

Act (cf. *Rani Janki Kunwar v. Raja Ajit Singh*) (1). The error into which the Chief Court fell, in their Lordships' opinion, is that they thought the three years permitted by the Limitation Act began to run, not from the discovery of the plaintiff of the true nature of the deed which he had signed, but from the date when he escaped from the influence by which, according to the plaintiff, he was dominated. Whether the facts as proved bring the claim within the limitation period even on this view is a question on which their Lordships express no opinion. It suffices to say that for the doctrine of the Chief Court their Lordships are unable to find any sufficient justification.

Their Lordships will therefore humbly advise His Majesty that the appeal of the defendant should be allowed, and that the decree of the Subordinate Judge of the 9th September, 1909, be restored. It follows that the cross-appeal falls to be dismissed. The plaintiffs must pay the costs here and in the Chief Court.

Solicitors for defendant-appellant: *Ranken Ford and Chester*.

Solicitors for plaintiffs-respondents: *T. L. Wilson and Co.*

## REVISIONAL CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava and  
Mr. Justice J. J. W. Allsop

J. HOLLOWAY (DEFENDANT-APPLICANT) v. J. HOLLAND  
(PLAINTIFF-OPPOSITE PARTY)\*

1933  
October 4

*Limitation Act (IX of 1908), Articles 36 and 115—Contract Act, section 151—Defendant borrowing plaintiff's car—Car meeting an accident while driven by defendant—Negligent driving—Defendant coming in collision with a tonga, while trying to pass a lorry—Defendant's failure to hold up the car, when he saw a tonga coming from opposite direction, whether negligent—Damages to the car—Suit to recover amount spent in repairs—Suit governed by article 115, Limitation Act and not article 36.*

\*Section 25, Application No. 61 of 1933, against the order of M. Humayun Mirza, Judge, Small Cause Court, Lucknow, dated the 10th of July, 1933.

(1) (1887) I.L.R., 15 Cal., 58; L.R., 14 I.A., 148.

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Where the defendant borrowed from the plaintiff his car and while the car was in defendant's use, it met with an accident which resulted in considerable damage to the car and the plaintiff had to spend a sum of money in its repairs, *held*, that the bailment arose out of a contract and the defendant was liable for damages in breach of contract by reason of his failure to carry out the obligation imposed on him by section 151 of the Contract Act and a suit brought by the plaintiff to recover the amount spent by him in its repairs was governed by article 115 and not article 36 of the Limitation Act. Article 36 refers to suits for compensation for malfeasance, misfeasance or non-feasance independent of contract, whereas article 115 refers to suits for compensation for the breach of any contract, express or implied.

Where the defendant, while driving a car tried to pass a lorry and in doing so came in collision with a *tonga* coming from the opposite direction and then lost control of the car and dashed against a lamp post which resulted in a smash of the car and burning of the engine, his failure to hold up the car, when he saw the *tonga* coming from the opposite direction and found that the road was not clear, was undoubtedly negligent.

Mr. B. N. Mulla, for the applicant.

Mr. Moti Lal Saksena, for the opposite party.

SRIVASTAVA and ALLSOP, JJ.:—This is a defendant's application in revision against the judgment and decree dated the 10th of July, 1933, of the learned Judge of the Court of Small Causes, Lucknow.

The admitted facts are that on the 21st of February, 1931, the defendant borrowed from the plaintiff his car in order to bring his daughter home from Messrs. Valerio and Co., Hazratganj, Lucknow. While the car was in the defendant's use, it met with an accident which resulted in considerable damage to the car. The plaintiff had to spend Rs.604 in the repairs of the car. He accordingly on the 16th of May, 1933, instituted the suit which has given rise to this application claiming the aforesaid amount together with interest thereon. The defendant denied his liability on the ground that the damage was not due to any negligence on his part but was the result of an unavoidable accident. He also pleaded limitation.

The lower court rejected the pleas raised in defence and decreed the claim for Rs.604 with proportionate costs but did not award any interest.

The learned counsel for the applicant has not questioned the correctness of the lower court's finding that the transaction was one of bailment. He has however contended in the first place that there was no negligence on the defendant's part and in the second place that the suit was barred by limitation.

The finding of the lower court that the accident was due to negligent driving on the part of the defendant is, at the face of it, a finding of fact which is not open to question in revision. We have however examined the evidence bearing on the point and have no hesitation in agreeing with the conclusion of the lower court. The defendant tried to pass a lorry and in doing so came in collision with a *tonga* coming from the opposite direction. He then seems to have lost control of the car and dashed against a lamp post which resulted in a smash of the car and burning of the engine. Even if the defendant had recorded a signal to pass from the lorry, yet his failure to hold up the car, when he saw the *tonga* coming from the opposite direction and found that the road was not clear, was undoubtedly negligent.

Next as regards the plea of limitation. It is contended that the case was governed by article 36 and not by article 115 of the Limitation Act. Article 36 refers to suits for compensation for malfeasance, misfeasance or non-feasance independent of contract, whereas article 115 refers to suits for compensation for the breach of any contract, express or implied. The question therefore arises whether the present claim is one for damages in tort or for compensation arising out of a breach of contract. It was argued that in the case of a breach of bailment the remedy lies in tort and not in contract. Reference was made to Winfield's Law of Tort, chapter V, which contains a learned discussion as regards the relation of tort to breach of bailment and of bailment to

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and  
Allsop, JJ.*

contract. There is considerable force in the argument that there is no consideration in the strict sense of it, in a gratuitous bailment but some consideration may be found in the fact that the owner had trusted the bailee with the goods. The law in respect of bailment in this country has been embodied in chapter IX of the Contract Act. The definition of bailment as given in section 148 of the Contract Act also clearly treats it as a species of contract. Section 151 places on the bailee a statutory liability to take as much care of the goods bailed to him as a man of ordinary prudence would, of his own goods of the same bulk, quality and value as the goods bailed. Thus while there may be cases of bailment without an enforceable contract, yet in the present case there seems no room for doubt that the bailment arose out of a contract and that the defendant is liable for damages in breach of contract by reason of his failure to carry out the obligation imposed on him by section 151 of the Contract Act. We are therefore of opinion that the lower court was right in holding that the case is governed by article 115 and not article 36 of the Limitation Act.

Lastly it was also contended that the defendant having on various occasions expressed his willingness to compensate the plaintiff for the damages suffered by him, he should not be made liable for the costs of the suit. We are not prepared to attach any value to these alleged verbal offers because when the plaintiff sent the defendant a registered notice demanding compensation and followed it up with a lawyer's notice, the defendant in his reply absolutely denied his liability and thus compelled the plaintiff to institute the suit.

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

*Application dismissed.*