
(1971) 09 CAL CK 0009

Calcutta High Court

Case No: Suit No. 650 of 1954

Rallis (India) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision: Sept. 17, 1971

Acts Referred:

- Carriers Act, 1865 - Section 3(1)
- Civil Procedure Code, 1908 (CPC) - Order 20 Rule 10, Order 21 Rule 31, Order 6 Rule 13, 80, 82
- Evidence Act, 1872 - Section 110
- Limitation Act, 1877 - Article 31
- Limitation Act, 1908 - Article 31, 48, 49
- Railways Act, 1890 - Section 55, 77
- Specific Relief Act, 1877 - Section 11

Citation: (1973) 1 ILR (Cal) 594

Hon'ble Judges: Deb, J

Bench: Single Bench

Advocate: R.L. Sinha, for the Appellant; H.M. Dhar and Ashim Ghosh, for the Respondent

Final Decision: Dismissed

Judgement

Deb, J.

In this suit the Plaintiff has claimed Rs. 17,985 as damages from the Defendant for wrongful conversion of 109 half bales of jute each weighing 1 1/2 mds. out of a total number of 471 half bales mentioned in the Railway Receipt No. 037139 dated April 30, 1951, issued by the Eastern Railway. The Defendant has admitted in its pleadings that those goods were not delivered to the Plaintiff but has denied the allegation of their wrongful conversion on the plea that those goods were delivered to a wrong person due to a mistake committed by a Railway employee and has set up the plea of limitation as its main defence. In view of the state of pleadings, the following issues were framed:

(1) Was the Railway receipt in suit endorsed in favour of the Plaintiff ?

(2) Has the Plaintiff suffered any damage by reason of wrongful delivery of the goods to a wrong person by the Defendant ?

(3) (a) Has the Defendant wrongfully converted the goods as alleged in para. 5 of the plaint ?

(b) If so, has the Plaintiff suffered any damage ?

(c) If so, what damage ?

(4) Was any notice u/s 77 of the Railways Act given ?

(5) (a) Was notice u/s 80 of the CPC duly served on the Defendant ?

(b) If so, is it a valid and sufficient notice ?

(6) Is the suit time-barred ?

(7) Has the Plaintiff no legal right to sue the Defendant ?

(8) To what relief, if any, the Plaintiff is entitled ?

2. One Mr. Bhairudan Jain, since deceased, was an employee of Mr. Ramlal Golcha who was the previous owner of those goods. Mr. Jain was the consignor and the consignee of those goods and after their arrival from Katihar Railway Station to Cossipore Railway Station they were unloaded on May 8, 1951, and were kept by the Railway in Cossipore Railway Shed No. 23. One Ramlal Choudhury was the carter of Pannalal Sarogi who was the broker of M/s Sardarmull Hulaschand and another lot of 107 half bales of jute belonging to M/s Sardarmull Hulaschand "under a different Railway receipt was unloaded on the same day at Cossipore Railway Station and were kept in the same shed by the Railway. On May 10, 1951, out of those 471 bales the Railway delivered 362 bales to the Plaintiff and did not deliver the remaining 109 bales to the Plaintiff. On the same day Ramlal came to the Railway shed for taking delivery of the goods belonging to M/s. Sardarmull Hulaschand--hereinafter referred to as the Firm. A Railway employee delivered the goods in suit to Ramlal and not the goods belonging to the Firm. This fact was detected by the Railway on May 11, 1951, and on the next day, the Railway called upon Sarogi to deliver those goods to the Plaintiff and to take delivery of the other lot belonging to the Firm from the Railway vide para. 3(a) of the written statement and admitted by the Plaintiff through counsel.

3. By the letter of May 12, 1951, the Railway asked Sarogi to return those goods to the Railway and on May 24, 1951, the Plaintiff requested the Railway to deliver those goods to the Plaintiff. The Firm by its letter of May 25, 1951, asked the Railway to take back those goods immediately on payment of godown rent, cartage and incidental expenses,

but the Railway was not willing to pay those charges and, therefore, by the letter of June 8, 1951, asked the Firm to return those goods to the Railway. As the goods were not delivered to the Plaintiff on July 2, 1951, the Plaintiff requested the Railway to issue a short certificate. On July 17, 1951, the Railway again requested the Firm either to settle the matter with the Plaintiff by giving delivery of those goods to the Plaintiff or to return those goods to the Railway, but in this letter the Railway maintained its silence relating to the payment of those charges lawfully claimed by the Firm. A copy of this letter was sent to the Plaintiff. On August 14, 1951, the Plaintiff again requested the Railway to issue a short-certificate, but the Railway did not comply with this request and then on September 8, 1951, the Plaintiff served the notice dated September 4, 1951, u/s 77 of the Railways Act, 1890, claiming Rs. 17,985 from the Railway for those goods and in reply the Railway by its letter dated November 11, 1951, requested the Plaintiff to send a representative for settling this claim.

4. By the letter of November 22, 1951, the Railway again asked the Firm to settle the matter with the Plaintiff. And in this letter the Railway admitted that those goods belonged to the Plaintiff and sent a copy of this letter to the Plaintiff. On February 1, 1952, the Railway also wrote a letter to Sarogi and in it again admitted that those goods belonged to the Plaintiff and asked Sarogi to settle the matter with the Plaintiff "or to pay" the value of those goods to the Plaintiff and sent a copy of this letter to the Plaintiff who after writing a number of letters to the Railway claiming the above sum ultimately on May 26, 1952, served the notice u/s 80 of the CPC on the General Manager of the Eastern Railway and as usual the Railway slept over the matter in spite of several reminders being given by the Plaintiff in this behalf.

