APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava and Mr. Justice Rachhpal Singh

1934
April, 30

MRS. E. H. PARAKH AND OTHERS (DEFENDANTS-APPELLANTS) *v.* MESSRS. G. MACKENZIE AND CO. LTD. (PLAINTIFF-RESPONDENT)*

Contract Act (IX of 1872), sections 95, 148 and 170—Sale of goods—Seller's lien—Payment of price, whether terminates lien—Seller's position, whether that of bailee—Section 170, Contract Act, applicability of—Bailment, essential elements of—Contract that seller was to become bailee, effect of.

Under the provisions of the Indian Contract Act, the only lien which a seller has is in respect of the unpaid price as provided for under the provisions of section 95 of the Indian Contract Act. Where the vendor accepts the price paid the only lien which he has terminates and no lien can exist after the price has been paid, because the lien exists solely for the purpose of enabling the seller to obtain payment of the price. *Martindale* v. *Smith* (1), *Somes* v. *The British Empire Shipping Co.* (2), and *Crommelin* v. *N. Y. and Harlem R. R. Co.* (3), referred to and discussed.

Section 170 of the Indian Contract Act makes provisions for those cases only in which goods have been given to a bailee for a purpose in connection with which the bailee has to use special skill. A lien is given to the bailee because he has used skill in improving the goods bailed. The case of a buyer who keeps the thing sold because the price has not been paid can never come within the purview of section 170 of the Indian Contract Act.

Two ingredients are necessary to constitute bailment under the provisions of the Indian Contract Act. One is that one person must deliver goods to another person for some purpose. The other is that there should be an agreement that on the accomplishment of the purpose, the goods shall be redelivered. A seller, unless there is a contract to that effect, cannot be regarded a bailee of the goods which he has sold to the purchaser under the Explanation added to section 148 of the Indian Contract Act. *Richard Grice* v. *Richardson* (4), referred to.

*First Civil Appeal No. 90 of 1932, against the decree of Pandit Brij Kishen Topa, Additional Subordinate Judge, Lucknow, dated the 4th of November, 1932.

(1) (1841) 1 Q.B., 389.
(2) (1860) 8 H.L., 338.
(3) (1868) 4 Keys, 90 (Amer).
(4) (1878) L.R., 3 A.C., 319.

Mr. *Ram Prasad Varma* (R. B.), for the appellants.

Mr. *D. N. Bhattacharji*, for the respondent.

SRIVASTAVA and RACHHPAL SINGH, JJ.:—These are three connected civil appeals arising out of two suits instituted by the parties against each other in the court below.

In order to understand the cases of the parties, it is necessary to set forth here briefly the circumstances under which the two suits which have given rise to these three appeals were instituted.

Messrs. G. Mackenize and Co., (1919) Ltd., is a firm carrying on motor business at Calcutta. The defendant, Mr. E. H. Parakh, owned a firm carrying on motor business in Lucknow under the name of Messrs. Eduljee and Co., Mr. E. H. Parakh purchased a new Willys-Knight Car Model A70 from Messrs. Mackenzie and Co., for a sum of Rs.4,630-7 the price of which was paid. In addition to this he had purchased certain accessories from Messrs. Mackenzie and Co., between the 1st of January, 1928 and the 13th of May, 1928, on account of which a sum of Rs.3,187-4-6 was due to Messrs. Mackenzie and Co., from Mr. Parakh. The plaintiff firm made a demand for the price of the accessories. When this demand was made by Messrs. Mackenzie and Co., Mr. Parakh proposed that the firm should take back the aforesaid Willys-Knight Car and its price be set off against the amount due to Messrs. Mackenzie and Co., for the price of the accessories, and that the surplus may be paid to Mr. Parakh. It is alleged that there was correspondence on this subject between the parties, but eventually the proposal fell through. After this Messrs. Mackenzie and Co. instituted a suit against Mr. Parakh in the Calcutta High Court to recover a sum of Rs.3,187-4-6 on account of the accessories supplied. The defendant, Mr. Parakh, on the other hand, instituted a suit in the court of the Subordinate Judge of Lucknow to recover a sum of Rs.2,411-5 for the balance of the price of the car which he alleged

