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MEMON HAJEE HAROON MAHOMED v. MOLVI ABDUL KARIM AND MOOLA AHMED MOOLA ABDULLA.

[The Appellate Court then proceeded to take Mr. Hore's evidence, and ultimately passed a decree for the appellant (plaintiff).]

Attorney for appellant.—*H. Bicknell.*

Attorneys for first respondent.—Messrs. *Lynch* and *Tobin.*

Attorney for second respondent.—*Khanderao Moroji.*

ORIGINAL CIVIL.

(23)

Before Sir M. R. Westropp, Kt., Chief Justice, and Mr. Justice Green.

1878
November 29 *and* 30.

SURUTRAM BHAYA, PLAINTIFF, *v.* THE GREAT INDIAN PENINSULA RAILWAY COMPANY, DEFENDANTS.*

Railway Company—Act XVIII of 1854, *ss.* 11 *and* 43—*Carriers—Evidence—Burden of Proof.*

The defendants having made arangements with the Madras Railway Company for the through carriage of goods, received from the plaintiff's agent at Pona thirty bags of *jowari* to be conveyed thence to Bellary and delivered to the plaintiff's agent there. The "goods consignment note," which was signed by the plaintiff's agent at Pona, contained the following condition, of which he had due notice:—"The Company receive goods for conveyance to stations on other railways with which they have made arrangements to book through, *subject to the rules and regulations and rates and fares of the respective Companies overwhose lines the goods may pass.*" On reaching Raichore the bags of *jowari* were transferred from the defendants' waggon, in which they had left Poona, into a waggon of the Madras Railway Company. One bag was subsequently lost; but the ramaining twenty-nine arrived, and were unloaded in good condition at Bellary on the 19th September 1877. No steps were taken, either by the defendants or by the Madras Railway Company, to give information of the arrival of the bags to the consignee, and he never received them. The plaintiff sued to recover their value. The defendant pleaded, 1st, that, under a rule of the Madras Railway Company in force at the time of the making of the contract between the plaintiff and the defendants, delivery was complete the instant the bags were unloaded at Bellary; and (2) that the plaintiff's agent at Bellary did not apply for the goods, but allowed them to remain in the station-yard until they became rotten by rain, and were destroyed by order of the Collector some time in November. The Madras Railway Company had issued a public notice of the above rule in the following terms:—"The Madras Railway Company hereby give public notice that they will not be responsible for loss of, or damage to grain after it has been unloaded from the Company's waggons." The defendants sought to incorporate this notice into their contract with the plaintiff by virtue of the condition printed in their 'goods consignment note"

Held that the said public notice afforded no protection to the defendants, on the ground that it was invalid as a regulation for non-compliance with the provisions of sec. 43 of Act XVIII of 1854, inasmuch as it had not been sanctioned by the

*Small Cause Court Reference, Suit No. 1608 of 1878.

local Government, and had not been posted up at all the station of the Madras line of Railway; and that it could not otherwise be binding against the plaintiff as neither the plaintiff nor his agents were shown to have had any knowledge of it at the time of entering into the contract with the defendants,

Quære—whether, if the plaintiff or his agents had such knowledge at the time of making the consignment, the notice would have constituted such a stipulation as to contravene s. 11 of Act XVIII of 1854, or whether it might be read together with that section, and treated as effectual, except so far as its operation would be limited in its scope by that section.

Held, also, that the arrival of the grain at the station of destination (Bellary) having been proved, the burden of showing that the goods were ready for delivery to the plaintiff for a reasonable time after such arrival, lay on the defendants, although no proof had been given of any application for delivery by the plaintiff within a reasonable time.

It is the duty of a railway company to keep goods, which have reached the station of their destination, ready there for delivery until the consignee in the exercise of due diligence can call for and remove them, and it is the duty of the consignee to call for and remove them within a reasonable time.

Semble. The object of sec. 11 of Act XVIII of 1854 is to preclude railway companies from being able by any stipulation to escape from liability for loss or injury to goods caused by the gross negligence or misconduct of their agents or servants.

CASE stated for the opinion of the High Court, under s. 7 of Act XXVI of 1864, by W. E. Hart, First Judge of Small Cause Court at Bombay :—

"This was an action to recover the sum of Rs. 540 as the value of 30 bags of *jowari*, delivered by the plaintiff's agent at Poona to the defendant company, to be by them carried thence for hire to Bellary, on the Madras Railway line.

"2. The contract is contained in the 'goods consignment note' which was signed by the plaintiff's agent at Poona, and on the back of which are printed a number of conditions, of which I hold the plaintiff to have had notice at the time of the making of the contract.