5. On June 4, 1953, the Union of India as the owner of this Railway filed a suit in this Court being Suit No. 1963 of 1953 against the Firm and Sarogi praying for a decree directing them to return of those goods to the Railway and, if they failed to return those goods, then to pay to the Railway Rs. 17,655 being the value for those goods. This sum was also claimed by the Railway as damages on an alternative plea that those goods were wrongfully converted by the said Firm and Sarogi. In the plaint of that suit it was, inter alia, said that the Railway was prevented from delivering those goods to the Plaintiff of this suit was made a pro forma Defendant in that suit and then the Plaintiff filed the present suit in February 1954.

6. Mr. Golcha is the main witness for the Plaintiff. He is the constituted Attorney of the Plaintiff and has verified the plaint. No one was called by the Railway to give evidence in this suit, and immediately the hearing of this suit was concluded and this judgment was reserved, the said Suit No. 1963 of 1953 was taken up for hearing and the Railway called several witnesses in that suit who were deliberately withheld by the Railway from giving evidence in this suit, though they were present daily in this Court while this suit was being heard.

7. The Railway had the opportunity for rectifying the mistake committed by its employee in delivering those goods to the wrong person but to save a paltry sum the Railway did not avail this opportunity as said earlier and therefore the defence, if any, based on the alleged mistake is not available to the Defendant, and I over-rule this plea in limine.

8. And in spite of all these admissions and deliberate withholding of the witnesses from the Court by the Railway, it was still contended by the Learned Counsel Mr. Dhar for the Defendant that the Plaintiff was not the owner of the goods in suit nor was entitled to obtain delivery of those goods from the Railway. The Railway has filed the other suit for restoration of those goods to the Railway and has also claimed their value in the alternative. Furthermore, the Railway did not deliver the goods belonging to that Firm and has deliberately suppressed from the Court as to what the Railway did with those goods belonging to that Firm. And here to make a further wrongful gain and by wasting public money the Railway has sought to defeat a genuine claim by raising these unmeritorious pleas without taking them by way of defence in the written statement. The Defendant is bound by its pleadings and its counsel cannot be heard to say anything which is not pleaded in the written statement.

9. Still I will deal with these unmeritorious contentions. As said earlier, Mr. Golcha was the owner of those goods and Mr. Jain was his employee. Mr. Golcha has conclusively proved that he had sold those goods covered by the Railway receipt in suit to the Plaintiff on credit and had subsequently received their value from the Plaintiff. Those goods were sold by him to the Plaintiff while they were in the custody of the Railway. He took Mr. Jain to the office of the Plaintiff, and on his instruction Mr. Jain had endorsed the Railway receipt in favour of the Plaintiff, and then Mr. Golcha had handed over the Railway receipt to the Plaintiff. The evidence of Mr. Golcha conclusively shows that the property in the goods covered by the Railway receipt had passed to the Plaintiff before those goods were wrongfully delivered by the Railway to Ramlal Choudhury.

10. I accept the evidence of Mr. Golcha and hold that the Plaintiff became the owner of those goods and also the endorsee of this Railway receipt for valuable consideration while those goods were in the custody of the Railway. The Railway, as said earlier, having admitted that those goods belonged to the Plaintiff, I overrule the contentions of Mr. Dhar and further hold that the Defendant was bound to deliver those goods to the Plaintiff who was alone entitled to obtain their delivery from the Railway.

11. The consideration for the endorsement of the Railway receipt not being pleaded in the plaint Mr. Dhar cited [Hari Mohan Dutt Vs. Dominion of India](#), and [Fushraj Thanmull Vs. Union of India \(UOI\)](#), to non-suit the Plaintiff on the plea that the plaint discloses no cause of action. These decisions were concerned with the question as to the Court's jurisdiction to try those two suits, and the first suit was adjourned to enable the Plaintiff to amend the plaint showing that the consideration for the endorsement of the Railway receipt was paid within the jurisdiction of the Court whereas the second suit was dismissed on the ground that no part of the Plaintiff's cause of action had arisen within the jurisdiction of the Court.

Here I am not concerned with any such question, and furthermore in these two case, the Union of India was sued as owner of the East Indian Railway and the head office of this Railway was situate within the jurisdiction of the Court and, therefore, these two decisions are no longer good law on the question of jurisdiction in view of the judgment of the Supreme Court in Union of India v. Sri Ladulal Jain AIR 1963 S.C. 1631

12. Moreover, the question of jurisdiction of the Court to try the suit has nothing to do with the question of the Plaintiff's right to sue. The first one goes with the question of the Court's power to hear the cause whereas the last one goes with the question as to whether any legal right of the Plaintiff has been wrongfully infringed by the Defendant. Where the Court has jurisdiction to try the cause it becomes wholly irrelevant to consider as to where the cause of action for the suit has arisen. I have discussed these elementary principles in my judgment dated September 18, 1970, delivered in Suit No. 3643 of 1969 in which the Union of India was the Plaintiff and Khemchand Raj Kumar was the Defendant. And nothing has been shown to me here to differ from my earlier view.