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had been purchased by the aforesaid firm from him and for certain other charges, after deducting the amount due to Messrs. Mackenzie for goods and accessories supplied. On the 25th of April, 1931, the suit of Mr. Parakh was decreed for a sum of Rs.2,289-12 against Messrs. Mackenzie & Co., by the learned Subordinate Judge of Lucknow, and it was held that the property in the Willys-Knight, car referred to above, had passed to Messrs. Mackenzie & Co. Messrs. Mackenzie & Co. alleged that on the 12th of October, 1931, they paid to the defendant the full amount of the decree passed by the court of the Subordinate Judge. and demanded the delivery of the aforesaid car which request the defendant refused, and it was alleged that the defendant unlawfully detained the car. It was pleaded by Messrs. Mackenzie & Co. that owing to this wrongful detention of the car by the defendant, they had suffered damages and they claimed the same at the rate of Rs.15 per day from the 12th of October, 1931, that is to say, the date on which they paid the decree money under the decree which had been passed by the court of the Subordinate Judge. They asked for the return of the car or its price together with Rs.1,800 on account of damages from the 12th of October, till the date of the suit and also damages at the aforesaid rate till the date of the decree.

Mr. E. H. Parakh instituted a counter suit against Messrs. Mackenzie & Co. to recover a sum of Rs.3,217. He alleged that under the judgment passed by the learned Subordinate Judge of Lucknow on the 25th of April. 1931, Messrs. Mackenzie & Co. became the owner of the car from the 1st of April, 1929 and, therefore they were liable to pay to him (Mr. Parakh) garage charges at the rate of Rs.30 a month and then at the rate of Rs.2 per day from the 1st of March, 1930, to the 31st of May, 1931. Mr. Parakh claimed these charges on the allegation that he had to keep the custody of the car which occupied space and that work was done on the car and cleaning, washing, pumping of tyres and keeping

them to the proper pressure, charging battery had to be done and also because the car had the advantage of an insurance. He further allowed that on the 5th of May, 1931, he sent a notice to Messrs. Mackenzie & Co., that if the car was not taken away he would charge them garaging at the rate of Rs.5 per day from the 8th of May, 1931. But Messrs. Mackenzie & Co. did not take delivery of the car in spite of repeated notices with the result that Mr. Parakh had to send them another notice by telegram asking them to remove the car or else he would charge them at the rate of Rs.10 per day. Both these suits were tried together. During the pendency of these suits, on the 29th of April, 1932, the car was delivered by Mr. Parakh to the Counsel for Messrs. Mackenzie & Co., and so the suit of Messrs. Mackenzie & Co. was confined to the claim for damages on account of detention of the car from the 12th of October, 1931, to the 29th of April, 1932.

To the suit instituted by Messrs. Mackenzie & Co., the defence of Mr. Parakh was that he had a lien in respect of the garage charges and as those were not paid he was justified in detaining the car. In the suit which Mr. Parakh filed the defence of Messrs. Mackenzie & Co. was that they were all along willing to remove the car from the place but it was owing to the defendant's own fault that they could not remove it. They denied the right of Mr. Parakh to detain the car on the alleged ground that he had a lien in respect of the garage charges. Messrs. Mackenzie & Co. was given a decree for damages for Rs.600 and proportionate costs in respect of the claim for damages and in respect of the relief for the return of the car full costs were allowed to Messrs. Mackenzie & Co. In the suit which Mr. Parakh had instituted he has been awarded a decree for Rs.960 with proportionate costs.

Three appeals have been preferred. One is an appeal by Messrs. Mackenzie & Co. This relates to the suit in which they were defendants and Mr. Parakh was the

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plaintiff. In this, in their grounds of appeal, they urged that the learned Subordinate Judge was wrong in giving a decree for Rs.960 and that in any case he ought not to have allowed garage charges at a rate exceeding Rs.15 per month. They admit that Mr. Parakh was entitled to a sum of Rs.240, so their appeal is for the reduction of the amount decreed against them.

