# LETTERS PATENT APPEAL.

*Before Hon'ble Mr. R. F. Rampini, Acting Chief Justice, and Mr. Justice Doss.*

JADU NATH DANDPUT

*v.*

HARI KAR.*

1908

*Aug. 20.*

*Limitation—Distraint—Compensation, suit for—Illegal distress—Limitation Act (XV of 1877) Sch. II, Arts. 36, 39, 49—Tort—"Malfeasance"—"Trespass upon immoveable property."*

*Per* RAMPINI, A. C. J. A suit for compensation for illegal distress, and cutting and carrying off standing crops is governed by Art. 36, Sch. II of the Limitation Act, such acts of tort constituting "malfeasance" within the terms of that Article.

*Mohesh Chandra Das* v. *Hari Kar* (1) approved. *Mangun Jha* v. *Dolhin Golab Koer* (2), distinguished.

*Per* Doss J. Wrongfully cutting and carting away crops amounts to "trespass upon immoveable property" and to "wrongfully taking specific moveable property" within the meaning of Arts. 39 and 49, Sch. II of the Limitation Act. ; and a suit for compensation for such acts is governed partly by Art. 39 and partly by Art. 49 of the Act.

*Mangun Jha* v. *Dolhin Golab Koer* (2), referred to.

LETTERS PATENT APPEAL against the judgment of GEIDT J.

THIS appeal arose out of suits brought by the plaintiffs for compensation in respect of paddy grown on their respective lands, but seized and reaped at the instance of the defendant No. 1, who, after an unsuccessful litigation with the real landlord of these plaintiffs, caused to distrain the paddy, taking out an order from Court on the false allegation and application of a fictitious person as landlord, under whom a fictitious tenant was said to have grown the crop in suit.

The plaint was filed on the 25th of June 1903 ; and the wrongful distraint and cutting away of the crops took place in November or December 1900.

The defendants contended, *inter alia*, that the suit was barred by limitation, it having been instituted after a lapse

* Letters Patent Appeals Nos. 107 to 111 of 1906, in Appeal from Appellate Decrees Nos. 2208, 2663, 2664, 2665 and 2666 of 1904.

(1) (1905) 9 C. W. N. 376. (2) (1898) I. L. R. 25 Calc. 692.

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of two years from the date of the alleged misappropriation of the crops.

The Court of first instance decreed the suit overruling the plea of limitation.

On appeal preferred by the defendants, the learned Subordinate Judge affirmed the judgment and decree of the first Court, and dismissed the appeal holding that Art. 39, Sch. II of the Limitation Act was applicable to the case.

The defendants appealed to the High Court.

The value of the subject matter of the suit being less than Rs. 1,000, the second appeal was heard by Mr. Justice Geidt sitting alone. His Lordship, relying on the case of *Mohesh Chandra Das* v. *Hari Kar* (1) was of opinion that Art. 36, Sch. II of the Limitation Act was applicable to the case and that, consequently, the suit was barred by limitation.

The plaintiff then preferred this appeal under s. 15 of the Letters Patent.

*Babu Krishna Prasad Sarbadhikari*, for the appellant.

*Babu Jogesh Chunder Dey*, for the respondent.

RAMPINI A. C. J. This is a Letters Patent appeal against a decision of Mr. Justice Geidt.

The appeal arises out of a suit for compensation for the illegal distress, and the cutting and carrying off of standing crops. Mr. Justice Geidt relying on the decision of this Court in *Mohesh Chandra Das* v. *Hari Kar* (1), has held that the Article of the Limitation Act applicable is Art. 36, and that the suit is accordingly barred as brought more than two years after the accrual of the cause of action.

On behalf of the plaintiff it has been contended that Mr. Justice Geidt's decision is wrong, and that the Article applicable is not Art. 36, but some other Article allowing 3 years for the suit and that the case relied on by Mr. Justice Geidt is

(1) (1905) 9 C. W. N. 376.

at variance with the Full Bench decision in *Mangun Jha* v. *Dolhin Golab Koer* (1).

I am unable, however, to see that Mr. Justice Geidt's judgment is wrong. I consider that the Article of the Schedule to the Limitation Act applicable is Art. 36. I have always been of this opinion :—see the Full Bench case above referred to and *Surat Lall Mandal* v. *Umar Haji* (2). The facts of the Full Bench case are different from those of the case of *Mohesh Chandra Das* v. *Hari Kar* (3). In the former case there seems to have been no illegal distress. In the latter case there was. Hence it does not appear that the decisions in the two cases are contradictory.

