DHIAN SINGH SOBHA SINGH & ANOTHER

1957

Octobe 29

THE UNION OF INDIA

(BHAGWATI, JAFER IMAM and GAJENDRAGADKAR JJ.)

Bailment—Non-delivery of goods by bailee—Rights and remedies of bailor—Election—Action for wrongful detention and wrongful conversion—Distinction—Value in the alternative, if as at the date of decree—Value stated in the notice, if a bar to recovery of appreciated value—Damages for wrongful detention—Principle of assessment—Code of Civil Procedure (Act V of 1908), s. 80.

The appellants, by an agreement, let out two trucks on hire to the respondent. The respondent terminated the agreement but failed to return the trucks on the fixed date on the plea that they had already been returned to a partner of the appellants. The appellants served the statutory notice under s. 80 of the Code of Civil Procedure and, on the respondent's failure to comply, brought a suit for wrongful, detention claiming, inter alia, return of the trucks or their value in the alternative as stated in the notice and damages for wrongful detention till delivery. Claim was also made for such appreciated value of the trucks as would prevail at the date of the decree by paying additional Court fee. The trial court held that the return of the trucks as alleged by the respondent was not justified, and, besides the rent claimed in the suit, passed a decree for recovery of the price of the trucks in the alternative as stated in the notice and interest thereon by way of damages, holding that the price as at the date of the tort was sufficient compensation in law either for wrongful conversion or for wrongful detention. The High Court affirmed the decision of the trial court so far as the recovery of the price in the alternative was concerned holding that the respondent could not be called upon to pay more than what it was asked to pay by the notice, but disagreed on the question of award of damages and enhanced the decree to the extent of the claim as tentatively laid in the appeal.

Held, that the courts below were in error in deciding the matter as they did and the appeal must be allowed.

Where the bailee fails to deliver the goods, the bailor has normally the right to elect his own remedy and sue him either for wrongful conversion or for wrongful detention. If he chooses to adopt the latter remedy, the bailee cannot take advantage of his own wrongful conversion and compel the bailor to choose the other remedy to his disadvantage.

Reeve v. *Palmer,* (1858) 5 C.B. (N.S.) 84, and *Wilkinson* v. *Verity,* (1871) L.R. 6 C.P. 206, referred to.

The cause of action in a suit for wrongful detention, unlike that in a suit for wrongful conversion, is a continuing

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one, and the measure of damages must be the value of the goods not as at the date of the tort but as at the date of the judgment. Although the cause of action arises with the refusal of the bailee to deliver the goods, it continues till delivery is made by the bailee or he is compelled to do so by a decree of court. While in a suit for wrongful conversion the plaintiff abandons his title and claims damages in lieu of the goods, in a case of wrongful detention the plaintiff claims delivery of the goods on the basis of his title that subsists till the date of decree. Consequently, the value of the goods in the alternative on failure of delivery can be ascertained only at the date of the decree.

Rosenthal v. *Alderton & Sons Ltd.*, [1946] I K.B. 374, referred to.

Case-law discussed.

It is well settled that in a suit for wrongful detention the plaintiff is entitled not merely to the delivery of the goods or their value in the alternative but also to damages for the wrongful detention till the date of the decree. The principle for assessing such damages must be the same as in any other case where the wrongful act of one so injures something belonging to another as to render it unusable or something is taken away so that it can no longer be used, and the amount of damages must be ascertained by a reasonable calculation after taking all relevant circumstances into consideration. In the instant case the High Court should have made a reasonable calculation of the number of days the trucks could have been put to use by the appellants and awarded damages accordingly.

Strand Electric & Engineering Co., Ltd., (1952) 2 Q.B. 246, *Owners of the Steamship "Mediana"* v. *Owners, Master and Crew of Lightship "Comet"*, [1900] A.C. 113, referred to.

Anderson v. *Passman*, [1835] 7 C. & P. 193, held inapplicable.

While the terms of s. 80 of the Code of Civil Procedure must be strictly complied with, that does not mean that the terms of the section should be construed in a pedantic manner or in a manner completely divorced from common sense. There can be no doubt on a reasonable construction of the terms of the section that the value of the trucks as stated in the notice in the instant case, could be no other than the value as on the date fixed for delivery and, consequently, it could be no bar to the recovery of such appreciated value as prevailed at the date of the judgment.

Bhagchand Dagadusa v. *Secretary of State*, (1927) L.R. 54 I.A. 338, considered.

Jones v. *Nicholls*, (1844) 13 M. & W. 361 : E.R. 149, and *Chandu Lal Vadilal* v. *Government of Bombay*, I.L.R. [1943] Bom. 128, referred to.

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 5 of 1954.

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Appeal from the judgment and decree dated April 7, 1948, of the Nagpur High Court in First Appeal No. 27 of 1954 arising out of the judgment and decree dated July 7, 1944, of the Court of Third Additional District Judge, Nagpur, in Civil Suit No. 10-B of 1943.

N. S. Bindra and *Gyan Singh Vohra,* for the appellants.

B Sen and *H. L. Hathi* (for *R. H. Dhebar*), for the respondent.

1957. October 29. The following Judgment of the Court was delivered by

Bhagwat. J.

BHAGWATI J.—This appeal with a certificate of fitness under s. 110 of the Code of Civil Procedure raises an important question as to the rights and remedies of a bailor in the event of non-delivery of the goods by the bailee.

The appellants carried on business in partnership in the firm name and style of "Ishwarsing Dhiansingh" and were the owners of two motor trucks, one bearing No. AWB 230 (V-8 Ford 1938 Model) and the other bearing No. AWB 253 (Oldsmobile Model 1938). On May 4, 1942, the appellants entered into an agreement for the hiring out of these trucks to the respondent for imparting tuition to the military personnel. Rupees 17 per day per truck was stipulated as the hire and the agreement was terminable on one month's notice by either side.

Pursuant to the said agreement truck No. AWB 230 was handed over to the respondent on April 29, 1942, and truck No. AWB 253 was given on May 4, 1942. The respondent used truck No. AWB 230 from April 29, 1942, to July 31, 1942, excepting the period from June 4, 1942, to June 9, 1942, and truck No. AWB 253 from May 4, 1942, to July 31, 1942, excepting the period from June 1, 1942, to June 9, 1942. On June 29, 1942, the respondent gave notice to the appellants terminating the agreement with effect from August 1, 1942, and asked them to remove the trucks on the expiration of that period. The appellant No. 1 attended upon the Officer Commanding 4 M.T.T. Centre, Kamptee at about 9 a.m. on August 1, 1942, for removing the trucks but they were not

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delivered to him by the transport in-charge and by his letter of the same date addressed to the S.S.O., Kamptee, the appellant No. 1 put the above fact on record.

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The respondent did not return the trucks to the appellants nor did it pay any hire charges to them. The respondent took up the position that the amount of hire had been paid and the trucks had been delivered by it to one Surjan Singh who was alleged to have been a partner of the appellants and thus entitled to receive the said payment and the delivery of the trucks in question. The appellants controverted the said position and claimed that the respondent was liable to pay the hire money as well as return the trucks to them.

On August 4, 1942, the appellants gave the requisite notice under s. 80 of the Code of Civil Procedure to the respondent and claimed (i) the hire money up to July 31, 1942, at Rs. 17 per day for AWB 230 from April 29, 1942, and for AWB 253 from May 4, 1942, and interest at 6% on the hire money from the due date till realization (ii) damages at Rs. 17 per day per truck from and inclusive of August 1, 1942, onwards till delivery of possession and (iii) return of the trucks Nos. AWB 253 and AWB 230 in good running order with spare wheels, accessories and tools and in good condition or in the alternative Rs. 3,500 being the price of the said two trucks.