"3. From this contract it appears that the said goods of the plaintiff were to be carried by the defendants to Bellary, and there delivered to Samurmul Acharia, who was the plaintiff's agent at that place, subject to the said conditions. The last of these conditions is in the following words :—'The Company receive goods for conveyance to stations on other railways with which they have made arrangements to book through, *subject to the*

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rules and regulations and rates and fares of the respective Companies over whose lines the goods may pass.'

"4. The defendants have made arrangements with the Madras Railway Company for the through carriage of goods; and to get from Poona to Bellary goods have to be put upon the Madras Railway at Raichore, whence they proceed the rest of the way by the line of the latter company.

"5. The goods in question were at Raichore transferred from the two waggons of the defendants, in which they left Poona, into a waggon of the Madras Company which arrived at Bellary, and was there unloaded on the 19th September 1877, when it was found to contain 29 bags only bearing the plaintiff's marks. These 29 bags arrived in good condition, but no steps were ever taken either by the defendants or the Madras Company to inform the consignee of their arrival.

"6. At the hearing before me the defendants admitted liability in respect of the one bag found short at Bellary, but set off against it the sum of Rs. 45-12-1 as freight for the thirty bags which the plaintiff admitted he had not paid. As to the remaining 29 bags, the defendants pleaded—1st, that, under a rule of the Madras Railway Company in force at the time of the making of the contract between the plaintiff and the defendants, delivery was complete the instant the bags were unloaded at Bellary; and, 2nd, that the plaintiff's agent at Bellary did not apply for the goods, but allowed them to remain in the station yard until they became rotten by rain, and were destroyed by order of the Collector some time in November.

"7. As to the first defence, the rule on which the defendants relied, and which was referred to through out the proceedings before me as the 'Madras Rule' was not one of those placarded at every station on the line, which had obtained the sanction of the local Government, and had been in force for a considerable time, but was one that had been introduced in November 1876 at Bellary, Adoni, Cuddaph, and Bengalore only, and related merely to the grain traffic; and in determining the validity of the defence it is important to consider the history of the 'Madras Rule.'

"8 On the 20th November 1876 the Madras Railway Company, without having previously obtained the sanction of the local Government, issued a public notice in the following terms :—' The Madras Railway Company hereby give public notice that they will not be responsible for loss of or damage to grain after it has been unloaded from the company's waggons.' On the 15th April 1877 the Madras Railway Company commenced to use, for the grain traffic only, and in respect only of consignments originally sent from stations on their own line, a new form of forwarding note for which they had not previously obtained the sanction of the local Government, and which contained the following condition:—' The above goods shall be taken delivery of immediately the same are unloaded at the station of destination, and the company shall not be liable in respect of loss or damage done thereto arising from theft, rain, fire, or from any other cause whatsoever, notwithstanding that the same be permitted to remain on the Railway Company's premises, it being agreed the delivery shall be completed on the unloading of the goods, and that from that time they remain at the sole risk of the party entitled thereto.' This condition, in conjunction with the public notice, constituted the ' Madras Rule' on which the defendants relied and which they sought to incorporate into their contract with the plaintiff by virtue of the last condition printed on the back of the goods consignment note.

" 9. On the introduction of the new form of grain-forwarding note, the Madras Chamber of Commerce addressed a letter of remonstrance on the subject to the local Government, and the Madras Government after receiving various reports made an order, on the 20th June 1877, in the following words :—' His Grace the Governor in Council is of opinion that the explanation furnished by the Traffic Manager is satisfactory, and that fair cause is shown for the additional clause in the forwarding note to which the Chamber of Commerce have drawn attention.'

"10. No further publication of the ' Madras Rule ' took place after the passing of the above order by the local Government, which order, it will, moreover, be observed, was passed, not at the request of the Railway Company that its new rule might be sanc-

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tioned, but in answer to objections to its legality raised by the Chamber of Commerce.

"11. There was no evidence whatever that, at the time of the making of the contract between the plaintiff and the defendants, the plaintiff or the defendants, or either of the plaintiff's agent, at Poona or Bellary, had seen either the public notice, or the new form of forwarding note, or had even so much as heard of the existence of the 'Madras Rule.'

"12. The object of the last of the special conditions,(1) printed at the back of the plaintiff's contract with the defendants, appeared to me to be to protect the defendants from liability to make good to the plaintiff a loss arising on the line of another company in respect of which they were precluded by the rules of that company from demanding compensation in their turn. The 'rules and regulations' contemplated by that special condition must, therefore, be only such rules and regulations as the Madras Company could plead against the defendants supposing the latter had compensated the plaintiff for his loss, and sought to recover the amount from the Madras Company.