13. It is true that in those two decisions, cited by Mr. Dhar, it was held that a mere endorsee of a Railway receipt cannot maintain an action against the Railway, but again the Plaintiff before me is not a mere endorsee of this Railway receipt but an endorsee for valuable consideration and, therefore, these two decisions are not the authorities on the questions involved before me and they do not apply in the facts and circumstances of the present case before me. A Railway receipt is a document of title to the goods and the Plaintiff's title to the goods covered by this Railway receipt was admitted by the Defendant all through prior to the institution of this suit as said earlier. The Railway went further and in no uncertain terms has admitted that the goods in suit belonged to the Plaintiff and the Plaintiff was alone entitled to obtain delivery of those goods from the Railway and the admission of all these facts by the Railway prior to the institution of this suit is of pivotal importance on the question of pleading and, therefore, Order VI, Rule 13 of the CPC is set out below:

Neither party need in any pleading allege any matter of fact which the law presumes in his favour or as to which the burden of proof lies upon the other side, unless the same has first been specifically denied, e.g. consideration for a bill of exchange where the Plaintiff sues wholly on the bill and not for the consideration as a substantive ground of claim.

14. The first part of the above Rule states that a fact which the law presumes in favour of a party need not be pleaded by him. There is a presumption in law that an endorsee of a bill of lading has a proprietary interest in the goods covered by the bill of lading and it was said by Bachawat J:

Like presumption as to the proprietary interest of the consignee or the endorsee may be made in the case of a Railway receipt as in the case of a bill of lading

in the case of Commissioner for the Port of Calcutta v. General Trading Corporation Ltd. (1963) 68 C.W.N. 410 (469)

15. The Plaintiff was the endorsee of the Railway receipt and the law laid down by Bachawat J. read with those admissions made by the Defendant prior to the institution of this suit raised a conclusive presumption that the Plaintiff had the proprietary interest in the goods covered by the said Railway receipt. In these circumstances, it was not even necessary for the Plaintiff to plead that the said endorsement was made for valuable consideration in view of the first part of this Rule.

16. The second part of this Rule states that no fact need be pleaded by a party the burden of proof of which lies on the other side unless the other side has specifically denied that fact previously. The Plaintiff was in possession of the Railway receipt in suit. The Railway receipt is a document of title to the goods. The part of the goods covered by this Railway receipt was delivered to the Plaintiff by the Railway. It had never been disputed by the Railway that the Plaintiff had no title to the said Railway receipt at any point of time. Furthermore, it was admitted by the Defendant all through that the goods covered by this Railway receipt belonged to the Plaintiff. In other words, the dispute raised by the counsel was never raised by the Railway before this suit was instituted. And now Section 110 of the Evidence Act says this:

When the question is whether any person is owner of anything of which, he is shown to be in possession, the burden of proving that he is not the owner is on the person who affirms that he is not the owner.

17. The Plaintiff was in possession of the Railway receipt in suit and the counsel for the Defendant has said that the Plaintiff was not the owner of this Railway receipt and, therefore, the burden of proving that the Plaintiff was not the owner of the Railway receipt is on the Railway. Hence, in view of the second part of this Rule it was not even necessary for the Plaintiff to plead that the said endorsement in favour of the Plaintiff was made for valuable consideration, and I reject the contention of Mr. Dhar and hold that the plaint discloses a sufficient cause of action against the Railway.

18. The Plaintiff was the owner of the goods in suit and the Railway was bound to deliver them to the Plaintiff alone and to no one else. The Railway did not choose to rectify the mistake committed by its employee and has thereby wrongfully deprived, the Plaintiff of all the property in those goods and still Mr. Dhar contended that the Defendant having delivered those goods to a wrong person cannot be sued for wrongful conversion of those goods and he cited *Ross v. Johnson and Dawson* 98 E.R. 483 and *Smith v. Young* 107 E.R. 1014 of this contention. These two actions should have been commenced under the old form of declaration in detinue sur bailment and not in detinue sur trover and for this reason and this reason alone the respective claimants were non-suited. These two forms of action were abolished in England in the year 1852 and much water has flown since then. These two decisions were authorities on ancient forms of action prevailing in those

ancient days but the modern law is no longer confined in those forms of action, and hence these two decisions are not even mentioned in the books of Salmond, Winfield and Street on the law of torts.

19. The Learned Counsel, however, drew my attention to Mr. Leslie's Law of Transport by Railway where *Ross v. Johnson & Dawson* (Supra) has been cited. But this book was published in the year 1928 and this case was cited on the topic of ancient law. The modern law of conversion and of detention must not be confused with those ancient forms of action as said by Denning J., as he then was, in *Bearnan v. A.R.T.S. Ltd.* (1948) 2 All E.R. 89 (92) and this judgment of Lord Denning has been quoted with approval by the Supreme Court in the well-known case of [Dhian Singh Sobha Singh and Another Vs. The Union of India \(UOI\)](#). And in view of this judgment of our Supreme Court *Ross v. Johnson & Dawson* (Supra) and *Smith v. Young* (Supra) can no longer be treated as "goof" law.

20. Now, to avoid repetition this is the appropriate time to refer to the distinctions between a wrongful conversion and a wrongful detention of goods because I am unable to agree with some of the decisions cited by Mr. Dhar on Article 31 of the Limitation Act where the law relating to conversion was unfortunately mixed up with the law relating to detinue.