The respondent failed and neglected to comply with the requisitions contained in the said letter with the result that on January 8, 1943, the appellants filed a suit against the respondent and the said Surjan Singh claiming the aforesaid reliefs together with future damages from the date of suit to the date of the delivery of the trucks and costs.

In the plaint as filed the cause of action was stated to be the failure of the respondent to pay hire money and the non-delivery of the trucks to the appellants by reason of their having been wrongfully delivered by the respondent to the said Surjan Singh. It was averred that the appellants were entitled to the return of their trucks or their value at the date of the decree. The appellants reserved their right to claim excess

amount if the price of the trucks at that time was found more than what was claimed by them owing to the rise in prices thereof, by paying additional court-fee. The action was one for wrongful detention and the appellants claimed a return of the trucks or in the alternative the price thereof at the date of the decree, payment of hire and damages for wrongful detention of the said trucks. The respondent reiterated its contentions in the written statement which it filed and the parties went to a hearing on these pleadings.

The Trial Court held that the respondent was not justified in paying the rent and delivering the trucks to the said Surjan Singh. It awarded to the appellants the price of the two trucks which had been fixed by the appellants at Rs. 3,500 both in the notice under s. 80 of the Code of Civil Procedure and the evidence led on their behalf. It also awarded to the appellants interest on that sum at 6% per annum by way of damages. It, however, refused to grant any mesne profits holding that for either detention or conversion, the value of the goods on the date of the tort was sufficient compensation. The rent of the trucks was calculated at Rs. 2,380 and it awarded to the appellant that sum together with interest thereon at 6% per annum from August 1, 1942, to January 7, 1943. It accordingly passed a decree in favour of the appellant for Rs. 6,032-4-0 with proportionate costs against the respondent as well as Surjan Singh.

The appellants preferred an appeal to the High Court of Judicature at Nagpur. They claimed a total sum of Rs. 11,985 as also the highest market value of the trucks. In so far as a decree for Rs. 6,032 had already been passed by the Trial Court in their favour, they valued the subject-matter of the appeal at Rs. 5,953 and accordingly furnished court-fee stamp for that amount.

The Office of the Registrar took objection to the amount of that court-fee and on February 19, 1945, a Bench of the High Court passed an order that the appellants must pay court-fee on Rs. 16,626 being the claim for rent from the date of the suit till the date

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of the filing of the appeal and the appellants accordingly paid the additional court-fee of Rs. 1,279-11-0 on February 28, 1945.

The appeal was heard by a Division Bench of the High Court on April 1, 1948. The High Court disallowed the appellants' claim for the higher value of the trucks on the ground that the appellants had merely claimed Rs. 3,500 as the price of the said trucks in the notice under s. 80 of the Code of Civil Procedure. The learned judges were of the opinion that although it might be permissible to allow some latitude when the substance of the claim was clear it would not be right to tell the respondent that only Rs. 3,500 was being claimed if the trucks were not returned and then in the suit to demand something like Rs. 14,000. They accordingly upheld the decree of the Trial Court in this regard. As regards the claim for damages for wrongful detention of the trucks the learned judges held that the appellants should be compensated for being deprived of the use of the trucks between August 1, 1942, the date of the breach and July 7, 1944, the date of the Trial Court's decree. They, however, observed that the appellants might not have been able to keep the trucks in use for every day all over the period, that there might be days when the trucks would be out of use, that there might be days when there would not be any hirers for the trucks, and that there might be days when the trucks would lie idle for repairs and overhaul and so forth. Even though all this was taken into consideration the learned judges thought that compensation at the rate of Rs. 17 per day per truck for a substantial portion of the period stated above would be fair. Having arrived at the above conclusion the learned judges observed that the appellants had no doubt paid an additional court-fee at a later stage but the fact that they had originally limited their claim to Rs. 5,953 showed that they considered that a fair sum in the beginning. The learned judges therefore limited the enhancement of the Trial Court's decree to Rs. 5,953 the sum which the appellant had originally claimed in the appeal. The Trial Court's decree was accordingly enhanced by Rs. 5,953 thus

allowing the appellant a further sum of Rs. 5,477 for compensation under that head and the appeal was allowed with costs to that extent.

The appellants thereafter applied for a certificate of fitness to appeal under s. 110 of the Code of Civil Procedure and hence this appeal.

The two main points which have been urged by the appellants before us are : (i) that the appellants' suit was one for wrongful detention and the appellants were entitled to return of the two trucks or in the alternative to the value thereof as on the date of the decree, that the value of the two trucks at the date of the decree was Rs. 7,000 each and the Trial Court should have awarded to them a sum of Rs. 14,000 in the alternative and (ii) that in addition to the above relief the appellants were entitled to damages for wrongful detention of the trucks calculated at the rate of Rs. 17 per day per truck from August 1, 1942, being the date of the accrual of the cause of action till July 7, 1944, which was the date of the decree passed by the Trial Court in their favour.

The reply of the respondent was (i) that at its worst the respondent was to the knowledge of the appellant guilty of wrongful conversion of the said trucks from August 1, 1942, and that the appellants were only entitled to damages for wrongful conversion which are commensurate with the price of the trucks at the date of such wrongful conversion and (ii) that even if the appellants were entitled to any further damages since August 1, 1942, they were merely the damages for non-payment of the value of the trucks by the respondent and should be assessed at only 6% interest per annum from the date of such conversion till payment. The respondent further contended that even on the basis of wrongful detention the appellant would not be entitled to anything more than the price of the said trucks as at the date of the Trial Court's decree plus nominal damages for the wrongful detention of the trucks from August 1, 1942, till July 7, 1944. In so far however as the High Court had awarded to the appellants the sum of Rs. 5,953 in addition to the sum

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of Rs. 6,032 already awarded by the Trial Court in their favour, the appellants were not entitled to anything more and that therefore the appeal was liable to be dismissed.

It would be relevant to consider what is the exact scope of the two forms of action, viz., action for wrongful conversion and action for wrongful detention, otherwise known as action in trover and action in detinue. A *conversion* is an act of wilful interference, without lawful justification, with any chattel in a manner inconsistent with the right of another, whereby that other is deprived of the use and possession of it. 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. (Salmond on Torts, 11th Edition, pages 323, 324, 330).

The action of detinue is based upon a wrongful detention of the plaintiff's chattel by the defendant, evidenced by a refusal to deliver it upon demand and the redress claimed is not damages for the wrong but the return of the chattel or its value. If a bailee unlawfully or negligently loses or parts with possession he cannot get rid of his contractual liability to restore the bailor's property on the termination of the bailment and if he fails to do, he may be sued in detinue. (Clerk & Lindsell on Torts, 11th Edition, pages 441 and 442 : paras. 720 & 721).

Detinue at the present day has two main uses. In the first place, the plaintiff may desire the specific restitution of his chattels and not damages for their conversion. He will then sue in detinue, not in trover. In the second place, he will have to sue in detinue if the defendant sets up no claim of ownership and has not been guilty of trespass; but the original acquisition in *detinue sur bailment* was lawful. Detinue lies against him who once had but has improperly parted with possession. At common law the natural remedy

for the recovery of chattels was the action in detinue. In that action the judgment was in the alternative—that the plaintiff do recover the possession of the chattels or their assessed value in case possession cannot be had together in any case with damages for their detention. (Salmond on Torts, 11th Edition, pages 351, 352 & 353).