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Two appeals have been preferred by Mr. Parakh. One is against the decision of the learned Subordinate Judge in the suit which Messrs. Mackenzie & Co. instituted and in which they were awarded damages. The other appeal of Mr. Parakh relates to his own suit which he had instituted against Messrs. Mackenzie & Co. We will first deal with the appeal filed by Messrs. Mackenzie & Co. in the suit which was instituted against them by Mr. Parakh. It is a common ground between the parties that under a previous decision of the learned Subordinate Judge of Lucknow, passed on the 25th of April, 1931, the property in the aforesaid Willys-Knight car passed to Messrs. Mackenzie & Co. On the 12th of October, 1931, Messrs. Mackenzie & Co. paid to Mr. Parakh the full amount of the decree and demanded the car. Now in this appeal it is not disputed that Mr. Parakh was entitled to garage charges from the 1st of June, 1930, to the 11th of October, 1931. The only point raised in the grounds of appeal by Messrs. Mackenzie & Co. is that the learned Subordinate Judge was not right in awarding garage charges for the aforesaid period at the rate of Rs.2 per day and that he should not have allowed any amount exceeding Rs.240, that is to say, at the rate of Rs.15 per month. We do not see any reason for disturbing the finding of the learned Subordinate Judge on this point. In the previous suit between the parties garage charges were allowed for a certain period at the rate of Rs.2 per day. Some evidence was adduced on behalf of Messrs. Mackenzie & Co. to prove that certain other people charge at a much lower rate than the one fixed by the learned Subordinate Judge. This would

depend on the kind of garage where the car is stored. If the garage is to be under a chappar shed probably a man may charge even less than Rs.15 a month. But in the case before us we find that the car in respect of which the charges are demanded was quite new and it was kept by the defendant firm in their show rooms. Under these circumstances, we do not think that Rs.2 per day is an excessive amount. For these reasons we hold that there is no substance in the appeal preferred by Messrs. Mackenzie & Co., and it should be dismissed.

Now we come to the two appeals which have been preferred by Mr. Parakh. Under the judgment of the learned Subordinate judge referred to above, Mr. Parakh was allowed garage charges up to the 31st of May, 1930. In satisfaction of the decree of the learned Subordinate Judge in the above mentioned case, Messrs. Mackenzie & Co. paid the full amount due under it to Mr. Parakh, and wanted the car to be delivered to them. Mr. Parakh accepted the decree money but declined to deliver the car unless garage charges from the 1st of June, 1930, till the date of payment (12th October, 1931) were paid to him. Messrs. Mackenzie & Co. refused to pay these charges and instituted a suit for the recovery of the car and damages. Two important questions arise for determination. One is whether Mr. Parakh was justified in refusing the delivery of the car to Messrs. Mackenzie & Co., unless the garage charges which had fallen due till the date on which the price was paid were paid by Messrs. Mackenzie & Co., and the other is up to what date is Mr. Parakh entitled to garage charges. We will take both these points separately. It is contended on behalf of Mr. Parakh that he had a bailee's lien in respect of the garage charges which were due to him till the date on which the price was actually paid to him. On the other hand, the case of Messrs. Mackenzie & Co. is that as soon as the price was paid, Mr. Parakh was bound to deliver the car and that he had no lien in respect of the garage charges, and, therefore, his action

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was unjustified. Now if it be held that Mr. Parakh had a bailee's lien in respect of the garage charges which were due to him, then it seems clear that Messrs. Mackenzie & Co.'s suit for damages must stand dismissed. They were bound to pay the garage charges, and if Mr. Parakh had a lien then he was justified in refusing delivery of the car. So the first question which we have to decide is, as to whether Mr. Parakh was keeping possession over the car in his capacity as a bailee from the 1st of June, 1930, to the 12th of October, 1931. On behalf of Mr. Parakh reliance is placed on section 170 of the Indian Contract Act which enacts that "where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them." The learned Subordinate Judge has held that section 170 of the Indian Contract Act does not apply to the case because in his opinion Mr. Parakh did not render "any service involving the exercise of labour or skill in respect of the goods bailed." It would appear from his judgment that he assumed that the position of Mr. Parakh was that of a bailee, but not of such a bailee who has rendered "any service involving the exercise of labour or skill in respect of the goods bailed." Before deciding whether the case comes within the purview of section 170 of the Indian Contract Act, it is necessary to determine whether the case is one of bailment; because if it appears that it is not a case of bailment, then no question as regards the applicability or otherwise of section 170 of the Contract Act can arise. In order to decide this question we have first to see what the facts were. The findings of the learned Subordinate Judge in the previous suit by which the parties would be bound are these:

(1) that as a result of a settlement arrived at between the parties, the Willys-Knight Car which

belonged to Mr. Parakh, was sold to Messrs. Mackenzie & Co., and the property in the car passed to them on the 1st of April, 1929;

