

1868.
LAKSHMITBAI
v.
GANPAT
MORABA'
et al.
GANPAT
MORABA'
et al.
v.
LAKSHMITBAI.

Justice East in *Cassinath Bysack v. Hurroosoondry Dossee* (g); and recent ones are *Tatama Natchiar v. The Rajah of Shivagunga* (suprà); *Mussumat Boobun Moyce Debai v. Ram Kishore Acharj Chowdhry* (h); and *Nobin Chunder Chuckerbutty v. Issur Chunder Chuckerbutty* (i), per Peacock, C.J.

The declaration in the decree, that the remainder is to those who at the decease of the plaintiff may be the heirs of her deceased husband, is in accordance with these authorities; and the learned Judge, who was himself one of the Judges by whom the case of *Jamiyatrám v. Bâi Jamná* was decided, having refused to alter the minutes, we think we cannot treat that case as an authority binding us to alter his decree. Opposed as the decision is to such high authorities, and not ourselves concurring in it, we do not feel bound to apply it in this case. The decree appealed from, ought, in our opinion, to be amended in the manner we have mentioned, and in other respects to be confirmed; and, as each of the appellants has failed in his or her appeal, we think each should bear his or her own costs.

Decree as amended confirmed.

Attorney for the plaintiff: *Shámráv Pándurang.*

Attorneys for the defendants: *Dallas and Co.*

(g) 2 Mor. Dig. 198—210. (h) 10 Moo. Ind. App. 279, 311.

(i) 9 Calc. W. Rep., Civ. R. 505, 508.



Referred Case.

July 17.

HA'SAM KA'SAM et al. Plaintiffs.
GOMA' JA'DAVJI et al. Defendants.

Conversion of Ornaments Pledged—Measure of Damages.

In an action of damages for the detention of ornaments pledged with the defendant which, the defendant has wrongfully converted to his own use, the measure of damages is the value of the ornaments less the sum for which they have been pledged.

CASE stated for the opinion of the High Court, pursuant to Sec. 55 of Act IX. of 1850, and Sec. 7 of Act XXVI.

of 1864, by John O'Leary, First Judge of the Bombay Court of Small Causes :—

“In this case the cause of action appears in the summons, as ultimately amended by order of the Court of Small Causes on the 14th of January 1868.

1868.
 HA'SAM
 KA'SAM
 et al.
 v.
 GOMA'
 JA'DAVJI
 et al.

“The facts of the case, as proved before me at the trial on the 11th of December 1867, were as follows :—

“In the month of Paush 1923, the plaintiff Chándu pledged certain ornaments with the defendant as security for a loan of Rs. 3,200. In the month of Ashád in the same year he redeemed a portion of the ornaments, and paid Rs. 2,870 in part payment of his debt. He subsequently tendered the balance of the debt, and demanded the remainder of the ornaments, but the defendant refused to deliver them up. It was admitted by the plaintiff that the value of the ornaments claimed by him exceeded Rs. 1,000. The reason alleged by the defendant for his refusal was as follows :—

“The defendant alleged that in the month of Shravan 1923, after payment of the sum of Rs. 2,870, the plaintiff came to him to demand the remainder of his ornaments, saying he wanted to sell them; that a calculation as to the value of the ornaments then in the defendant's custody was made, and this was settled at Rs. 750, which sum was lodged with the defendant by the plaintiff, who took away the ornaments (with the exception of one, which the defendant produced in court); that the account between the plaintiff and the defendant was not then settled, but that on subsequent examination the defendant ascertained the amount remaining due to him to be about Rs. 472-8-0, principal and interest, and he paid into court Rs. 270, being the balance of the sum alleged by him to be due to the plaintiff on settlement of account.

“In my opinion, the defendant wholly failed to prove his defence. I was satisfied that he had refused to deliver up the ornaments, although the amount due had been tendered to him by the plaintiff.

“The question for the decision of the High Court is, had

1868.
 HA'SAM
 KA'SAM
et al.
 v.
 GOMA'
 JA'DAVJI
et al.

the Court of Small Causes jurisdiction in the case, under the circumstances stated above.


“For the defendant it was contended, under the plea to the jurisdiction, that the action was in the nature of an action of trover or detinue, and that the plaintiff was bound to sue the defendant for the full value of the ornaments detained by him, without deducting therefrom the sum admitted by the plaintiff to be due by him to the defendant. That, as the value of the ornaments was over Rs. 1,000, and the amount so deducted or given credit for was not a payment on account, or an admitted set-off, the plaintiff could not bring the case within the jurisdiction of this court, except by abandoning the excess.