Judgment for the petitioner in trover is for recovery of damages for the conversion : Judgment for the petitioner in detinue is for delivery of the chattel or payment of its value and damages for detention. (Halsbury's Laws of England, Hailsham Edition, Vol. 33, p. 78, para. 135).

These forms of action are survivals of the old forms of action in trover and in detinue and it is interesting to note the evolution of the modern causes of action for wrongful conversion or for detention. Denning J. (as he then was) in *Beaman* v. *A.R.T.S. Ltd.*(1) gave the following history of their evolution at page 92 :—

"The modern causes of action for wrongful detention or for conversion are very different from the old forms of action for detinue or for trover, and must not be confused therewith. Detinue in its original form was a real action founded on a bailment which was extended later to cases against a finder. It had, however, many procedural disadvantages, and, in particular, the defendant could wage his law. On this account, it was superseded in the course of time by trover, which for over 150 years was in practice the common remedy in all cases of taking away or detention of chattels or of their misuse or destruction. In 1833 the defendant in detinue lost his right to wage his law. In 1852 the old forms of actions were abolished. In 1854 the plaintiff gained the right to an order for specific delivery of the chattel detained. Since that time there have developed the new causes of action of conversion and wrongful detention, the names of which are derived from the old forms of action, but the substance of which is quite different. I attempt no precise definition, but, broadly speaking, the cause of action in conversion is based on an

(1) [1948] 2 All E.R. 89, 92.

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unequivocal act of ownership by the defendant over goods of the plaintiff without any authority or right in that behalf. The act must be an unequivocal act of ownership, i.e., an act such as acquiring, dealing with, or disposing of the goods, which is consistent only with the rights of an owner as distinct from the equivocal acts of one who is entrusted with the custody or handling or carriage of goods. A demand and refusal is not, therefore, itself a conversion, but it may be evidence of a prior conversion. The cause of action in wrongful detention is based on a wrongful withholding of the plaintiff's goods. It depends on the defendant being in possession of the plaintiff's goods. If such a defendant, without any right so to do, withholds the goods from the plaintiff after the plaintiff has demanded their return, he is, for such time as he so withholds them, guilty of wrongful detention : This is the tort of which a bailee or finder is guilty who is in possession of the goods and fails to deliver them up within a reasonable time after demand, though it may also, in the case of a bailee, be a breach of contract. If the bailee or finder subsequently disposes of the goods, he is guilty of conversion, but the wrongful detention then comes to an end and is swallowed up in the conversion."

Paton on "Bailment in the Common Law" (1952 Edition) has the following observations to make in regard to these two forms of causes of action at page 404 :

"The following maxim has been suggested as a guide for plaintiffs ; if the market is falling sue in conversion, if it is rising sue in detinue. This is the orthodox view and it shows that even today the distinction between the old forms of action is important."

Whether the plaintiff files an action for wrongful conversion or for wrongful detention this is essentially a matter for his election ; he can sue the bailee who has parted with wrongful possession of the goods in favour of a third person either in trover or in detinue or where the goods have been sold he may waive the tort and sue as upon an implied contract for money

had or received. (Halsbury's Laws of England, Hailsham Edition, Vol. 33, page 69, para. 115). The defendant cannot be heard to say that the plaintiff knew or ought to have known of the conversion of the goods by him and therefore should pursue his remedy only in conversion. He cannot take advantage of his own wrong. It was held as early as 1858 in *Reeve* v. *Palmer*(1) by Cockburn C. J.

"It has been held from a very early time that where a chattel has been bailed to a person, it does not lie in his mouth to set up his own wrongful act in answer to an action for detinue, though the chattel has ceased to be in his possession at the time of the demand.....

Williams J. also observed:

"All the authorities, from the most ancient time, shew that it is no answer to an action of detinue, when a demand is made for the re-delivery of the chattel to say that the defendant is unable to comply with the demand by reason of his own breach of duty." The said decision was affirmed in appeal before the Exchequer Chamber and that may be taken to be the settled law on this point.

Wilkinson v. *Verity*(2) also laid down the same principle of election of the remedies and the following observations of Willes J. at page 210 are apposite:

"The misconduct of the party who acts in fraud of the bargain in such cases gives the other party thereto the election of suing either for the first violation or for non-performance at the day; and it does not furnish the wrongdoer with any answer to the latter.....

On the other hand, if the action of detinue is resorted to as it may be (Com. Dig. Detinue A) for the purpose of asserting against a person entrusted for safe custody a breach of his duty as bailee, by detention after demand, independent of any other act of conversion, such as would make him liable in an action of trover, it should seem that the owner is entitled to sue, *at election*, either for a wrongful parting with the

(1) (1858) 5 C.B. (N.S.) 84, 90, 91. (2) (1871) L.R. 6 C.P. 206.

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property (if he discovers and can prove it) or to wait until there is a breach of the bailee's duty in the ordinary course by refusal to deliver up on request and that in the latter case, it is no answer for the bailee to say that he has by his own misconduct incapacitated himself from complying with the lawful demand of the bailor.

. . . . . .

In that case, the principle that a man entrusted with property for safe custody cannot better his position by wrongfully parting with possession of it, but must be answerable as if he retained the possession, was applied both in this Court and in the Exchequer Chamber to the action of detinue.....And this is agreeable to the maxim, "Qui dolo desiit possidere pro possidente Damnatur."

It may be noted that this case of *Wilkinson* v. *Verity*(1) was followed by the Court of Appeal in England in *Rosenthal* v. *Alderton & Sons Ltd.*(2) and by the High Court of Australia in *John F. Goulding Proprietary Limited* v. *The Victorian Railways Commissioners*(3).

It is clear therefore that a bailor in the event of the non-delivery of the goods by the bailee on a demand made by him in that behalf is entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof and if the bailor pursues his remedy against the bailee for wrongful detention of the goods it would be no answer for the bailee to say that he was guilty of wrongful conversion of the goods at an earlier date which fact of conversion of the goods the plaintiff knew or ought to have known at or about that time and is therefore not liable to the plaintiff for wrongful detention thereof. It is the option of the plaintiff to pursue either remedy against the bailee just as it suits him having regard to all the circumstances of the case and the bailee cannot be heard to say anything to the contrary for the simple reason that he cannot take advantage of his own wrong and cannot ask the plaintiff to choose a remedy which may be less beneficial to him.

(1) (1871) L.R. 6 C.P. 206.
(2) [1946] 1 K.B. 374.
(3) 48 C.L.R. 157, 167.

This is of course the normal rule, though the courts have tried to soften its rigour by importing the consideration that the plaintiff should not be allowed to delay his action in order to get the advantage of a rising market. A speculative element might enter into the matter and a shrewd plaintiff might attempt to take unfair advantage of a fluctuating market. "Just as plaintiff may not waive a conversion so as to pick his own time to demand return and thus evade being statute barred, so he may not bide his time after a conversion so as to make his demand when the market price is highest." [Kialfray (12) Modern Law Review at page 427].