21. Wrongful conversion and detention of goods are torts but conversion is not a detinue nor a detinue is a conversion. In conversion the owner abandons the title to the goods and his only remedy is to sue the convertor for the value of the converted goods. He cannot sue the tort-feasor for the return of the goods. But in detinue the owner retains the title to the goods and, hence, he can only sue for restoration of the "goods and, in the alternative, for its value as on the date of the decree if the detainer is unable to restore the goods in terms of the decree. This law is laid down by the Supreme Court in *Dhian Singh Sova Singh and Anr. v. Union of India* (Supra (287)) in the following terms:

The tort (i.e. conversion) is complete the moment the goods are wrongfully converted by the Defendant and no question can arise in those cases of any continuing wrong. In a case of wrongful detention, however, the cause of action may certainly arise the moment there "is a refusal by the Defendant to redeliver the goods on demand made by the Plaintiff in that behalf. But even though the cause of action thus arises on a refusal to re-deliver the said goods to the Plaintiff the wrongful detention of the goods is a continuing wrong and the wrongful detention continues right up to the time when the Defendant re-delivers the goods either of his own volition or under compulsion of a decree of the Court. There is moreover this distinction between actions for wrongful conversion and those for wrongful detention that in the former the Plaintiff abandons his title to the goods and claims damages from the Defendant on the basis that the goods have been wrongfully converted by the Defendant either to his own use or have been wrongfully dealt with by him. In the latter case, however, the Plaintiff asserts his title to the goods all the time and sues the Defendant for specific delivery of the chattel or for re-delivery of the goods bailed to him on the basis that he has a title in those goods. The

claim for the re-delivery of the goods by the Defendant to him is based on his title in those goods not only at the time when the action is filed but right up to the period when the same are re-delivered by the Defendant to him. The wrongful detention thus being a tort which continues all the time until the re-delivery of the goods by the Defendant to the Plaintiff, the only verdict or judgment which the Court can give in" action for wrongful detention is that the Defendant do deliver the goods thus wrongfully detained by him or pay in the alternative the value thereof which can only be ascertained as on the date of the verdict or judgment in favour of the Plaintiff.

22. Furthermore, any person who is wrongfully deprived of his goods is entitled at his option to sue the tort-feasor either in turner or in detinue and his election in this behalf must prevail is also the law laid down by the Supreme Court (Supra (280)). This law was overlooked in some of the decisions on Article 31 of the Limitation Act cited by Mr. Dhar and for avoiding the repetition I have also referred to this law here.

23. Mr. Dhar contended that the Defendant having delivered those goods by mistake to the wrong person was not guilty of converting those goods. No doubt those goods were mistakenly delivered to a wrong person, but undoubtedly the Plaintiff was permanently deprived of those goods due to this mistake committed by an employee of the Defendant. Mistake is not a legal justification nor it is a lawful excuse. In *Hiro v. London North Western Rly. Company Ltd.* (1879) 4 Ex. 188 the Railway was held guilty of converting the goods by giving delivery to a wrong person due to the mistake of a Railway employee. *Stephenson v. Hurt* (1828) 4 Bing. 476 has laid down that an action in trover will, lie against a carrier for delivering the goods by mistake to a wrong person. And our Supreme Court in the case of *Dhian Singh Sova Singh v. Union of India* (Supra (278)) has said this:

If a carrier or other bailee wrongfully and mistakenly delivers the chattel to the wrong person or refuses to deliver it to the right person, he can be sued as for a conversion. Every person is guilty of a conversion, who without lawful justification deprives a person of his goods by delivering them to some one else so as to change the possession.

And still Mr. Dhar was bold enough to argue against this law laid down by the Supreme Court and, therefore, I reject his argument and hold that the Defendant has wrongfully converted these goods belonging to the Plaintiff. Moreover, the Defendant, as said earlier, could have rectified the mistake of its employee and not having done so this defence as to mistaken delivery of these goods is not available to the Defendant. The Railway has wrongfully delivered these goods to a wrong person and has failed to restore them to the Plaintiff and, therefore, the Defendant was a converter of these goods.

24. Furthermore, so far as this Court is concerned it has been finally settled by the judgment of Bachawat J. in the case of *Commissioner for the Port of Calcutta v. General Trading Corporation Ltd.* (Supra (469)) that the endorsee of a Railway receipt

having some proprietary interest in the goods may sue the Railway administration in tort for conversion of goods

and the same law was repeated by A.K. Mukherjea J. (Supra (447)). In these circumstances, there is no substance in the contention of Mr. Dhar that the Railway cannot be sued for converting the goods in suit.