(2) that Messrs. Mackenzie & Co. refused to take delivery of the car though Mr. Parakh was always ready to deliver the same;

(3) that there was a breach of contract on the part of Messrs. Mackenzie & Co., when they refused to take delivery of the car; and

(4) that a sum of Rs.4,630-7 was due to Mr. Parakh from Messrs. Mackenzie & Co., on account of the price of the car, Rs.707 on account of garage and other charges, total Rs.5,337-7. It was also found that Rs.3,047-11 were due by Mr. Parakh to Messrs. Mackenzie & Co. Thus Mr. Parakh was given a decree for the balance which amounted to Rs.2,289-12.

The result of this judgment, coupled with the events which have followed was this:

(1) from the 1st of April, 1929, the property in the car passed to Messrs. Mackenzie & Co.

(2) they did not pay to Mr. Parakh the amount due to him till the 12th of October, 1931, and

(3) on payment of the amount due under the aforesaid decree, Messrs. Mackenzie & Co. became entitled to take delivery of the car.

The question for our consideration is to decide what the position of the parties was after a completed contract of sale. The rights and liabilities will have to be determined with reference to the provisions of the Indian Contract Act, as at the time when the sale took place, the Indian Sale of Goods Act had not come into force. The contract of sale in the case before us had taken place on the 1st of April, 1929. Section 78 of the Indian Contract Act (No. IX of 1872) provides how sale is effected and how the property passes. In the case before us, in the previous litigation between the parties, the learned Subordinate Judge has held, and that

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finding is binding on the parties, that there was a completed contract of sale under which the car was sold by Mr. Parakh to Messrs. Mackenzie & Co., on the 1st of April, 1929, and that the property in the car passed to Messrs. Mackenzie & Co. on that very date. Section 93 of the Indian Contract Act provides that in the absence of any special promise, the seller of goods is not bound to deliver them unless the buyer applies for the same. Section 95 is about the seller's lien in respect of the goods sold. It enacts that "unless a contrary intention appears by the contract, a seller has a lien on sold goods as long as they remain in his possession and the price, or any part of it, remains unpaid." Then we have section 107 of the Indian Contract Act as regards the right of re-sale; where the buyer of the goods fails to perform his part of the contract, either by not taking the goods sold to him, or by not paying for them. In addition to this right of re-sale, the seller has other remedies, for instance, under the provisions of section 55 of the Indian Contract Act, he can put an end to it if the purchaser fails to perform his part of the contract within a reasonable time. It appears to us that the only lien which the Indian Contract Act recognizes in respect of the sale of goods is the seller's lien for the price. He has no other kind of lien. Even according to common law, there is not any seller's lien in respect of charges for ware-housing goods, although such charges or other expenses of a like nature may have been incurred through the buyer's default. And where the right of lien is exercised and charges are incurred in so doing, then the person exercising the right has no claim at all against the buyer in respect of such charges. In *Martindale* v. *Smith* (1), it was held that the vendor's right to tender the things sold against the purchaser must be considered as a right or lien till the price is paid. That was a case in which the vendor had refused to accept the price tendered. So the case before us is

(1) (1841) 1 Q.B., 389: 113 E.R., K.B., 1181.

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much stronger. Here the vendor accepted the price paid, and so the only lien which he had terminated. No lien can exist after the price has been paid, because the lien exists solely for the purpose of enabling the seller to obtain payment of the price. Section 41 of the English Sale of Goods Act makes a similar provision. In Benjamin on Sale of Goods, 7th Edn., page 874, a lien has been defined to be a right of retaining property until a debt due to the person retaining it has been satisfied; and it is said that as the rule of law is that in a sale of goods, where nothing is specified as to delivery or payment, the seller has the right to retain the goods until payment of the price, he has a lien. At page 875 in the same book, it is remarked that this lien extends only to the price. If by reason of the buyer's default the goods are kept in warehouse, or other charges are incurred in detaining them, the lien does not extend to such a claim, and the seller's remedy is personal against the buyer. In *Somes* v. *The British Empire Shipping Co.* (1), which went in appeal before the House of Lords, Lord Wensleydale said "I am clearly of opinion that no person has by law a right to add to his lien upon a chattel a charge for keeping it till the debt is paid; that is, in truth, a charge for keeping it for his own benefit." Lord Cranworth, who concurred, said "the short question is only this, whether Messrs. Somes, retaining the ship, not for the benefit of the owners of the ship, but for their own benefit, in order the better to enforce the payment of their demand, could then say: 'We will add our demand for the use of the dock during that time in our lien for the repairs.' The two courts held, and as I think correctly held, that they had no such right."