In the present case, however, we are not fettered by any such consideration. The respondent was the bailee of the two trucks and was bound to return the same to the appellants on the termination of the bailment. The bailment came to an end on August 1, 1942, and the appellants attended the office of the Officer Commanding 4 M.T.T. Centre, Kamptee on the said date for having the trucks re-delivered to them. When the said trucks were not so delivered the appellants immediately on August 14, 1948, gave the statutory notice to the respondent under s. 80 of the Code of Civil Procedure. The period of the said notice expired on or about October 14, 1942, and the appellants filed their action for wrongful detention on January 8, 1943. There was no delay on the part of the appellants which would spell out any intention on their part to take advantage of the rising market or to waive their remedy in wrongful conversion with a view to take advantage of the statute of limitation. There is no evidence to show that the market value of the trucks had appreciated perceptibly between August 1, 1942, and January 8, 1943, and it is significant to note that the only claim which the appellants had made in their notice dated August 4, 1942, was for specific delivery of the said trucks by the respondent. Even though the appellants knew that the said trucks had been re-delivered by the respondent to Surjan Singh and they

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could have, if they had been so minded, sued the respondent for wrongful conversion of the said trucks, they elected to have the said trucks re-delivered to them and asked for the specific delivery thereof and filed their action for wrongful detention of the said trucks. They were, in our opinion, perfectly entitled to do so and we have to consider the further questions that arise before us on the basis that the action for wrongful detention had been rightly instituted by the appellants against the respondent.

This leads us to the question as to what relief the appellants are entitled to obtain against the respondent. The claim for the rent already due by the respondent to the appellants up to August 1, 1942, has been settled by the judgments of the courts below and we are not called upon to canvass these findings of fact any further. The more important questions that require to be dealt with are : (1) What is the amount which the appellants are entitled to recover from the respondent as and by way of the value of the two trucks in the alternative—the respondent being admittedly not in a position to re-deliver the said trucks to them and (2) what are the damages which the appellants are entitled to recover by reason of wrongful detention of the trucks till the date of judgment.

As regards the first question the Trial Court unfortunately did not properly appreciate the evidence which was led by the appellants before it. That evidence was given on or about February 1, 1944, more than a year after the institution of the suit and about five months before the date of the decree. The evidence such as it stood was to the effect that the prices of similar trucks had considerably appreciated after August 1, 1942, and broadly stated were at least twice those which obtained on or about that date. The claim of the appellants as laid was no doubt exaggerated and on the evidence the Trial Court would not have been justified in awarding to the appellants anything like the sum of Rs. 7,000 per truck which had been claimed. The evidence however was sufficient to enable the Trial Court to come to the conclusion that the price of the said two trucks which had been fixed at Rs. 3,500 both in the notice under s. 80 of the Civil

Procedure Code as well as in the plaint had appreciated at least by 100% and if the Trial Court had come to the conclusion that the appellants were entitled to the value of the trucks as at the date of the judgment it would certainly have been justified in awarding to the appellants an aggregate sum of Rs. 7,000 in the alternative. The Trial Court however understood the position in law to be that for either detention or conversion the value on the date of the tort was sufficient compensation and awarded to the appellants only a sum of Rs. 3,500 which was the value thereof on August 1, 1942, together with interest at 6% per annum as and by way of damages. The Trial Court was obviously wrong in awarding this sum and interest to the plaintiff for the reasons which we shall presently discuss.

When the matter went to the High Court the learned judges of the High Court did not discuss this aspect of the question at all but dismissed the claim of the appellants merely on the ground that the appellants had only claimed Rs. 3,500 in the notice which they had served on the respondent under s. 80 of the Code of Civil Procedure and that they were therefore not entitled to recover anything more than the sum of Rs. 3,500 and they accordingly upheld the decree of the Trial Court in this behalf.

We are constrained to observe that the approach of the High Court to this question was not well founded. The Privy Council no doubt laid down in *Bhagchand Dagadusa* v. *Secretary of State*(1) that the terms of this section should be strictly complied with. That does not however mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common sense. As was stated by Pollock C. B. in *Jones* v. *Nicholls*(2) "We must import a little common sense into notices of this kind." Beaumont C. J. also observed in *Chandu Lal Vadilal* v. *Government of Bombay*(3): "One must construe section 80 with some regard to common sense

(1) (1927) L.R. 54 I.A. 338.
(2) (1844) 13 M. & W. 361, 363 ; 153 E.R. 149, 150.
(3) I.L.R. [1943] Bom. 128.

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and to the object with which it appears to have been passed....." If the terms of the notice in question be scrutinized in this manner it is abundantly clear that the relief claimed by the appellant was the re-delivery of the said two trucks or in the alternative payment of Rs. 3,500 being the value thereof. The value which was placed by the appellants on the trucks was the then value according to them—a value as on August 1, 1942, the date on which the delivery of the trucks ought to have been given by the respondent to the appellants. The appellants could only have demanded that sum as on the date of that notice. They could not sensibly enough have demanded any other sum. If the respondent had complied with the terms of that notice then and there and re-delivered the trucks to the appellant, nothing further needed to be done. If on the other hand instead of re-delivering the trucks it paid to the appellant the value thereof then also it need not have paid anything more than Rs. 3,500 to the appellant, on that alternative. If, however, the respondent failed and neglected to comply with the requisitions contained in that notice the appellants would certainly be entitled to recover from the respondent the value of the said trucks in the alternative on the failure of the respondent to re-deliver the same to the appellants in accordance with the terms of the decree ultimately passed by the Court in their favour. That date could certainly not be foreseen by the appellants and it is contrary to all reason and common sense to expect the appellants to have made a claim for the alternative value of the said two trucks as of that date. The respondent was and ought to have been well aware of the situation as it would develop as a result of its non-compliance with the terms of that notice and if on January 8, 1943, the appellants in the suit which they filed for wrongful detention of the said trucks claimed re-delivery of the said trucks or in the alternative Rs. 3,500 as their value and reserved their right to claim the further appreciation in the value of the trucks by reason of the rise in prices thereof up to the date of the decree by paying

additional court-fee in that behalf, it could not be laid at their door that they had not made the specific demand in their notice to the respondent under s. 80 of the Code of Civil Procedure and that therefore their claim to recover anything beyond Rs. 3,500 was barred under that section. A common sense reading of the notice under s. 80 would lead any Court to the conclusion that the strict requirements of that section had been complied with and that there was no defect in the same such as to disentitle the appellants from recovering from the respondent the appreciated value of the said two trucks as at the date of the judgment. It is relevant to note that neither was this point taken by the respondent in the written statement which it filed in answer to the appellants' claim nor was any issue framed in that behalf by the Trial Court and this may justify the inference that the objection under s. 80 had been waived. The point appears to have been taken for the first time before the High Court which negatived the claim of the appellants for the appreciated value of the said trucks.

Turning then to the question whether the appellants were entitled to the value of the said trucks in the alternative as at the date of the judgment or at the date of the tort,—whether it be conversion or wrongful detention, the position appears to be a little confused. Recent cases indicate that there is much conflict concerning the true rule to apply as to the measure of damages in detinue and conversion. As to the time at which the value of the goods which are the subject-matter of the tort should be assessed it is not certain (a) whether the rule is the same in trover as in detinue; (b) whether damages should be calculated at the moment of the wrong, or of the verdict or at some intermediate period and (c) whether the doctrine of special damage can be so used as to compensate the owner for fluctuations in value. (Paton on "Bailment in the Common Law", page 404).

Up to 1946 the trend of the authorities in England was to assess the value of the goods at the date of the breach where the action was for breach of contract and as at the date of the tort where the action was for

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wrongful conversion or for wrongful detention. There was an old authority of *Mercer* v. *Jones*(1) which laid down that the damages should be the value at the time of the conversion. This authority was relied upon by the Attorney-General in *Greening* v. *Wilkinson*(2) but Abbott C. J. observed that that case was hardly law, and that the amount of damages was for the jury, who might give the value at the time of the conversion, or at any subsequent time in their discretion, because the plaintiff might have had a good opportunity of selling the goods if they had not been detained. He expressed the opinion that the jury were not at all limited in giving their verdict by what was the price of the article on the day of the conversion. This case was considered and not applied in *Johnson* v. *Hook*(3) and the position which obtained was that the damages were to be assessed on the value of the property at the date of the conversion.