“For the plaintiff it was contended that the cause of action was the damage sustained by the plaintiff, by reason of the wrongful detention of the pledge after tender of the amount due, which damage, being the excess of the value of the ornaments detained over the amount due, was less than Rs. 1,000, and that, therefore, the court had jurisdiction.

“I inclined to the latter view of the case, and gave a verdict for the plaintiff for Rs. 608-11-0 with costs, and I certified plaintiff's costs at Rs. 51.

“The defendant having applied to the Court of Small Causes for a new trial, that Court, on the 14th day of January 1868, amended the summons as set forth in copy of amended summons (A), and, subject to the opinion of the High Court on the question whether, under the circumstances stated above, the Court of Small Causes had jurisdiction to hear and determine this case, the Court of Small Causes refused to grant a new trial, and confirmed my decree of the 12th of December 1867. And I refer the case to the High Court to make such order, under Sec. 8 of Act XXVI. of 1864, as the said High Court may think proper.”

The amended summons was for damages sustained by the plaintiffs, by reason of the defendants' detention and conversion to their own use of the plaintiffs' ornaments, pledged with them by the plaintiffs, being the value of the said orna-

ments less the sum of Rs. 478 due by the plaintiffs to the defendants on pledge of the same .....Rs. 835 14 0

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Costs ,, 61 8 9

Total..Rs. 897 6 9

1863.
HA'SAM
KA'SAM
et al.
v.
GOMA'
JA'DAVJI
et al.

There was no appearance for the plaintiffs.

The Honorable L. H. Bayley (Advocate General) for the defendants cited Chitty on Contracts, p. 754; *Awards v. Rhodes (a)*.

Couch, C. J.:—It is clear to my mind that the Small Cause Court had jurisdiction in this case. The original summons stated that the action was brought for Rs. 835-14-0 claimed as damages for the detention of certain ornaments. The particulars go on to show how that sum was arrived at. The value of the ornaments was Rs. 1,313-14-0, and there was a debt due upon them of Rs. 478-0-0.

Now, according to several authorities, in such cases as this the damages are to be measured by the amount of the loss actually sustained by the plaintiff. Chief Justice Earle, in *Johnson v. Stear (b)*, delivering the judgment of himself and Byles and Keating, JJ., said: "On these authorities we hold that the damages due to the plaintiff for the wrongful conversion of the pledge by the defendant are to be measured by the loss he has really sustained, and that in measuring these damages the interest of the defendant in the pledge at the time of the conversion is to be taken into account." The Judges, in coming to this conclusion, followed the case of *Chinery v. Viall (c)* in the Court of Exchequer, where it was held that an unpaid vendor of goods who had wrongfully re-sold them was liable only in damages for the difference between their value and the price that was to be paid for them.

It is true that in *Johnson v. Stear* Mr. Justice Williams differed from the other members of the court, being of opinion that the plaintiff was, upon the conversion of his goods

(a) 22 L. J. Exch. 106.

(b) 33 L. J. C. P. 130.

(c) 29 L. J. Exch. 180.

1868.

HA'SAM
KA'SAM
et al.
v
GOMA'
JA'DAVJI
et al.

by the bailee, entitled to recover the whole amount of the value of the goods; but if his judgment be examined, it will be found that even in his opinion the plaintiff was not bound so to treat the demand, and that it was optional for him not to sue for the entire amount; so that, as applicable to the present case, his judgment is not inconsistent with that of the rest of the Court.

Applying the above rule to the case before us, what the plaintiff had a right to recover was, the value of his ornaments less the claim which the defendant had against him in respect of them.

The case of *Avards v. Rhodes* has, in my opinion, no application to the present question.

The decision of the Small Cause Court was, therefore, right, and the defendant must pay the costs of reserving this question.

SARGENT, J. :—I am of the same opinion. It seems to me that, on the face of the summons, if you omit the plaintiff's particulars, no question could be raised. Those particulars merely show how the result is arrived at, which is immaterial so long as the damage claimed is under Rs. 1,000. In *Chinery v. Viall*, Bramwell, B., says: "If the facts were simply set forth according to the truth" (which is what the plaintiff has done here), "it would plainly appear that he lost only the *difference* of value and price, being liable to pay the price."

The plaintiff, by setting out the particulars, did no more than state the true facts of the case. The summons was substantially a claim for damages to the amount of Rs. 835-14-0.