In another case reported in *Crommelin* v. *N. Y. and Harlem R. R. Co.* (2), it was held that a railway company had no lien for a claim in respect of delay of a consignee in taking away goods; that the lien was for freight only,

(1) (1860) 8 H.L., 338. (2) (1868) 4 Keys. 90 (Amer.).

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and the claim for demurrage was only personal. Having considered these cases, and taking into view the provisions of the Indian Contract Act, we are clearly of opinion that the only lien which the seller of goods has is for the unpaid purchase money in accordance with the terms of section 95 of the Indian Contract Act. This does not, however, mean that the seller is without a remedy. If he has incurred any charges he is entitled to claim them by way of damages as has been done by Mr. Parakh in this case. He had, however, no lien in respect of the garage charges and, therefore, it must be held that he was not justified in not delivering the car after the full price had been tendered and accepted. Under no circumstances can it be said that he was the bailee of the car. Bailment is defined in section 148 of the Indian Contract Act. Two ingredients are necessary to constitute bailment under the provisions of the Indian Contract Act. One is that one person must deliver goods to another person for some purpose. The other is that there should be an agreement that on the accomplishment of the purpose, the goods shall be redelivered. No transaction can be called a bailment which does not satisfy these two conditions. Now it cannot be said that the purchaser "delivers the goods to the seller for some purpose." Nor is there any agreement in such a case that the goods are to be returned after a particular purpose has been accomplished. A seller, unless there is a contract to that effect, cannot be regarded a bailee of the goods which he has sold to the purchaser. The property in the goods may have passed under an agreement between the parties, but the seller has a lien in respect of the price—he has also a right of re-sale. He further has a right of cancelling the contract of sale if the purchaser does not perform his part. So it can hardly be said that he is a bailee. We do not agree with the contention of the learned Counsel appearing for the appellant that the explanation added to section 148 of the Contract Act applies to this case.

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Of course, a seller may become a bailee of the goods which he has sold, but that position can only arise where there is a contract to that effect between the parties. In the Explanation it is clearly mentioned that "if a person already in possession of the goods of another contracts to hold them as a bailee." In the present case there was no contract between the parties under which it can be said that it was agreed that Mr. Parakh had become a bailee. There is no other kind of lien recognized in favour of a seller in Indian Law. The learned Counsel appearing for Mr. Parakh contended that this question about vendor's lien could not be raised in appeal by the opposite side, on the ground that it was not taken up in the court below. But we do not agree with this contention. Messrs. Mackenzie & Co. have all along been contending that the detention of the car by Mr. Parakh, after he had been paid the decree money, was unlawful. The learned Subordinate Judge in his judgment has gone into this question. So it is not a new point. The learned Counsel for the appellant relied on a ruling reported in *Richard Grice and others* v. *Richardson and others* (1). We do not think that that case is applicable to the facts of the case before us. The facts in that case were different. There the vendors were also warehousing goods sold under a special agreement with the purchaser under which the purchaser had agreed to pay the warehousing charges So that case is quite distinguishable. For the reasons given above, we are of opinion that under the provisions of the Indian Contract Act, the only lien which a seller has is in respect of the unpaid price as provided for under the provisions of section 95 of the Indian Contract Act.

Now we may take into consideration appeal No. 90 of 1932 which Mr. Parakh has filed against the decree for damages awarded to Messrs. Mackenzie & Co. in their suit. We have already stated that the learned

(1) (1878) L.R., 3 A.C., 319.