Bodley v. *Reynolds*(4) was an action in trover for goods and chattels comprising of carpenter's tools. Special damages were also claimed and proved and the Court awarded not only the value of the goods at the date of conversion but also special damages as laid in the declaration. Lord Denman C. J. observed that where special damage was laid and proved, there could be no reason for measuring the damages by the value of the chattel converted. In effect this confirms the position that apart from this circumstance the damages would be measured by the value of the chattel converted which value was taken as at the date of conversion.

Reid v. *Fairbanks*(5) was also an action in trover. It was held that the proper principle on which to estimate such damages, would be, the value of the ship and all her store, etc., on the date when the third party took possession of her; and that, as a mode of ascertaining such value, the referee should consider what would have been the value of the ship, if she

(1) (1813) 3 Camp. 477 ; 170 E.R. 1452.

(2) (1825) 1. Car & P. 625 ; 171 E.R. 1344.

(3) (1883) 31 W.R. 812.

(4) (1846) 8 Q.B. 779 ; 115 E.R. 1066.

(5) (1853) 13 C.B. 692 ; 138 E.R. 1371.

had been completed by the defendant according to his contract with the plaintiff and deduct therefrom the money that would necessarily have been laid out by the defendant after that date, in order to complete her according to the contract. The value of the ship was thus calculated as at the date of the conversion even though the method of computation was prescribed by the circumstances of the case.

In S. S. Celia v. *S. S. Volturno*(1) the House of Lords had to consider the question whether the proper date for ascertaining the rate of exchange for the purpose of converting the amount payable into English currency was the date on which the detention occurred or the date on which the damages were assessed or payment made. Lord Buckmaster at page 548 said:

"A judgment, whether for breach of contract or for tort, where, as in this case, the damage is not continuing, does not proceed by determining what is the sum which, without regarding other circumstances, would at the time of the hearing afford compensation for the loss, but what was the loss actually proved to have been incurred either at the time of the breach or in consequence of the wrong. With regard to an ordinary claim for breach of contract this is plain. Assuming that the breach complained of was the non-delivery of goods according to contract, the measure of damage is the loss sustained at the time of the breach measured by the difference between the contract price and the market price of the goods at that date.

. . . . . .

Similar considerations apply to an action for tort. In cases where, as in the present, the damage is fixed and definite, and due to conditions determined at a particular date, the amount of damage is assessed by reference to the then existing circumstances and subsequent changes would not affect the result. If these damages be assessed in a foreign currency the judgment here, which must be expressed in sterling, must

(1) [1921] 2 A.C. (H.L.) 544, 548.

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be based on the amount required to convert this currency into sterling at the date when the measure was properly made, and the subsequent fluctuation of exchange, one way or the other, ought not to be taken into account."

Lord Sumner expressed himself in these terms at page 555 :

"The matter may be tested in this way. Suppose that, as an incident of the collision, some seaman belonging to the Celia had taken possession on behalf of her owners of a parcel of Italian currency notes, the property of the owners of the Volturno, and that the former had received and kept it. The owners of the Volturno could have claimed damages for conversion of the notes or their return with damages for their detention, as they chose. In the first case the value of the notes would be taken and exchanged into sterling as at the date of the conversion, and as the foundation of the damages in the second case the same date would have been taken."

The following passage from Lord Wrenbury's speech at page 563 clearly sets out the position in law :

"The argument to the contrary is that the defendant is bound by a pecuniary payment to put the plaintiff in a position as good as that in which he stood before the tort was committed. That is true, but it is necessary to add the consideration of which we have recently heard so much, in the form of a fourth dimension—namely, that of time. The defendant is bound to make such pecuniary payment as would put the plaintiff at the date of the tort in as good a position as he would have been in, had there been no tort. If the date taken be that not of the tort but of the judgment, it is giving the plaintiff not damages for the tort, but damages also for the postponement of the payment of those damages until the date of the judgment. If such later damages can be recovered as under circumstances they may be if the defendant improperly postpones payment, they would be recovered in the form of interest. They would be damages not for the original tort, but for another and a subsequent wrongful act."

In *the Arpad*(1) where the plaintiff laid alternative claims in contract and tort it was held that the true measure of damages was the value of the goods at the date of the non-delivery, disregarding circumstances peculiar to the plaintiffs and that on the alternative claim in tort for damages for conversion also, the measure of damages was the same. Scrutton L. J. observed in the course of his judgment at page 205 :

"In my opinion the damages in conversion should be the value to the purchaser or goods owner at the time of the conversion."

The last case in this series is that of *the Caxton Publishing Co.* v. *Sutherland Publishing Co.*(2). Lord Porter in his speech at page 201 defines conversion in the terms following :

"As to (3) conversion was defined by Atkin J. as he then was, in *Lancashire and Yorkshire Rly. Co.* v. *MacNicoll* (88 L. J. (K.B.) 601, 605). "Dealing", he said, "with goods in a manner inconsistent with the right of the true owner amounts to a conversion, provided that it is also established that there is also an intention on the part of the defendant in so doing to deny the owner's right or to assert a right which is inconsistent with the owner's right."

This definition was approved by Scrutton L. J. in *Oakley* v. *Lyster* [1931] 1 K. B. 148, 153.

"Atkin J. goes on to point out that, where the act done is necessarily a denial of the owner's right or an assertion of a right inconsistent therewith, intention does not matter. Another way of reaching the same conclusion would be to say that conversion consists in an act intentionally done inconsistent with the owner's right, though the doer may not know of or intend to challenge the property or possession of the true owner."

After thus defining conversion the learned law Lord proceeded to consider the measure of damages suffered from that act and he observed at page 203 :

"As to (4) there is no dispute as to the principle on which in general the measure of damages of conversion is calculated. It is the value of the thing

(1) [1934] P. 189. (2) [1939] A C 178

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converted at the date of the conversion, and this principle was accepted by both sides in the present case."

While thus enunciating the principle on which the measure of damages for conversion is to be calculated the noble law Lord referred to the statement of Abbott C. J. in *Greening* v. *Wilkinson* (*supra*) and stated :

"I should wish to leave open for consideration in a case in which it directly arises the question whether the statement of Abbott C. J. in *Greening* v. *Wilkinson* that the jury "may give the value at the time of the conversion or at any subsequent time" can be supported or not."

The catena of authorities quoted above shows that but for the reservation made by Lord Porter in the last mentioned case in regard to the statement of Abbott C. J. in *Greening* v. *Wilkinson* (*supra*) the consensus of opinion was that the damages for tort were to be measured as at the date of the tort, though it may be noted that most of these cases were concerned with wrongful conversion of the goods and not with the wrongful detention thereof.

