

G. R. ELIAS, APPELLANT, v. JOHN PORTE,
APPELLEE.

APPEAL FROM THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT,
MONTSERRADO COUNTY.

Decided May 2, 1928.

1. Where a vehicle, whether chartered or borrowed by one party from another for service, while in the possession of the bailee becomes injured, he shall be liable in damages to the owner for the injury done thereto.
2. If a vehicle which becomes damaged while in the possession of another is repaired and delivered and the owner takes possession of it without any objections, and after a few days declares same to be still damaged and upon his own volition sends it to an engineer for repairs, the owner shall be responsible for the payment of said repairs.
3. Where the owner of a vehicle takes possession of same and after two days declares it to be all right, he shall not thereafter be entitled to damages.

Appellee, plaintiff in the court below, brought an action for damages in the amount of \$192.00. To the judgment for plaintiff, defendant excepted. On appeal to this Court, *reversed*.

MR. JUSTICE KARNGA delivered the opinion of the Court.

The above case came up before this Court upon appeal from the Circuit Court for the First Judicial Circuit for Montserrado County. The defendant in the court below, now appellant, submitted the following bill of exceptions:

- "1. Because the judgment of the Court is not supported by the evidence adduced at the trial in the Court of original jurisdiction;
- "2. And also because on the 29th day of October A. D. 1926 your Honour, notwithstanding the law and facts placed before you in favour of the defendant, rendered final judgment against defendant to which said judgment defendant excepts and prays an appeal to the Honourable Supreme

Court of the Republic of Liberia at its April Term A. D. 1927.”

This bill of exceptions was duly approved by His Honor Nugent H. Gibson, Judge of the First Judicial Circuit Court for Montserrado County during its November term, 1926.

The action was originally brought by the plaintiff in the Municipal Court of Monrovia in the month of April, 1926 against the defendant, for damages to the amount of one hundred ninety-two dollars. It subsequently found its way on appeal to the Circuit Court. The plaintiff in the court below avers that sometime previous, the defendant requested him to lend him his motorcycle to take him, defendant, to the settlement of White Plains. That on the following day after defendant had returned from his trip, he reported that he could not get the engine to start and ordered the motorcycle taken to the engineer of the French wireless station for repairs, and that he, the defendant, would become responsible for the payment of the repairs.

The plaintiff in the court below, John Porte, claimed ownership of the motorcycle, the subject of this suit. This fact has not been denied by the defendant, now appellant. The evidence in the case also conclusively shows that the appellant did borrow the said motorcycle from the appellee and that it got damaged while in his possession.

Witness John Porte on the stand testified *inter alia*:

“Appellee said to me if you cannot manage it, take it (the motorcycle) to the engineer at the French wireless station to see what is the trouble with it. I at once carried it there at his request and we worked on it three days and were unable to get it loose, afterwards the engineer fixed it and sent me the bill of five pounds. Houston, one of the witnesses, went and presented the bill to the defendant. He asked me to ask the engineer to reduce the bill. I went but

the engineer refused to reduce the bill; I came back and informed the defendant of same and he then promised to pay the money. After a long delay for payment and the engineer was about to go home, he reported the matter to the French Consul who then wrote Mr. Faulkner, my employer. Mr. Faulkner advised me to pay but I refused."

There are other witnesses in support of this testimony. It is a settled principle of law that where a vehicle, whether chartered or borrowed by one party from another for service, becomes injured while in the possession of the bailee, he shall be liable in damages to the owner for the injury done thereto.

If, however, a vehicle which becomes damaged while in the possession of another is repaired and delivered and the owner takes possession of it without any objections, and after a few days he declares same to be still damaged and upon his own volition sends it to an engineer for repairs, he, the owner of the vehicle, shall be responsible for the payment of said repairs and not the bailee. Witness F. B. Houston stated in his testimony before the court below that the engineer repaired the motorcycle and charged five pounds; that the bill was presented to plaintiff and they went to the Department and presented the bill. For a good length of time this bill was not paid; and after repeated demands for payment, the plaintiff asked the engineer to take the motorcycle and keep it until he got the money from the defendant to pay. Upon cross-examination by the defense, the witness was asked:

"Now tell me what was the period of time between the first delivery to the plaintiff and the time you took it over and gave him a receipt for nonpayment as far as you can remember?" Answer: "I cannot exactly remember the date and month, but it was some few weeks afterwards."

It was also stated on the cross-examination by witness

Houston that after the motorcycle had been repaired it was delivered to the plaintiff and that a day or two thereafter, the plaintiff reported to the engineer that the machine was all right. Records, p. 2.

The plaintiff in the court below having taken possession of his motorcycle after it had been repaired by the engineer and declared same to be all right after being in his possession two days, it does not appear to this Court that the plaintiff is entitled to the amount of damages claimed by him.

It is therefore the opinion of this Court that the judgment of the court below be reversed; and that the plaintiff pay the sum of five pounds sterling for the repairs of the motorcycle, the subject of this suit, and all costs of this action. The Clerk of this Court shall notify the clerk of the court below as to the effect of this judgment; and it is so ordered.

Reversed.