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Subordinate Judge held that the defendant, Mr. Parakh, had no lien in respect of the garage charges which were due to him for the period running from the 1st of June, 1930, to the 12th of October. 1931. On the 12th of October, 1931, the price was paid to him, and as he had no other lien he was bound to deliver the car to Messrs. Mackenzie & Co. By reason of this non-delivery, Messrs. Mackenzie & Co. became entitled to damages from the date on which the price had been paid. The learned Subordinate Judge found that Messrs. Mackenzie & Co. had been deprived of the use of the car from the 12th of October, 1931, till the date on which the car was delivered to them during the pendency of the suit which has given rise to this appeal. Messrs. Mackenzie & Co., had claimed damages at a very high rate, but the learned Subordinate Judge has awarded damages at the rate of Rs.5 per day. Messrs. Mackenzie & Co. had pleaded that if the car had been delivered to them when they had paid the price, they would have been able to run it as a taxi. The learned Subordinate Judge had not accepted this evidence, but he held that some damages must be awarded to Messrs. Mackenzie & Co., because of the wrongful detention of the car by Mr. Parakh. We are also unable to accept this evidence, but nevertheless we agree with the learned Subordinate Judge that some damages should have been allowed. Here we have the case in which a new car in a first class condition was detained by Mr. Parakh. Messrs. Mackenzie & Co. might have been able to sell it at a good price. By the action of the defendant, the sale of the car was delayed for a sufficiently long period and that fact by itself would entitle Messrs. Mackenzie & Co. to get damages. We do not think that it is a case in which only nominal damages should be awarded. We, therefore, agree with the court below that Rs.5 per day is a fair and reasonable amount of damages on account of the non-delivery of the car.

Another ground taken was that the lower court was wrong in awarding full costs on the value of the car to Messrs. Mackenzie & Co. It appears that before the issues were framed, the car had been delivered to Messrs. Mackenzie & Co., and so the defendant should have been taxed with costs, so far as the valuation of the car is concerned, as if it were a non-contested case. To this extent we think that the order of the learned Subordinate Judge should be modified.

Now, we come to third appeal which Mr. Parakh has filed in his own case which he had instituted to recover damages. He had claimed a sum of Rs.3,217. The lower court has allowed him damages at the rate of Rs.2 per day from the 1st of June, 1930, till the 12th of October, 1931, the date on which the decree money was paid by Messrs. Mackenzie & Co. to him. Mr. Parakh had claimed damages at a higher rate from the various dates on which he gave notices to Messrs. Mackenzie & Co., saying at what rate he would claim garage charges from the dates of those notices. But the lower court has allowed damages at a uniform rate of Rs.2. We see no reason for disturbing the finding of the learned Subordinate Judge on this point. The claim of Mr. Parakh for garage charges for the period subsequent to the date on which the decree money was paid to him has been dismissed by the learned Subordinate Judge as in his opinion Mr. Parakh had no right to detain the car and he had no lien in respect of any amount that was already due. We have already given our reason for holding that Mr. Parakh had no lien in respect of the amount due to him on account of garage charges from 1st of June, 1930, to 12th of October, 1931. After the price was paid to him his action in not delivering the car was not justified. So, his claim for damages for the period after the date on which the decree money was paid to him was rightly dismissed by the trial court. On behalf of Mr. Parakh reliance had been placed on section 170 of the Indian Contract Act. We have dealt with

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that question already. We may add that section 170 of the Indian Contract Act makes provisions for those cases only in which goods have been given to a bailee for a purpose in connection with which the bailee has to use special skill. A lien is given to the bailee because he has used skill in improving the goods bailed. The case of a buyer who keeps the things sold because the price has not been paid can never come within the purview of section 170 of the Indian Contract Act. The principle on which this rule is enacted in section 170 is thus described in Paine's law of Bailment (1901 Edition) page 233:

> "Thus, the artificer to whom goods are delivered for the purpose of being worked up into form. or the farrier by whose skill the animal is cured of a disease, or the horse breaker by whose skill he is rendered manageable, have liens on the chattels in respect of their charges. And all such specific liens being consistent with the principles of natural equity, are favoured by the law, which is construed liberally in such cases."

We hold that Mr. Parakh's claim for garage charges after the 12th of October, 1931, was rightly dismissed by the trial court.

The result is that appeal No. 8 of 1933, filed by Messrs. Mackenzie & Co., and first appeal No. 7 of 1933, filed by Mr. Parakh, deceased, stand dismissed with costs. First Appeal No. 9 of 1931, filed by Mr. Parakh, also stands dismissed with costs with this exception that we direct in calculating the costs which Messrs. Mackenzie & Co. should get in their suit against Parakh the claim in respect of the recovery of the car shall be treated as if it were not contested.

Appeal dismissed.