25. The main question is whether this suit is barred by Article 31 of Limitation Act as, contended by Mr. Dhar Article 31 was inserted in the Limitation Act, 1877, by Section 3(1) of the Carriers Act, 1899, and one year was prescribed for a suit "against a carrier for compensation for non-delivery of, or delay in delivering goods" from the date "when the goods ought to be delivered". This Article was reproduced word for word in the Limitation Act, 1908. The Plaintiff has claimed compensation for wrongful conversion of these goods and Mr. Dhar contended that Article 31 and not Article 48 of the Limitation Act, 1908, should apply in this case because the Railway is a carrier within the meaning of this expression and a wrongful conversion of goods amounts to non-delivery of the goods. His bone of contention was that Article 31 should apply in all cases for compensation against the Railway for non-delivery of the goods entrusted to the Railway for carriage whether the cause of action is based on a breach of contract or in tort as held by a Full Bench of the Madras High Court in the case of Jaldu Venkatasubba Rao v. The Asiatic Steam Navigation Company Calcutta ILR 39 Mad. 1. It was an action in detinue against the Respondent carrier for the restoration of a plank under a bill of lading but in their Lordships' opinion the Appellant was not entitled to its return in view of Section 11 of the Specific Relief Act, 1877, and Order XXI, Rule 31 of the CPC and they treated the action as "suit for compensation for failure to deliver the plank in breach of the contract under the bill of lading." But, with due respect, I am unable to agree with their Lordships' opinion because it is directly against the law laid down by the Supreme Court in the case of Dhian Singh Sova Singh v. Union of India (Supra). Now that suit was filed after the expiry of one year from the date when that plank should have been delivered by the carrier and after quoting the above insertions made by the Carriers Act in the Limitation Act, 1877, their Lordships said as follows (Supra (12)):

It seems to us that by this amendment the Legislature clearly indicated its intention that Article 31 should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort. Even so it may be, as pointed out by one of the learned Judges who have referred the case, that Article 31 only deals with claims for compensation, and that Article 49 applies when in a proper case a claim is made against a carrier for the return of a specific moveable which as already pointed out is not this case. Insofar however as Article 49 -applies to suits "for compensation for wrongfully taking or injuring or wrongfully detaining the same", it is in any case inapplicable to the facts here, and even if it were applicable, its operation would be excluded by the provisions of the special Article 31 as amended on the principle generally specialibus non clerogani.

Our answer to these questions is that the suit must be regarded as a suit for compensation and, as such, it comes under Article 31.

26. No doubt the general observations made by their Lordships support the contention of Mr. Dhar, but again this decision is not an authority on Article 48 of the Limitation Act which has used the expression "conversion" and this Article was not the subject-matter of this decision, and when it was pointed out to Mr. Dhar that Article 48 was not even considered by their Lordships he cited the case of *G.P. Venkataraman & Company v. Union of India* AIR 1958 Mad. 321 where, after the arrival of the goods to their destination, they were unloaded from the wagon and no one came to take their delivery and thereafter the Railway sold those goods u/s 55 of the Railways Act and one year thereafter the consignor brought an action for compensation for wrongful conversion of those goods. It was held that Article 48 of the Limitation Act had no application and the suit was barred under Article 31. of the Act and, therefore, it is necessary to set out below Article 48 of the Limitation Act of 1908.

48. For specific moveable property lost or acquired by theft, or dishonest misappropriation or conversion or for compensation for wrongfully taking or detaining the same

Three years

When the person having a right to the possession of the first learns in whose possession to it is.

27. Now coming back to this decision their" Lordships said as follows (*Supra* (324)):

Looking at that Article independently of the authorities relied on, this suit is not clearly within the language of that Article. The Plaintiff does not sue for specific moveable property lost or acquired by theft or dishonest misappropriation or conversion. The suit was instituted in 1950. Even if the potatoes had not been sold, they would be of no use in 1950 to the Plaintiff or anybody else and it is altogether out of the question that anybody in 1950 would sue for the specific moveable property which was consigned to the Railway in 1948 for carriage to Shalimar.

There has of course been "conversion". A person might sue for specific moveable property where it has been detained and such detention amounts to conversion, or where the property has been transferred to another, and such act of transfer amounts to conversion. But even where the act alleged is conversion, unless the relief prayed for is possession of the specific, moveable property, the earlier part of that Article will not apply. The latter part of the Article would apply where compensation is prayed for wrongfully taking or detaining the same.

The goods in this case were taken by the Railway administration lawfully on being consigned to them for carriage. On the Plaintiff's own allegation the goods have been disposed of and are not detained. We may note" in passing that, if the suit were laid

immediately after the sale to Sinha and Bros, and while they were yet capable of being delivered to the Plaintiff and the suit were for possession of the goods, then the suit would be a suit of the kind provided for by Section 11(d) of the Specific Relief Act.

Under Section 11(d) of the Specific Relief Act a person who is in possession of a particular article of moveable property of which he is not the owner, may be compelled specifically to deliver it to the person entitled to its immediate possession when the possession of the thing claimed has been wrongfully transferred from the claimant. Where conversion of that sort is alleged and on the basis of such cause of action, specific moveable property is sought to be recovered, Article 48 of the Limitation Act would directly come into play. Article 48 in our opinion has no application to a case where possession has been transferred by conversion and the relief claimed is not possession of the specific moveable property so transferred but compensation for such conversion.

It is true that under Order 20, Rule 10, Code of Civil Procedure, even where possession of specific moveable property is claimed and the Court grants a decree for possession of such property, the Court has to state in its decree the amount of the money to be paid in the event of the failure to deliver the article. Nonetheless the suit remains a suit u/s 11 of the Specific Relief Act for specific moveable property. We have dealt with this particular point at some length because we do not think that the authority cited to us on the question of the applicability of Article 48 to the facts which have been proved in this case, namely, [Sundarji Shivji Vs. Secy. of State](#), should, speaking with great respect, be followed by us.