In 1946 the Court of Appeal in England laid down in the case of *Rosenthal* v. *Alderton & Sons Ltd.* (*supra*) that in detinue the value of the goods should be measured as at the date of the judgment or verdict, and not at the date of the refusal to return the goods. The action there was one of detinue. The plaintiff who was a tenant of the defendants surrendered his tenancy in June, 1940, and, by arrangement with the defendants left on the premises certain goods belonging to him. In 1943, after his return from a period of military service, the plaintiff found that the goods were missing, some of them having been sold by the defendants. On October 6, 1943, the plaintiff through his solicitors demanded the return of the goods and, on the defendants' refusal to comply, brought an action against them claiming the return of the goods and, in the alternative, the payment to him of their value and damages for their detention. It was contended on behalf of the defendants that a demand by

the plaintiff for the return of the goods having been refused by the defendants several months before the issue of the writ; the proper assessment of the value of such of the goods as had not been returned by the defendants should have in accordance with their value on the date when the cause of action arose, which was (as it was claimed), notoriously less than their value as assessed by the official referee after action was brought. This contention of the defendants was negatived and the Court held that in an action of detinue, the value of the goods to be paid by the defendants to the plaintiff in the event of the defendants' failing to return the goods to the plaintiff must be assessed as at the date of the verdict or judgment in his favour and not at that of the defendants' refusal to return the goods. Evershed J. who delivered the judgment of the Court dealt with this contention at page 378 as under :

"In our judgment an assessment of the value of the goods detained (and not subsequently returned) at the date of the accrual of the cause of action (*i.e.*, of the refusal of the plaintiff's demand) must presuppose that on that date the plaintiff abandoned his property in the goods : and such a premise is inconsistent with the pursuit by the plaintiff of his action of detinue. The significance of the date of the refusal of the plaintiff's demand is that the defendant's failure to return the goods after that date becomes and continues to be, wrongful. Moreover, the plaintiff may recover damages in respect of the wrongful 'detention' after that date, *e.g.*, where the plaintiff has suffered loss from a fall in value of the goods between the date of the defendant's refusal and the date of actual return, (See *William* v. *Archer* (1847) 5 C.B. 318) and such damages must equally continue to run until the return of the goods or (in default of return) until payment of their value. There is (as appears from the forms of judgment mentioned) a clear distinction between the value of the goods claimed in default of their return and damages for their detention, whether returned or not. The date of the refusal of the plaintiff's demand is the date from which the latter commence to run,

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but appears to be irrelevant to the former and cannot convert a claim for the return of the goods into a claim for payment of their value on that date."

A further contention was urged on behalf of the defendants in that case that the value of certain of the goods which they had in fact sold could not in any event be assessed at any higher value than at the date of the sale. This contention was negatived by the Court in the terms following at page 379 :

"In other words they say "We have proved that we converted some of your goods and therefore, we can have the benefit of any lower value prevailing at the date of the conversion". It is, however, clear that it is no answer for a bailee, when sued in detinue, to say that he has by his own misconduct incapacitated himself from complying with the lawful demand of the bailor—cf. *Wilkinson* v. *Verity* (*supra*). It seems to us that the defendants are, in affect, saying "Your real remedy is in conversion," but the bailor can, in such circumstances elect to sue in detinue (at any rate where he was not aware of the conversion at the time), and there is no reason why the value of the goods in fact converted should be assessed on a different basis from the value of the goods which the bailee has not converted but which for some other reason he fails to re-deliver."

These observations are the basis of the headnote which says that the same principle applies whether the defendant has converted the goods by selling them or has refused to return them for some other reason.

This decision of the Court of Appeal lays down that where the defendant has been guilty of wrongful conversion of the goods or the wrongful detention thereof, the plaintiff is entitled to damages for such tort committed by the defendant measured at the value of the goods which are the subject-matter of the tort computed as at the date of the verdict or judgment and not at the date of the tort. If this is the true position it would run counter to the rule which had been settled all along up to 1946 that the measure of damages in an action for tort would be the value of the goods at the date of the tort. As a matter

of fact Denning J. (as he then was) commented on this position in *Beaman* v. *A. R. T. S. Ltd.* (*supra*) at page 93:

"A recent decision of the Court of Appeal holds that the damages in such cases are to be assessed at the date of the judgement or verdict in the plaintiff's favour: See *Rosenthal* v. *Alderton & Sons Ltd.* (*supra*); but that does not mean that the cause of action accrues at that time. The observations of Lord Goddard C. J. in *Sachs* v. *Miklos* (1948) (1 All E. R. 67) considerably limit the scope of *Rosenthal* v. *Alderton*, and, should prices hereafter fall, the courts will probably be faced with the task of reconciling *Rosenthal* v. *Alderton* with the settled rule that damages, whether in contract or tort, are to be assessed as at the date of the accrual of the cause of action and that subsequent fluctuations upwards or downwards in rates of exchange or commodity prices, before or during legal proceedings, are irrelevant : See the decision of the House or Lords in *S. S. Celia* v. *S. S. Volturno* (supra) particularly the speeches of Lord Buckmaster ([1921] 2 A. C. 544, 548), of Lord Sumner (ibid., 556), and Lord Wrenbury (ibid., 563), and the long line of cases of buyers who sue sellers for conversion of, or for failure to deliver, goods bargained and sold (such as *France* v. *Gaudet* (1871) L.R. 6 Q.B. 199) where the damages are always assessed as at the date of the breach."

The qualification added by the Court of Appeal on the bailor's right to elect to sue in detinue, "at any rate where he was not aware of the conversion at the time", has also been commented upon by Paton on "Bailment in the Common Law" at page 405, that on a strict historical basis, this qualification is unnecessary, but the Courts have added it to prevent a plaintiff delaying his action in order to get the advantage of a rising market.

In *Sachs* v. *Miklos*(1) the Court of appeal discussed the measure of damages in a case that raised the point very neatly. In 1940 a bailor agreed with a bailee that the latter should gratuitously store his furniture

(1) [1948] 2 K.B. 23.

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in her house. In 1944, the bailee wished to get rid of the furniture and, after fruitless attempts to get in touch with the bailor, sold it. The furniture realised £ 13 at a public auction. In 1947 the bailor sued for detinue and conversion, and the current value of the furniture was now assessed at £ 115. Lord Goddard C. J. (with whom Tucker L. J. and Jenkins J. concurred) stated "that the measure of damages is the same in conversion as in detinue, where the facts are only that a defendant has the goods in his possession and could hand them over, and would not do so" and as a result the damages fall to be assessed as at the date of the verdict or judgment. These observations of Goddard C. J. were understood by Denning J. in *Beaman* v. *A. R. T. S. Ltd.* (supra) as considerably limiting the scope of *Rosenthal* v. *Alderton* (supra). The following comment on the case by Winfield on Tort, 6th Edition at page 442 may be noted with interest :

"It seems, however, that *Rosenthal's case* simply laid down that where the plaintiff sues in detinue the same principle of assessment of damages applies whether the defendant refuses to return the goods because he has converted them or for some other reason fails to return the goods. This hardly warrants the conclusion that the measure of damages is the same in detinue as in conversion. As we have seen the two actions are distinct in their nature and purpose."

Paton on "Bailment in the Common Law" at page 405 has the following comment to make on this position :

"The Court reached a conclusion that was based on common sense and a desire to do justice to both parties, but in certain respects breaks new ground. The crucial question was : What was the plaintiff's loss ? What damage did he suffer by the wrongful act of defendant ? If the plaintiff knew or ought to have known in 1944 of the defendant's intention to sell the damages would be justly calculated at £ 13. If he did not know, or ought not to have known, till 1946 that his goods were sold, then the damages should be

assessed at £115. The case was remitted to the County Court judge in order that the facts might be further elucidated. The Court also emphasised one further factor. It was clear that the plaintiff knew of the sale in January, 1946, but he did not begin the action till January, 1947. If the County Court judge found that there was an undue delay in bringing the action and that there had been a rise in price between 1946 and 1947, then allowance must be made. This point disposes of the criticism that a speculative element enters into the matter and that a shrewd plaintiff might attempt to take unfair advantage of a fluctuating market."

