature of the transaction. The lower court has found that it was a deposit and that article 145 of the first schedule to the Limitation Act applies to the case. Article 145 deals with a suit against a depositary or pawnee to recover moveable property deposited or pawned and the period of limitation is thirty years from the date of the deposit or pawn. The word "deposit" as pointed out by the Madras High Court in *re Balakrishnadu v. Narayanasawmy Chetty* (1) is derived from the Latin *depositum*, a technical word used in the Roman Law of Bailment for a bailment of a specific thing to be kept for the bailor and returned when wanted, as opposed to *commodatum* where a specific thing is lent to the bailee to be used by him and returned. In popular language *commodatum* is translated by the word "loan" and the distinction between deposit and loan is this that a deposit is to be kept by the depositee for the depositor and the loan is to be kept by the borrower for himself. Thus I deposit my hat in the cloak room. My hat is not to be used by the depositee but is to be kept for me and returned to me on my demand, but I lend my money to a friend and he can do what he likes with it as long as he returns it to me either on demand or at some specified time. It may be, as observed by Sir WALTER SCHWABE when Chief Justice of the Madras High Court, in *Kishtappa Chetty v. Lakshmi Ammal* (2) that article 154 covers more than the *depositum* of Roman Law and his Lordship observed that the framers of the Indian Limitation Act "meant to use simple and plain language," but I take this to mean that the word "deposit" is used in the ordinary sense of the word in the English language, and as far as I am aware the word "deposit" does not cover a transaction of the nature of a loan. The transaction that we have to consider is a loan. The plaintiff lent the defendant these ornaments to be used by the

(1) (1912) I. L. R., 37 Mad., 175.

(2) (1923) 44 M. L. J., 431.

latter in a religious procession. There was no question of trust or *quasi* trust. It was a mere loan for the benefit of the borrower and, in my opinion, article 145 has no application.

I am equally certain that article 49 need not be considered. This article provides for a case where the property has been wrongfully taken or injured or wrongfully detained. The property was not wrongfully taken, it was not injured nor was it detained by the defendant, because it was stolen from his possession before he had an opportunity of returning it. This article, though pleaded in the first court, was given up on the court below. The only other article which appears to be applicable is article 115. This prescribes the period of three years' limitation in a suit for compensation for the breach of any contract, express or implied, and the limitation runs from the time when the contract is broken. It is not and cannot be contested that the defendant when he took these articles of jewellery on loan was bound to return them, and as he took them for a special purpose, namely, for use in the Ram Lila procession, he should not have retained the articles after the purpose had been accomplished. In fact the transaction is a bailment as defined in section 148 of the Contract Act and a bailment is the delivery of goods by one person to another for some purpose upon a contract that they shall, when the purpose is accomplished, be returned. Thus although no time was stipulated for the return of the articles there was, in my opinion, an implied contract that they should be returned when the purpose for which they were borrowed was accomplished. Section 46 of the Contract Act lays down that where no time for performance of a contract is specified the engagement must be performed within a reasonable time, and the question "what is a reasonable time" is in each particular case a question of fact. It is clearly unreasonable for a person who has borrowed ornaments for use

1930

 CHATURGUN
v.
 SHAHZADEY.

Pullan, J.

1930

CHATURGUN
v.
SHAHZADEY

Pullan, J.

in a ceremony to detain them after the ceremony has been completed and the owner has demanded their return. As I stated above this is not a case of detention, but if I were required to find what was a reasonable time for these articles to be returned, supposing that they had not been lost, and that the defendant was in a position to return them, I should say that, the reasonable time was when the lender asked for the articles after the purpose for which they had been lent had been accomplished. The defendant reported to the police the theft of the articles on the 27th of October, 1924, and this may be taken for the purposes of limitation as the date when the defendant should under his implied contract have returned the articles to the plaintiff. In my opinion the plaintiff had a period of three years from that date to bring a suit either for the return of the articles or for compensation. He cannot rely on the fact that the defendant did not deny his liability during that period for obtaining an extension of the period of limitation. Article 115 is a residuary article for actions *ex contractu*; and can only be applied when no other article of the Limitation Act schedule is appropriate. It would not, in my opinion, be proper to go beyond this and take refuge in the omnibus article 120. As long as there is a contract between the parties which is not in writing and which can be covered by article 115, article 120 cannot be applied. Indeed it should never be invoked if there is any other article in the schedule which upon reasonable interpretation of its language seems to cover the particular suit with which the court is dealing. In my opinion the transaction between the parties can be covered by a reasonable interpretation of the language of article 115, and as the suit has been brought more than three years after the breach of the contract it is barred by time and I would, therefore, allow this appeal with costs.

SRIVASTAVA, J. :—I agree. Article 145 governs suits “to recover moveable property deposited or pawned.” In the present case the relief claimed by the plaintiff and decreed in his favour is a decree for money representing the value of the ornaments. The article has in my opinion, no application to a suit for such a money decree. Article 49 also is inapplicable. Though the suit is for compensation, yet on the facts found it is impossible to say that the defendant has wrongfully taken or injured, or that he is wrongfully detaining the ornaments which have been stolen.

Thus in the absence of any specific article, article 115 which is a residuary article would seem to apply. When the defendant borrowed the ornaments he must be deemed to have made an implied contract for the return of the goods to the plaintiff. Under section 160 of the Contract Act it is the duty of the bailee to return the goods bailed without demand as soon as the time for which they were bailed has expired or the purpose for which they were bailed has been accomplished. Admittedly the ornaments were borrowed for the purpose of the Ram Lila and the Ram Lila was over on the 24th of October, 1924. There was therefore a breach of the contract when the ornaments were not returned after the completion of the Ram Lila and the suit is barred by article 115.

BY THE COURT :—The appeal is allowed, the decree passed by the lower court is set aside and the plaintiff’s suit is dismissed with costs in all the courts.

Appeal allowed.

1930

CHATURGUN
c.
SHARZADEY.

Pallan, J.