My learned brother considers that the Article of the Limitation Act applicable is partly Art. 39 and partly Art. 49. I am unable to take this view, because it would seem to me that the acts of the defendants did not amount to mere trespass on immoveable property as provided for in Art. 39, but to "trespass" and "conversion" of immoveable property (not "moveable property" to which Art. 49 applied), and that such acts of tort constitute "malfeasance" within the terms of Art. 36. There is no provision in the Letters Patent for reference to a third Judge, when there is a difference of opinion in a Letters Patent appeal. The appeal is therefore dismissed with costs. This order governs the analogous appeals, which are also dismissed with costs.

Doss J. This is an appeal in an action brought by the plaintiff for compensation under the following circumstances :—

In his plaint he alleged that the defendant No. 1 set up defendant No. 8, as the landlord and the husband of defendant No. 9 as the tenant, with regard to his holding and having obtained a process for distraint from the Court, caused the standing crops on his holding to be distrained and subsequently cut and removed them in collusion with the peon,

(1) (1898) I. L. R. 25 Calc. 692. (2) (1895) I. L. R. 22 Calc. 877.
(3) (1905) 9 C. W. N. 376.

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deputed by the Court to distrain the crops and that thereby he had sustained great loss. Among various other pleas, which for the purposes of this appeal it is unnecessary to notice, the defendant No. 1 raised the plea of limitation and denied the facts alleged by the plaintiff. The Munsiff found the allegations of the plaintiff to be true and he overruled the plea of limitation on the ground that Article 48 of the second schedule of the Limitation Act, which provides 3 years as the period of limitation for a suit of this kind, applied to the case, and that, as the suit had been brought within 3 years from the date of cutting the crops and the removal thereof from the holding (though more than 2 years after that date), it was within time. On appeal by the defendants, the learned Subordinate Judge concurred in the finding of the Munsif on the facts and with regard to the question of limitation thus observed in his judgments. "In these cases persons having no concern with the lands yielding the crops in dispute are the tortfeasors, so Art. 39 appears to my mind to be applicable and Arts. 48 and 49 may apply to the removal of the crop itself." As 3 years' limitation is provided by each of these Articles, he held that the suit was saved from limitation.

On appeal by the defendants to this Court, the learned Judge, who decided the appeal, has, relying on the case of *Mohesh Chandra Das* v. *Hari Kar* (1), held that the suit fell within Article 36 of Schedule II of the Limitation Act, which allows 2 years for bringing such a suit, and, as it was brought more than 2 years after the date of the cutting and removal of the crops, he has held that the suit is barred by limitation.

The plaintiff has appealed from this judgment under section 15 of the Letters Patent.

I think the view taken by the learned Judge of this Court is opposed to the decision of the Full Bench in the case of *Mangun Jha* v. *Dolhin Golab Koer* (2). I am of opinion that the view taken by the learned Subordinate Judge on the question of limitation is correct.

In the last mentioned case the defendants under colour of an order of the Criminal Court had wrongfully cut

(1) (1905) 9 C. W. N. 376. (2) (1898) I. L. R. 25 Calc. 692.

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and carried away standing crops from the plaintiff's land. Similarly in the present case the defendant No. 1, who is a perfect stranger and not the landlord of the plaintiff, had obtained an order for distraint in the name of a fictitious landlord against a fictitious tenant; and under colour of that order had caused the standing crops on the plaintiff's land to be distrained. This is not a case of illegal or irregular distress (which I understand to mean distress in contravention of the provisions of law relating to distress) by the landlord, but by a perfect stranger. When, therefore, the defendants, under colour of such an order for distraint entered upon the land of the plaintiff and cut the standing crops on it, they clearly committed a pure act of trespass upon his land and when they took away the crops after they had been severed from the land, they wrongfully took away "specific moveable property." It appears to me, therefore, that the fact of the so-called distraint in this case makes no material difference, and it is to my mind indistinguishable from the Full Bench case, at any rate so far as the *ratio decidendi* of that case is concerned.