Paton further states that this is an interesting decision, but a short survey of the cases shows that the earlier authorities, especially with regard to conversion, are by no means clear. (See also Salmond on Torts, 11th Edition at page 347).

The difficulty, however, arises when there is an increase in the value of the goods which are the subject-matter of the tort between the date of the tort and the date of the verdict or judgment and there is authority for the proposition that any increment in value due to the act of the defendant is not recoverable by the plaintiff. Salmond thus summarises the position in his treatise on Torts, 11th Edition at page 348:

"If, on the other hand, where the property increases in value after the date of the conversion, a distinction has to be drawn. If the increase is due to the act of the defendant, the plaintiff has not title to it, and his claim is limited to the original value of the chattel. Thus, in *Munro* v. *Willmoti* ([1949] 1 K. B. 295) the plaintiff in 1941 deposited a car in the defendant's yard. In 1945, the defendant, after endeavouring without success to communicate with the plaintiff, sold the car, having spent £ 85 on repairs necessary to put it into a saleable state. Lynskey J. assessed the value of the car at the date of the judgment as £ 120, but held "that the defendant is entitled to credit, not from the point of view of payment for what he has done, but in order to arrive at the true value of the property which the plaintiff has lost" : if the repairs had not

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been done the car could only have been sold for scrap".

It may be noted that Lynskey J. approved of this statement of the law as enunciated in Salmond.

Paton, however, in his "Bailment in the Common Law" points out at p. 412 that there is a tendency to consider the merits of each case in order to reach a reasonable solution; although the theoretical rule is that the defendant is entitled to credit, not as payment for what he has done, but rather to arrive at the true value of the property converted. He further points out that American cases also emphasise the state of mind of the tortfeasor. An innocent converter is allowed to deduct the value of his improvements, but one who knowingly commits conversion may be forced to pay damages for the value of the *res* in its improved state. This is justified on the ground that it is fair to award punitive damages where the wrong was wilful.

Where, however, the increase in value is not due to the act of the defendant the plaintiff is also entitled to recover the extra value as special damage resulting from the conversion in addition to the original value of the property converted. The following passage from Paton at page 409 further elucidates this position :

"The plaintiff can always recover, in addition to the value of the property, any special damage which the law does not regard as too remote. Thus if a carpenter's tools are converted, it has been held that he may recover their value and also special damages for the loss of employment. *France* v. *Gaudet* (supra) explained this decision on the ground that the defendant had some notice of the existing contract. Such special damage must be pleaded.

If this rule is applied to fluctuations in value, the result is as follows :

(a) If the value increases and is highest at the date of verdict, the result is the same as taking the test of the value at the time of verdict, for the plaintiff obtains the value at the time of conversion, and in addition the increase in value as special damages.

(b) If the value decreases, then the plaintiff can still secure the value at the time of conversion: he can

claim no special damage and the defendant has no claim to reduce the damages.

It is doubtful, however, whether the rule as to special damage should be applied to the question of fluctuations of value. There is some authority for it, but it cannot be regarded as established. If it is accepted, the argument as to the date of the moment of calculating damage loses much of its practical importance.

A commentator in the Harvard Law Review ((1947) 61 Harv. L. R. 158) states that in measuring damages for conversion the courts started with the "traditional but over simplified value at the time and place of the wrong". But where the goods are of such a nature that their value fluctuates greatly the courts have been prepared to depart from this rule. Thus in New York, where stock is concerned, the courts allow the owner to recover the highest value to which the stock rose a reasonable time after he learnt of the conversion, the emphasis on the reasonable time being to prevent speculation by delaying unduly the initiation of the action. California allows the highest value reached between the date of the conversion and the time of trial. In Texas the highest intermediate value is allowed in cases of wilful wrong or gross negligence, but only the value at the date of the conversion as against a blameless defendant." (See also restatement of the Law, Volume on Torts, pages 650, 653 and 927).

And further at page 410 :

"The decisions illustrate the way in which the merits of the defendant's case have been allowed to determine the technical question of the method of calculating damages. In England, these considerations have not been discussed so openly, but their influence on decisions is seen in the judgments in *Sachs* v. *Miklos* (supra), where the question of reasonable speed in bringing the action was discussed and in Lord Atkin's speech in *Solloway* v. *McLaughlin* ([1938] A.C. 247) where he finds delight in using a technical rule to award damages against the unjust steward."

It follows from the above that the position in law in regard to the measure of damages in an action for

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wrongful conversion is far from clear and the law in regard to the same cannot be said to be perfectly well settled. Whatever be the position in regard to the same in actions for wrongful conversion, one thing is quite clear that in actions for wrongful detention the measure of damages can only be the value of the goods as at the date of the verdict or judgment. The tort 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 re-deliver 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 actions for wrongful detention is that the defendant do deliver to the plaintiff 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.

Winfield thus enunciates the position in his Treatise on Tort, 6th Edition at page 414 :

"The significance of the date of the refusal of the plaintiff's demand is that the defendant's failure to return the goods after that date becomes, and continues to be, wrongful, and damages are recoverable for wrongful "detention" after that date until the goods are returned or payment of their value. The date of the defendant's refusal cannot convert a claim for the return of the goods into a claim for payment of their value at that date."

It is, therefore, clear that in actions for wrongful detention the plaintiff is entitled on default of the defendant in re-delivering the goods to him, to payment in the alternative of the value of the goods thus wrongfully detained as at the date of the verdict or judgment, in other words, at the date of the decree. We are, therefore, of opinion that the appellants were entitled to recover from the respondent the value of the said trucks which, as has been already stated, was Rs. 7,000 in the alternative, on default committed by the respondent in re-delivery of the same to the appellants.

The next question to consider is what damages are the appellants entitled to recover from the respondent by reason of the wrongful detention of the said trucks from August 1, 1942, up to the date of the decree. It is well settled that in an action for wrongful detention the plaintiff is entitled besides the re-delivery of the chattel or payment of its value in the alternative, also to damages for such wrongful detention. There is however no definite criterion laid down by the decided cases as to what the measure of such damages should be. As was observed by Denning L. J. in *Strand Electric & Engineering Co. Ltd.*(1):

"The question in this case is : What is the proper measure of damages for the wrongful detention of goods ? Does it fall within the general rule that the plaintiff only recovers for the loss he has suffered or

(1) (1952) 2 Q.B. 246, 253.

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within some other, and if so what, rule ? It is strange that there is no authority upon this point in English law : but there is plenty on the analogous case of detention of land. The rule there is that a wrongdoer, who keeps the owner out of his land, must pay a fair rental value for it, even though the owner would not have been able to use it himself or to let it to anyone else. So also a wrongdoer who uses land for his own purpose without the owner's consent, as, for instance, for a fair ground, or as a way-leave, must pay a reasonable hire for it, even though he has done no damage to the land at all : *Whitwham* v. *Westminster Brymbo Coal Company* ([1896] 2 Ch. 538). I see no reason why the same principle should not apply to detention of goods."

