ADMIRALTY JURISDICTION.

Before Mr. Justice Farran.

ESSOO BHAYA'JI, (PLAINTIFF), *v.* THE STEAM-SHIP "SA'VITRI," (DEFENDANT).* 1886, *June* 24.

Limitation—Shipping—Collision—Suit for damages for loss of ship by collision —Limitation in action of tort—Limitation Act XV of 1887, *Sch. II, Arts.* 36, 99.

A suit to recover damages for the loss of a ship caused by collision at sea is an action of tort founded upon the negligence of the defendant or his servants in the management of his vessel, and must be brought within two years under the provisions of article 36 of Schedule II of the Limitation Act XV of 1877.

Article 49 of Schedule II of the Limitation Act XV of 1877 applies only to suits in respect of property in the hands of some other person, and not to suits in respect of property in the plaintiff's own possession, and the injury to property there mentioned, is limited to cases of injury to property while in the custody of some person other than the owner.

From the provisions of article 36 and 115 of Schedule II of the Limitation Act XV of 1877, the intention of the Act appears to be that, not more than two years should be allowed for bringing a suit founded on tort, except in certain well-defined particular instances.

THE plaintiff was the owner of a certain *pattimár*, which was lost at sea on the 5th January, 1883, owing to a collision which took place on that day with the steam-ship "Sávitri." On the 7th January, 1886, the plaintiff filed this suit to recover the sum of Rs. 5,500, which he alleged to be the value of the *pattimár*, and a further sum of Rs. 200, belonging to him, which was on board at the time of the wreck.

In a suit subsequently filed against the "Sávitri," by one Ookerdá Poonsey, an owner of cargo on board the said *pattimár* (Admiralty Suit No. 3 of 1886), it was held by Bayley, J., that both vessels were equally to blame for the collision, and that, consequently, the defendants were liable for only half the damage sustained. The plaintiff in the present suit accepted the decision in that previous suit as to the circumstances under which the collision occurred, and accordingly reduced his claim to Rs. 2,750 and Rs. 100.

*Admiralty Suit, No. 1 of 1886.

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At the hearing, it was contended for the defendant that the suit was barred by limitation.

The plaintiff appeared in person.

Latham (Advocate General) and *Russell* for the defendant :—The suit is barred by limitation; see Limitation Act XV of 1877, art. 36. The collision occurred on the 5th January, 1883, and the suit was not filed until the 7th January, 1886. Promptitude is required from a plaintiff who brings a suit like this—Prichard's Digest, Vol. I, pp. 313-14; *The John Brotherick*(1). Counsel referred to clauses 48, 49 of Schedule II of the Limitation Act XV of 1877 ; Prichard's Digest, Vol. I, 127 ; *The Dundee*(2).

FARRAN, J. :—The only issue I have on this occasion to determine is the first, which is, "whether the suit is barred by the law of limitation."

The plaintiff sues the S. S. "Sávitri" and, in effect, her owners to recover damages occasioned to him by the loss of his *pattimár*. The latter vessel and the S. S. "Sávitri" came into collision with one another, and the effect of the mutual admissions made by the parties is that the Court is to consider that both vessels were to blame for the collision ;—the result, according to the rule of maritime law as administered in this Court, being that the owners of each vessel must bear half the loss occasioned by the collision. The S. S. "Sávitri" sustained no appreciable damages: so her owners will have to pay half the damages occasioned to the *pattimár*, unless the suit is barred by limitation.

The collision took place off the Western coast of India, on the 5th January 1883. This suit was filed on the 7th January, 1886 ; but as the 5th and 6th days of January fell in vacation, it was brought within three years of the date of the cause of action as extended by section 5 of the Limitation Act XV of 1877. The 7th of January was the day on which the Court re-opened after the Christmas vacation in 1886. The plaintiff contends that the law allows him three years within which to bring his suit for a cause of action of this nature. The defendants contend

(1) 8 Jur., 276. (2) 1 Hag. Adm. 109 at p. 120.

that he was bound to commence it within two years after the collision. The Court has to determine which view is correct. The question is one of nicety and doubt. I regret that it was not argued before me for the plaintiff. He appeared in person at the hearing.

The only articles in Schedule II of Act XV of 1877 within which the case can be suggested to fall, are articles 36 and 49. Article 36 provides a limitation of two years to suits "for compensation for any malfeasance, misfeasance, or non-feasance independent of contract, and not therein specially provided for." Article 49 provides a limitation of three years to suits "for other specific moveable property, or *for compensation for* wrongfully taking or *injuring* or wrongfully detaining *the same*." The time from which the limitation begins to run is, in each case, the same, namely, the time when the wrong complained of is done, and not, as in article 48, the time when it becomes known to the person wronged. The expression "other specific moveable property" in article 49 seems to be used in antithesis to the specific moveable property referred to in article 48, which prescribes a limitation of the same period of three years to suits "for specific moveable property lost, or acquired by theft, or dishonest misappropriation, or conversion, or for compensation for wrongfully taking or detaining the same;" but fixes the period, from which limitation is to run, at the time "when the person, having the right to the possession of the property, first learns in whose possession it is." Compensation for *injuring* specific moveable property of the latter description, curiously enough, is not provided for in article 48; so that, in respect of injury to such property, the complainant is, apparently, thrown back upon the general provision of article 36. I mention this as an instance to show how unsystematically the schedule is framed.

