subsisting between them and the plaintiff, and that being so the case falls clearly within the principle laid down in *Guruvayya* v. *Dattatraya*[1], which, I think, is obviously correct and should be followed in the present case. It has been adopted in several cases by the other High Courts, and is practically approved of by the Privy Council in *Kishan Prasad* v. *Har Narain Singh*[2]. In *Shahasaheb* v. *Sadashiv Supdu*, [3] it was held that the provisions of Order XXXIV, Rule 1, were not of an imperative character. In this case it is not necessary to go so far as that, nor does section 99 of the Civil Procedure Code come into play here, as it did there, in support of the view taken in that decision. In the present case there has been an application to add these two co-heirs as parties, and the application is one which, in my opinion, should have been assented to by the trial Court. I, therefore, concur in the order remanding the case.

Decree reversed : case remanded.

R. R.

[1] (1903) 28 Bom. 11. [2] (1911) 33 All. 272.
[3] (1918) 43 Bom. 575.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Fawcett.

ISUFALLI HASSANALLY AND ANOTHER (ORIGINAL PLAINTIFFS), APPLICANTS *v.* IBRAHIM DAJIBHAI AND ANOTHER (ORIGINAL DEFENDANTS), OPPONENTS*.

1920. *October 7.*

Indian Contract Act (IX of 1872)—Bailment—Machine useless for purpose for which hired—Liability of bailee.

A bailee for hire is ordinarily bound to return the article hired at the end of the period for which it is hired, but when an article is hired out for use for

* Civil Extraordinary Application No. 134 of 1920.

1920.

ISUFALLI HASSANALLI v. IBRAHIM DAJIBHAY.

a certain purpose there is an implied warranty that it is fit to be used for that purpose, and if there is a breach of this warranty, the bailee is not liable to pay the hire, and need take no steps to return the article to the bailor.

Chew v. *Jones*[1], followed.

THIS was an application under extraordinary jurisdiction against the decision of P. M. Bhatt, First Class Subordinate Judge at Broach.

The defendant hired a grass pressing machine from the plaintiff at Broach at the rate of Rs. 22 per month, and had it removed to Anavil for use there. It was then found that the machine was out of order. An attempt was made by the defendant at his own expense to put it in working order but without success, and eventually he hired another machine and did his work. He did not pay any rent and did not return the machine to the plaintiff.

The plaintiff sued to recover the rent from the defendant; but his suit was dismissed.

The plaintiff applied to the High Court.

G. N. Thakor, for the applicants.

R. J. Thakore, for opponent No. 1.

MACLEOD, C. J.:—In this case the plaintiffs hired out a grass-press to the defendants at the rate of Rs. 22 a month. They complain that the defendants did not pay the rent, nor did they return the Press. The defendants on the other hand said that the Press was not in working order, and that they had spent some money in repairs, that still it could not be used, and, therefore, they had to get a Press from another man. The Judge dismissed the suit, and has found as a fact that the Press would not work. The only question was whether the detention of the Press by the defendants

[1] (1847) 10 L. T. 231.

would involve them in liability. He considered that owing to the express conduct of the defendants they were not liable. That was not a very satisfactory way of dealing with the question about which it is somewhat difficult to find authority. A bailee for hire is ordinarily bound to return the article hired at the end of the period for which it is hired. But the Indian Contract Act says nothing as to what is to happen if it is found that the article is not fit to be used for the purpose for which it was hired. No doubt there is an implied warranty when an article is hired out for use that it is fit to be used for that purpose, and if there is a breach of warranty then there is no liability to pay the hire. The question is whether a bailee can leave the article where it is and give notice to the bailor that there is a breach of warranty, or whether he is bound to return it to the bailor. However, there is a case on this question, *Chew* v. *Jones*[1], in which an opinion was expressed by the Court that if a man hired a horse for the purpose of a journey, then there was a warranty that the horse was fit for the journey, and if it was found out that the horse was not fit for the journey and broke down then the bailee was entitled to leave the horse at the nearest stable and give notice to the owner that he had done so. From that it may be deduced that all that the bailee is bound to do is to give notice that there has been a breach of the warranty. This the defendants did, and as the Judge has found that there was a breach of warranty, therefore they were not liable. The rule must be discharged with costs.

Rule discharged.

R. R.

[1] (1847) 10 L. T. 231.