In that case certain portable switchboards were lent by the plaintiff to a Theatre Co., pending the manufacture and installation by the plaintiffs of permanent switchboards. The hiring out of portable switchboards was a normal part of the plaintiff's business and it was agreed between the plaintiff and the Theatre Co., on a subsequent date that the company should pay to the plaintiff the hiring charges at a certain rate per week. Later on the defendant took possession of the theatre and gave instructions that nothing whatsoever must be removed, and the Theatre Co., disclaimed any responsibility for the plaintiffs' hire equipment as from that date. The plaintiffs thereafter wrote a number of letters to the defendant demanding the return of their equipment but received neither their property nor any satisfactory reply, and they issued a writ claiming the return of their equipment or its value, and damages for the period of its detention, which at the trial was shown to be for 43 weeks. The question that arose for consideration was what was the quantum of damages which the plaintiffs were entitled to recover and it was held that in an action in detinue in respect of a chattel which the plaintiff, as part of his business, hires out to users, the plaintiff, if the defendant has during the period of detention made beneficial use of the chattel, is entitled to recover as damages the full market rate of hire for the whole

period of detention. After setting out the passage above quoted Denning L. J. continued at page 254 :

"If a wrongdoer has made use of goods for his own purpose, then he must pay a reasonable hire for them, even though the owner has in fact suffered no loss. It may be that the owner would not have used the goods himself, or that he had a substitute readily available, which he used without extra cost to himself. Nevertheless the owner is entitled to a reasonable hire. If the wrongdoer had asked the owner for permission to use the goods, the owner would be entitled to ask for a reasonable remuneration as the price of his permission. The wrongdoer cannot be better off by doing wrong than he would be by doing right. He must therefore pay a reasonable hire."

Mr. B. Sen, who appeared on behalf of the respondent, urged before us on the authority of *Anderson* v. *Passman*(1) that as the gist of the grievance is mere unlawful detention, the damages will be nominal unless the plaintiff proves that he has suffered special damage. This position is, however, of no avail to the respondent because it cannot be said that the appellants' grievance here is merely in regard to the wrongful detention of the trucks. The appellants in this instant case have also claimed to recover from the respondent future damages from the date of detention till the date of delivery of the trucks and apart from any claim laid in special damages, these are damages which naturally flow from the wrongful act of the respondent and which the appellants would be entitled to recover in the event of non-delivery of the trucks to them by the respondent.

This is certainly not a case of nominal damages. As Earl of Halsbury L. C. pointed out in *Owners of the Steamship "Mediana"* v. *Owners, Master and Crew of Lightship "Comet"*(2) :

"the unlawful keeping back of what belongs to another person is of itself a ground for real damages, not nominal damages at all."

The quantum of damages may be big or small but it

(1) [1835] 7 C. & P. 193. (2) [1900] A.C. 113, 118.

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does not make any difference to the principle. The principle of assessing the damages is the same and that is that where by the wrongful act of the one man something belonging to another is either itself so injured as not to be capable of being used or is taken away so that it cannot be used at all, that of itself is a ground for damages. (Ibid p. 116).

In the case before us the appellants were the owners of the two trucks and they used to hire out the same to others. Hiring out of the trucks was a regular business of theirs and if the said trucks had been re-delivered by the respondent to them on August 1, 1942, they would have immediately put the same to the user, *viz.*, that of hiring them out to outsiders and earning thereby a certain sum by way of rent for each truck per day. The appellants might not have been able to hire them out for every day of the period of wrongful detention by the respondent, *viz.*, from August 1, 1942 to July 7, 1944. As the learned judges of the High Court have observed, there might be days when the trucks would be out of use; there might be days when the trucks would lie idle for repairs and overhaul and so forth; that would only go to reduce the number of days for which the appellants would be entitled to recover the damages for such wrongful detention. If the learned judges of the High Court had on taking all the circumstances into consideration arrived at the figure of Rs. 5,953 as the amount of hire which could have been reasonably earned by the appellants in the event of the re-delivery of the trucks by the respondent to them on August 1, 1942, their judgment in this behalf could not have been successfully impeached. What they did, however, was to confine the appellants' claim to Rs. 5,953 on the ground that the appellants had claimed that amount in the first instance and had paid the court-fee on the same. They, therefore, took it that that sum of Rs. 5,953 represented a fair amount of damages for wrongful detention of the trucks according to the appellants.

We are of opinion that the High Court was clearly in error in adopting this basis for the award of

damages. The payment of court-fee stamp on Rs. 5,953 was certainly not conclusive against the appellants because on its being pointed out by the Office of the Registrar, the appellants paid an additional court-fee stamp of Rs. 1,279-11-0 on February 28, 1945, and that was done because the appellants did not confine their claim merely to the said sum of Rs. 5,953. If, according to the judgment of the learned judges of the High Court the appellants were entitled to damages for the wrongful detention of the said two trucks at the rate of Rs. 17 per day per truck from August 1, 1942 to July 7, 1944, they ought to have made a reasonable calculation of the number of days for which the trucks would have been put to use by the appellants and awarded damages to the appellants accordingly. This, however, they failed to do.

In our opinion, the appellants are entitled to recover such damages from the respondent at the rate of Rs. 17 per truck per day for such reasonable period between August 1, 1942 to July 7, 1944, for which the appellants would have hired out the trucks to outside parties. The trucks were in a fairly good running condition but were old models of 1938 and it will be quite reasonable to hold that they would have been in commission approximately for one year during that period. Calculating the hire of these trucks at the rate of Rs. 17 per truck per day the total amount of damages which the appellants would be entitled to recover from the respondent works out at Rs. 12,410. The appellants would therefore be entitled to recover over and above the sum of Rs. 5,953 already awarded to them by the High Court an additional sum of Rs. 6,457 by way of damages for wrongful detention of the said trucks by the respondent.

We accordingly allow this appeal and pass in favour of the appellants, in addition to the enhanced decree which they have already obtained from the High Court, a decree against the respondent for Rs. 3,500 being the appreciated value of the said trucks together with interest thereon at 6% per annum from July 7, 1944, till this date as also for a sum of Rs. 6,457 by way of additional damages for wrongful detention of

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the said trucks, additional proportionate costs both in the Trial Court as well as in the High Court as also the costs of this appeal, subject of course to the payment of additional court-fee for the excess amount awarded hereby. The whole of the decretal amount as above will carry further interest at the rate of 6% per annum from this date till payment.

Appeal allowed.

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INAYAT ULLAH
v.
THE CUSTODIAN, EVACUEE PROPERTY

(BHAGWATI, JAFER IMAM and GAJENDRAGADKAR JJ.)

Evacuee property, Notification of—Issue of notice by Custodian on person interested—Propriety, if can be determined by Court—Refusal of copies of materials by Custodian—Legality—Administration of Evacuee Property Act, 1950 (XXXI of 1950), s. 7.

The appellant and his brother owned certain properties inherited from their father. The brother died and the appellant claimed to have become the sole heir. The respondent issued a notice under s. 7 of the Administration of Evacuee Property Act, 1950, in respect of the share of the brother on the ground that the brother had left a widow and a son who had migrated to Pakistan. The appellant, desiring to know on what materials the notice was issued, applied for copies of the materials on the basis of which the respondent had formed his opinion. The application was rejected by the respondent. The appellant filed a petition under Art. 226 of the Constitution in the High Court which was also dismissed. The appellant obtained special leave and contended that the notice was issued without jurisdiction as there was no material before the respondent to justify his issuing of the notice and that the application for the copies had been improperly rejected by the respondent.

Held, that it was for the Custodian to form his opinion on such material as was before him and on such information which he possessed. It is not for any Court to determine whether the information in the possession of the Custodian was adequate to justify the issue of a notice under s. 7 of the Act:

Held further, that the application for copies had been rightly rejected. There are two stages in the process whereby any property can be declared to be evacuee property under the Act. One is the issuing of the notice to persons interested and the other is the inquiry under s. 7. The proceedings commence after issue of the notice and not