The words "malfeasance, misfeasance, or non-feasance independent of contract" used in article 36, are of the widest import, and embrace all possible acts or omissions, commonly known as torts by English lawyers; that is to say, wrongs independent of contract. For the sake of brevity I use the expres-

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sion "torts" throughout my judgment as the equivalent of the expressions employed in article 36. For torts, a two-years' period of limitation is thus provided as the general rule, subject; to *special exceptions* contained in other articles of the schedule; as three years is the general rule in cases of breaches of unregistered contracts (article 115). Torts to the person or reputation, as well as some other torts of a *quasi* personal character, are by earlier articles, (see articles 19 to 27), specially provided for, being included in the one year's limitation period. Torts to property immoveable and moveable, including in the latter expression exclusive privileges, such as copyrights or patent rights, &c., are dealt with by the 36th article. The special provisions for certain classes of torts then follow in articles 37 to 49, which cover most instances of torts to immoveable property as well as torts committed in respect of exclusive rights. Included in the latter article are "*injuries to specific moveable property*," other than moveable property such as is described in article 48. If the words I have italicised are to be construed in their widest sense, they will include, as far as I can see, all torts to tangible *moveable* property; and nothing, except a few torts to *real* property, such as those the subject of decision in *Mitchell* v. *Darley Main Colliery Co.*[1] and *The Queen* v. *The Commissioners of Sewers for Essex*[2], will be left for the general article to operate upon. The special provisions in article 49, combined with those in article 40, will, so far as moveable property is concerned, be co-extensive with the general rule, and abrogate the latter. Reading the schedule as a whole, I cannot think that this was the purpose of the Legislature. I rather from such a perusal come to the conclusion that it was intended that two years should be the outside time allowed for bringing a suit founded upon tort, except in certain well-defined particular instances. No other conclusion can be come to when the provisions of article 36 are compared with those in article 115. Such a conclusion is in accordance with the provisions of other systems of law and with the dictates of common sense. There are no cases in which it is more desirable that the evidence by which they are supported or rejected, should be promptly given and

(1) L. R., 14 Q. B. Div., 125. (2) L. R., 14 Q. B. Div., 561.

scrutinized than in actions of tort. In cases of collision at sea the evidence is proverbially contradictory and untrustworthy. If the words used in article 49 are unambiguous, and must necessarily in their ordinary grammatical sense, (the article being read as a whole), have the extended meaning contended for by the plaintiff, effect must be given to such meaning—*Julius* v. *Lord Bishop of Oxford*(1). The defendants, however, say that the words are ambiguous; that the maxim *noscitur a sociis* applies to them; and that the apparent generality of the expression "injury to specific moveable property" must be cut down by the connection in which those words are used, and limited to the case of moveable property of the plaintiff in the possession of the defendant.

What is the meaning of "specific moveable property" as used in article 49? The word specific applied to property in one's own possession is meaningless. In addition to its medical, natural history, and botanical meanings, Webster's Dictionary defines it as "tending to specify or make particular, definite, limited, precise." All property in possession of an owner is in this sense specific, as well the corn in his barn as the horse in his stable. Lawyers use the words specific property in a different sense, *viz.*, as equivalent to property of which you may demand the delivery in *specie*. Thus a specific legacy is a legacy "which can only be satisfied by the delivery of the identical subject." The phrase is only apt when the thing to which you are entitled, is in the possession of some third party. It is in this sense, I think, that the word specific is used in article 49. Expanding the expression, the article will read thus:—"For other property of which the owner is entitled to demand the return in *specie*, or for compensation for wrongfully taking or injuring or wrongfully detaining such property."

Injury to property will thus be limited to injury to the property of another in the possession of the person in whose custody it is injured, and the several provisions of the articles will be in their proper places as special exceptions to the general rule laid down in article 36. The construction of a statute is to be made of all the parts together, and not of one part only by itself,

(1) H. L., 5 App. Cas., 214.

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Incivile est, nisi tota lege perspecta, una aliqua particula ejus proposita, judicare vel respondere. Such a survey is always indispensable even when the words are the plainest, for the true meaning of any passage is that which best harmonises with the subject and with every other passage of the statute—Maxwell on Statutes, p. 35; *Smith* v. *Bell* (1).

There is no difference between causing injury to a ship and causing injury to a carriage, or any other kind of moveable property. A suit to recover compensation for damages caused by a collision is an action of tort founded upon the negligence of the defendant or his servants in the management of his vessel—*The European* (2). I decide the issue before me in favour of the defendants.

Attorneys for the plaintiff:—Messrs. *Little, Smith, Frere and Nicholson.*

Attorneys for the defendant:—Messrs. *Chalk and Walker.*

(1) 10 M. & W., 378. (2) 10 Prob. Div., 99.

INSOLVENCY JURISDICTION.

Before Sir Charles Sargent, Kt., Chief Justice and Mr. Justice West.

1886.

October 8; *December* 10.

IN THE MATTER OF CA'NDA'S NA'RRONDA'S, INSOLVENT.

C. A. TURNER, OFFICIAL ASSIGNEE, APPELLANT, *v.* PURSHOTAM MUNGALDA'S NATHUBHOY AND OTHERS, RESPONDENTS.

Insolvency—Judgment entered up under Section 86 *of Indian Insolvent Act (Stat.* 11 *and* 12 *Vic., Cap.* 21*)—Execution of such judgment—Limitation—Limitation Act XV of* 1877, *Sch. II, Arts.* 178, 179 *and* 180.

C. was adjudicated an insolvent in October, 1866, and on the 19th August, 1868, judgment was entered up against him under section 86 of the Indian Insolvent Act (Stat. 11 and 12 Vic., cap. 21) for Rs. 16,40,648. In 1886 it was ascertained by the Official Assignee that certain property belonging to the insolvent's estate was available for the creditors of the estate, and on his application an order for execution against the said property was made on the 5th April, 1886, by the Insolvent Court under section 86 of the Insolvent Act. It was contended that execution was barred by limitation.

Held, that execution on the judgment was not barred.

Per SARGENT, C. J.:—The policy of the Indian Insolvent Act is that the future property of the insolvent should be liable for his debts. That intention would be