28. Mr. Dhar contended that Article 48 should not in any event apply to a claim for compensation for wrongful conversion of goods for the above reasons given by the learned Judges, but with due respect to them I am unable to accept the correctness of their opinion because the law relating to conversion was mixed up with the law relating to detinue. Furthermore, it was an action in trover and not action in detinue and no action in trover can be converted into an action in detinue. The very foundation of this decision is against the law laid down by the Supreme Court in the case of *Dhian Singh Sova Singh v. Union of India* (Supra (280)) and, moreover, Section 11 of the Specific Relief Act does not lay down the entire law on this subject.

29. A carrier is a bailee and an action against him lies even where he has wrongfully parted with the possession of the goods is the law laid down by the Supreme Court in *Dhian Singh Sova Singh*'s case (Supra (280)). Furthermore, the Plaintiff has a right to elect either to sue in trover or in detinue and his choice is final. And the Court has no power to change his election. The distinction between wrongful conversion and wrongful detention indicated earlier are of pivotal importance because the modern law of torts in relation to conversion and detention is principally based on those distinctions.

30. The Limitation Act does not create any right nor does it create a cause- of action. It prescribes the time within which an existing right is to be enforced and nothing more. The

substantive law is not even touched by the Limitation Act not this Act has conferred any right on a party to sue for the return of the converted goods whose only remedy is to sue for compensation under the substantive law of torts. And these are the main reasons for rejecting the contentions of Mr. Dhar.

31. Then the learned Judges of the Division Bench of the Madras High Court after dissenting from the Patna case and following the Full Bench judgment of their own Court (Supra (325)) held that Article 31 of the Act was applicable in the case before them. But again, with due respect I am unable to share their views. A carrier ceases to be a carrier and becomes a warehouseman if the goods are warehoused by him after the end of the carriage or, and if he otherwise retains them, he becomes a bailee of the goods. In the Madras case, after the carriage was over the Railway retained those goods and thereafter sold them. Article 31 of the Limitation Act does not apply to a warehouseman nor to a bailee and, therefore, Article 31 "could not be invoked at all in that case.

32. Then Mr. Dhar cited the case of AIR 1925 478 (Lahore) where the action was brought against the Railway claiming compensation for wrongful conversion of the goods entrusted to the Railway for carriage by the consignor after one year from the date of conversion of those goods. It was held by the Lahore High Court that the action was barred under Article 31 of the Act in the following terms:

It is true that the Plaintiffs alleged in their plaint that the Railway authorities had wrongfully converted the goods of these 4 bundles, and a suit for compensation for such wrongful conversion is one of the description mentioned in Article 48. But while alleging conversion of the goods the Plaintiffs are alleging at the same time non-delivery, and they expressly mentioned in their replication that the goods had not been delivered to them, so that the suit is also one of the description mentioned in Article 31. The question then is which of these 2 Articles is to be applied in the present case. In Venkatasubba Rao v. The Asiatic Steam Navigation Company (39 Mad. 1) it was held by a Full Bench of the Madras High Court that a suit against a carrier for compensation for non-delivery of goods was governed by Article 31, whether the suit was laid in contract or in tort, and further that even if Article 49 were applicable its operation would be excluded by the special Article 31 on the principles "*generalia specialibus non derogant*". We agree with that decision and hold that the suit must be governed by Article 31 which applies specially to a suit against a carrier, whereas Article 48 is not restricted to such a suit.

33. The next case cited by Mr. Dhar was G.I.P. Railway Company v. Radhakisan Jaikisan and Anr. AIR 1926 Nag. 57 (59) where two suits were filed by the consignor against the Railway for wrongful conversion of those goods after the expiry of one year from the date of conversion, and following the Full Bench judgment of the Madras High Court it was held that those suits were barred under Article 31 of the Limitation Act for reasons set out below:

Non-delivery may be due to many causes of which conversion is one, but the cause of action is the non-delivery of the goods, whether due to loss, theft, destruction, conversion or mis-delivery to somebody else. If the Defendants had delivered the goods to the Plaintiffs they would have no cause of action, even if the bales had been wrongfully marked with the name of somebody else. Mr. Rustomji in his Commentary on the Limitation Act at page 292 differs from the opinion of Starling that all suits against carriers in respect of goods delivered to them for carriage fall under Articles 30 and 31, but there seems to be no grounds for making such distinction. As pointed out by one of the referring Judges in *Jaldu Venkalasubba Rao v. The Asiatic Steam Navigation Company of Calcutta*, reported in 39 Mad. 1, it appears that the Legislature intended to provide exceptionally for the case of carriers on account of the difficulty of investigating and settling claims preferred against them after a long lapse of time in respect of a few articles out of the quantity of goods that are constantly passing through their hands.

We are therefore of opinion that Article 31 applies to these cases whether based on tort or contract. The plaints show that the suits are based on breach of contract.

34. These two decisions were followed in the case of *Ramlal v. B.N. Rly. Company Ltd.*, Calcutta AIR 1936 Nag. 31, where it was held that Article 31 and not Article 48 of the Limitation Act should apply in a claim against the Railway for wrongful conversion of goods. In some of these decisions the law relating to wrongful conversion and the law relating to detinue were mixed up and confused, but it is not necessary to go into this question any further.