I do not think Article 36 applies to this case. The words of that Article in the first column are "for compensation for any malfeasance, or misfeasance or nonfeasance independent of contract and not herein specially provided for." I am inclined to think that the following passage in Stephen's Commentaries, 14 Ed., Vol. III, page 384, furnishes a guide to the sense in which these words have been used in this Article. That passage runs thus:—"Personal actions are actions founded either on contracts or on torts; that is to say, they are either actions *ex contractu* or actions *ex delicto*; torts being wrongs independent of contract; and being either (i) nonfeasances, or the omission of acts which a man was by law bound to do, or (ii) misfeasances, or the improper performance of lawful acts or (iii) malfeasances, or the commission of acts, which were themselves unlawful." This view gains support from the fact that in Article 40 of Act IX of 1871, which has been re-enacted in Article 36 of Act XV of 1877, the words were "for compensation or any wrong,

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malfeasance, nonfeasance or misfeasance, etc." In the last mentioned Act the expression "wrong" has been omitted on account of redundancy, the next succeeding words malfeasance, nonfeasance or misfeasance, taken together denoting the same idea, and covering the same ground as is done by the preceding generic word "wrong," and being in fact subdivisions of the latter. There cannot, therefore, be any doubt that Article 36 contemplates suits for compensation for all kinds of torts or wrongs, except those for which special provision has been made by other Articles in the same Act. Articles 39 and 49 together with several other Articles, to which it is not necessary to refer, fall within this exception and for them a period of 3 years' limitation has been provided. In the same volume of the Commentaries at page 385, trespass is thus defined: "trespass" where the plaintiff claims damages for a trespass *vi et armis*, *i.e.*, for an injury accompanied with actual force, *i.e.*, wrongful entry upon land or a wrongful taking and keeping of personal chattels; "trover" where the wrongful taking being waived the plaintiff claims damages for the wrongful keeping or "wrongful conversion."

Trespass may be committed by an entry on 'another's' and *i.e.*, trespass *quare clausum fregit*) or by taking another's goods (trespass *de bonis asportatis*). Conversion is an unauthorized act, which deprives another of his goods, and the essence of the wrong is the dealing with the use and possession of the goods of another adversely to him and in a manner incon istent with his right of dominion.

It seems to me, therefore, that Article 30 of the second schedule of the Limitation Act corresponds to the first kind of trespass; Article 48 and he first portion of Article 49, which is "for other specific moveable property or for compensation or wrongfully taking or injuring the same," correspond to the se ond kind of trespass, or asportation (Article 48 relating to trespass or asportation, where he owner has no knowledge of the person, who has possession of the goods and the first portion of Article 49 relating to trespass or asporta-

tion where he has such knowledge); and the second portion of Article 49 corresponds to conversion.

If the defendants, after entering on the plaintiff's land, had cut the standing crops and left them there, the wrong thus done would have been a trespass upon immoveable property coming within Article 39, the act of cutting the crops being an aggravation of the wrong committed by the bare entry on the land and calling for substantial damages. By the act of cutting the crops a portion of the immoveable property (standing crop before it is severed from the land being manifestly immoveable property) is transmuted into specific moveable property, the right to which is vested in the owner of the land, albeit the transmutation is effected by the act of the tortfeasor. Suppose the tortfeasor, after he has cut the crop, is prevented by the owner from taking it away and is expelled from the land, and a little while after, when the owner happens to be absent, a third person comes in and takes the crop away, the taking of the crop by the third person would, in that case, clearly amount to "wrongfully taking away specific moveable property." Why should the removal of the crop by the tortfeasor himself, soon after he has cut the same, be any the less wrongful taking away of "specific moveable property?" Indeed, the character of moveable property is impressed on the crop the moment it is severed from the land. Why should the personale, so to say, of the appropriator cause any difference in the character of the property? Why should the period of limitation in the former case be 3 years, and in the latter case 2 years? It is possible that the framers of Article 49 had not in their minds the case now in hand, but that is no reason why we should not apply that Article to it, if the ordinary and natural meaning of the words used fairly warrant its application. It seems to me, therefore, that the subsequent act of carrying away the severed crop is in the words of Article 49, "wrongful taking away specific moveable property" and falls within the first portion of that Article. It does not fall under Article 48, because the owner

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has from the beginning knowledge of the person, who has possession of the goods.

I am of opinion, therefore, that the suit falls partly under Article 39 and partly under Article 49, and 3 years being the period of limitation in each case, it is not barred by limitation.

For these reasons, the appeal ought to be decreed, the judgment appealed against set aside and the judgment and decree of the Court of Appeal below restored.

I regret very much I am constrained to differ from the learned Chief Justice in this case.

*Appeals dismissed.*

B. D. B.