35. The Learned Counsel, Mr. Sinha, appearing for the Plaintiff disputed the correctness of these decisions and cited a few cases. In the case of [Sundarji Shivji Vs. Secy. of State](#), a Division Bench of the Patna High Court took the view that Article 48 of the Limitation Act should apply in a claim against the Railway for damages for wrongful conversion of the goods. This case was not followed by the Madras High Court, but I am unable to follow the decision of the Madras High Court for the reason given earlier and also for the reason given later on. The Allahabad High Court in [Firm Nawab Boot House Vs. Secy. of State](#), has expressly dissented from *G.I.P. Railway Company v. Radhakisan Jaikisan and Anr.* (Supra) and following the case of [Sundarji Shivji Vs. Secy. of State](#), has held that not Article 31 but Article 48 of the Act should apply in a suit for compensation for wrongful conversion of goods against the carrier. The next case relied on by Mr. Sinha is a decision of a Division Bench of the Mysore High Court in the case of *Union of India v. Allahabad Faizulhukka Pathan* AIR 1960 Mys. 283 (288) where it was held:

Article 31 can have no application to a case where the suit is for recovery of compensation for conversion. That Article is applicable only to suits against a carrier for non-delivery of the goods entrusted to him.

36. Reliance was also placed by Mr. Sinha on the judgment of the Division Bench of this Court in the case of *Union of India* (as representing the [Dudhnath Shaw and Another Vs.](#)

[The State](#). This is the only judgment of this Court which was cited before me on this point. It was not a suit for compensation for wrongful conversion of the goods but a simple suit for compensation for non-delivery of a part of the goods entrusted to the Railway for carriage. The Railway Administration succeeded in the appeal for the reason that notice u/s 77 of the Railways Act, 1890, was not served on the Railway Administration. On the question of limitation, K.C. Das Gupta J., as he then was, said as follows:

It is hardly necessary for us to consider the question of limitation based on Article 31. Mr. Mukherji contended that Article 31 can have no application and Article 48 would apply. If there was any reason to think, as Mr. Mukherji contends there was, that this was a case of conversion by the Railway, there can be no doubt that Article 48 would be the appropriate Article of limitation. I am unable to see, however, anything on the record on which we can reasonably base a conclusion that this was a case of conversion by the Railway. There is no scope, therefore, for the application of Article 48 of the Limitation Act.

37. Now, that the Judicial Committee in *L.P.E. Pugh v. Asutosh Sen* L.R. 56 IndAp 93 and in the case of *Adjai Coal Company Ltd. v. Pannalal Ghosh* L.R. 57 IndAp 144 has laid down that Article 48 must govern all actions for compensation for wrongful conversion of goods, I presume that Das Gupta J. had these two decisions in his mind while expressing the opinion that Article 48 of the Act should apply to a case against a carrier for compensation for wrongful conversion of the goods. The Judicial Committee has laid down the above law long after the decision of the Full Bench of the Madras High Court and these two decisions of the Judicial Committee were not even considered in any of the decisions cited at the Bar. Apart from this "obiter dictum" of the Division Bench of this Court there are additional reasons stated later on for holding that Article 31 of the Act cannot apply in the instant case before me.

38. Reliance was also placed on the maxim *generalia speciali-bus non derogant* by Mr. Dhar, but on this maxim at p. 168 of Maxwell's *Interpretation of Statutes* (11th ed.) it is stated that a "general later law does not abrogate an earlier special one by mere implication." Though there was a specific provision dealing with the claim for compensation for wrongful conversion of goods in the Limitation Act, 1877, still the Legislature kept it untouched. There is nothing in the Carriers Act, 1899, even to suggest that the Legislature intended to alter the pre-existing period of limitation for enforcing a claim for compensation for wrongful conversion of goods. Therefore, no rule of interpretation can justify in holding that by the mere insertion of the word "non-delivery" in Article 31 of the Limitation Act, 1877, by the Carriers Act, 1899, the Legislature intended to bring within its scope and ambit a claim for compensation for wrongful conversion of goods against a carrier.

39. No equitable consideration can arise when the language of an Article of the Limitation Act is clear and unambiguous and the Court, however sympathetic may be, cannot ignore that Article. But when the language is not clear and is ambiguous, it must be strictly

construed for the reason that no legal right can be defeated by mere implication. Where there is a conflict between two Articles it becomes necessary to determine which one is more specific than the other and here the principle "a specific Article excludes the operation of a general Article" comes into play and this principle immediately calls for a discussion as to whether Article 31 is more specific than Article 48 as contended by Mr. Dhar and if not then on what principle this question should be decided.

40. Article 31 uses two expressions "carrier" and "non-delivery". The expression "carrier" is a special term and it does not include all types of tort-feasors. The expression "non-delivery" is however a general term and its scope and ambit are much wider than the expression "conversion". Therefore, Article 31 is a specific Article so far as a carrier is concerned and it is also a general Article so far as a cause of action for non-delivery of chattels by a carrier is concerned. Article 48 of the Act is the only Article which uses the expression "conversion" and this expression is a well-known term and has a special meaning in law. The term "conversion" does not necessarily include all cases of non-delivery of chattels. Article 48 applies to a cause of action for conversion irrespective of any question as to the capacity in which the converter has converted the chattels. Hence, Article 48 is a specific Article in relation to a claim for compensation for conversion of the goods and it is also a general Article in the sense that it applies to all types of converters.

41. These two Articles stand on the same footing and, therefore, the principle "specific Article excludes the operation of the general Article" cannot be invoked here. The only principle that can apply here is that where a cause of action for a suit comes within the scope and ambit of two Articles, the Court always leans in favour of that Article which prescribes a longer period of time for the purpose of preserving the lawful claims of the suitors in preference to the other Article which prescribes a shorter period of limitation and defeats their lawful claims. This principle of construction of the Limitation Act was laid down by Dawson Miller C.J. in *Tofa Lal Das v. Syed Moinuddin Mirza* ILR 4 Pat. 448 (457-8) in the following terms:

I consider that, in giving effect to a statute of limitation if two Articles limiting the period for bringing the suit are wide enough to include the same cause of action and neither of them can be said to apply more specifically than the other that which keeps alive rather than that which bars the right to sue should generally and apart from other equitable considerations be preferred.

42. The above principle was not only quoted with approval but was also followed by P.B. Mukharji J., as his Lordship then was, while presiding over our Appeal Court in the case of *Gannon Dunkerley and Company Ltd. v. Western India Theatres Ltd.* (1960) 65 C.W.N. 504 (530). And so far as this Court is concerned this rule of interpretation is firmly established. In the cases relied on by Mr. Dhar this rule of interpretation was not even considered not to speak of what are stated before and, therefore, I am unable to follow those decisions. Both the Articles 31 and 48 are partly specific and partly general. Article

31 prescribes a shorter period of time whereas Article 48 prescribes a longer period of time. The rule laid down by Dawson Miller C.J. and followed by Mukharji J. therefore, directly applies in the instant case before me and I hold that the case before me is governed not by Article 31 but by Article 48 of the Act.

43. The main reason, however, for holding that Article 31 of the Act has no application in this case is that the Railway was not a carrier on the day those goods were wrongfully and without any legal justification delivered by the Railway to the wrong person. There was no contract of carriage between the Plaintiff and the Railway. The Plaintiff was neither the consignor nor the consignee of those goods. The Plaintiff was the endorsee of the Railway receipt for valuable consideration and there cannot be any contract of carriage between the Railway and an endorsee of a Railway receipt because the contract contained in a Railway receipt, in the words of Bachawat J., "is not annexed to the goods and does not run with it." See *Commissioners for the Port of Calcutta v. General Trading Corporation Ltd.* (Supra (467)). The goods in suit were unloaded from the Railway wagon on May 8, 1951, and were stored by the Railway on the same day in a Railway shed. The moment those goods were warehoused the question of their further carriage by the Railway could never arise. The entire consignment covered by the same Railway receipt were stored by the Railway from May 8, 1951, and then on May 10, 1951, the Railway delivered a part of those goods to the Plaintiff and not the goods in suit.

44. The above facts conclusively show that after the arrival of those goods at Cossipore Railway Station a reasonable time did expire for giving delivery of those goods to the Plaintiff and with the lapse of" this reasonable time the Railway was no longer holding those goods as a carrier but was holding them as a warehouse-keeper. In other words, the Railway ceased to be a carrier on May 10, 1951.

45. The judgment of the Supreme Court in the case of [Union of India \(UOI\) Vs. West Punjab Factories Ltd.](#), has placed beyond all controversy that the responsibility of a Railway as a carrier ceases after the expiry of reasonable time from the date of arrival of the goods to their destination and with the cessation of this responsibility a new responsibility of the Railway springs up and this responsibility is the responsibility of a warehouseman when the goods are warehoused by the Railway and the Railway is liable to pay compensation as a bailee of those goods if they are destroyed while in custody of the Railway due to the negligence of any Railway employee.

46. It is also well-established by the judgment of the Supreme Court in the case of *Dhian Singh Sova Singh* (Supra) that if a bailee wrongfully and mistakenly delivers the goods to a wrong person he is guilty of converting the goods and he can be sued for compensation for wrongful conversion of the goods. It is also well established by *Devereux v. Barclay* (1819) 2 B. & Ald. 702 that where a warehouseman by mistake misdelivers the goods to a wrong person an action for wrongful conversion of the goods will lie against him. After the end of the carriage, the Railway became the bailee and a warehouseman in relation to the goods in suit. The Railway has wrongfully delivered those goods to a wrong person

and in spite of demands the Railway has failed and neglected to deliver those goods to the Plaintiff. The Plaintiff has claimed the value of those goods instead of their restoration and has thereby abandoned the title to those goods and has further elected to sue the Defendant as converter of those goods. In these circumstances, the Railway has wrongfully converted those goods and at the time of such wrongful conversion the Railway was not a carrier. Furthermore, the Railway having, disposed of those goods wrongfully and without any legal justification was guilty of wrongfully converting those goods and the wrongful detention of those goods came to an end then and there because it was swallowed up in the "conversion", as said by Lord Denning in *Bcaman's* case (*Supra*). Hencej in my opinion, Article 31 of the Limitation Act cannot apply to the facts and circumstances of this case. I hold that this suit, having been filed within three years from the date of wrongful conversion of those goods, is well within the time prescribed by Article 48 of the Act which is the only appropriate Article applicable to the facts and circumstances of this case, and I over-rule the contentions of Mr. Dhar.,

47. His next contention was that notice u/s 77 of the Railways Act was not served on the Defendant. This contention is untrue in fact. This notice and its acknowledgment in writing are admitted documents and they were exhibit