"13. It is evident that if the 'Madras Rule' is such a regulation as is contemplated by s. 43 of Act XVIII of 1854, it is wholly invalid for want of compliance with the provisions of that section. On the other hand, if it be contended that the 'Madras Rule' is not such a regulation as is contemplated by s. 43, then it appears to me that neither is it such a rule or regulation' as was in the contemplation of the parties to the contract in the present case. At any rate, if the 'Madras Rule' be not a regulation within the scope of s. 43 of Act XVIII of 1854, it can only be regarded as a notice; but, as such, it can not bind the plaintiff, for it was never brought to the knowledge of himself or his agents. In the hypothetical case suggested in the last paragraph the Madras Company could not be heard to say to the Great Indian Peninsula Company: 'We are protected by this rule, which is not one of our general regulations, but merely a notice of limited effect and restricted application which we have never brought to your knowledge.' Neither, therefore, can the Great Indian Peninsula Company say this to the plaintiff.

(1) See *supra*, para. 3, p. 97.

"14. Again, the 'Madras Rule' appeared to me to be in contravention of the provisions of s. 11 of Act XVIII of 1854, because its terms are so wide as necessarily to include loss or damage arising from the neglect or default of the company or its servants. It is impossible to put any more restricted interpretation on those words, and according to them the company would still not be liable even if its own servants stole the bags as fast as they were placed on the unloading platform. The case of *Patscheider* v. *The Great Western Railway Company*(1) shows that the liability of a railway company as carriers continues for a reasonable time after the arrival of the goods at the station of destination; and it is of this liability that the Madras Company seek to rid themselves by means of the 'Madras Rule' expressed in terms so wide and general as necessarily to include even loss occasioned by the company's own servants.

"15. I accordingly held that the defendants could not avail themselves of the 'Madras Rule'; but must show that, for a reasonable time after the arrival of the plaintiff's goods at Bellary, they were ready for delivery to him at the usual place of delivery. Of this there was not the slightest evidence. All trace of the 29 bags was lost immediately they were unloaded, and, for all that appeared to the contrary, they might have been stolen, or destroyed, or removed by mistake for other goods, within five minutes of their arrival, and the defendants entirely failed to identify the plaintiff's bags as being among those said to have been destroyed in November by order of the Collector. With regard to the Collector's order, moreover, it is worthy of remark that it is apparently not an order to destroy, but a suggestion that the work of destruction already voluntarily begun should be proceeded with more rapidity.

"16. The plaintiff offered some evidence, which I did not believe, of repeated applications having been made by his agent for delivery in the months of September and October, and of his having been informed by the company's servants that his goods had not arrived. But I held that the plaintiff's failure to prove this part of his case did not affect the question, as he could not

(1) L. R. 3 Ex. Div. 153.

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be called upon to prove that he applied for delivery within a reasonable time until the company had first shown that for a reasonable time after arrival they had the goods ready for delivery to the plaintiff. I, accordingly, passed a verdict for the plaintiff for Rs. 237-5-11 (being the value of his 30 bags of *jowari*, at the Bellary market rate of the day, less the sum of Rs. 45-12-1 for freight chargeable in respect of their carriage thither), together with costs, but at the request of the defendants' counsel this verdict was made subject to the opinion of the High Court on the following questions, which I accordingly submit, and request that the Honourable the Judges of the High Court will make such order in the case as they may think proper:—

1*st.*—Is the 'Madras Rule' invalid for non-compliance with the provisions of s. 43 of Act XVIII of 1854?

2*nd.*—Is the 'Madras Rule' viod as being in contravention of the provisions of s. 11 of Act XVIII of 1854?

3*rd.*—Arrival of the goods at Bellary having been proved, and no application by the plaintiff within a reasonable time for delivery having been proved, was the *onus* rightly laid on the defendants, of proving that the goods were ready for dilivery to the plaintiff for a reasonable time after their arrival?

"The plaintiff's pleader states that he has no question which he wishes to refer in the case; but it strikes me that one may arise in the event of its being held that the 'Madras Rule' is not within the scope of s. 43 of Act XVIII of 1854, in which case it would, of course, not be invalid for non-compliance with the terms of that section; but, in that case, would it not still be inoperative as against the plaintiff, seeing that it was not brought to the knowledge of himself, his agents, or the defendants at the time of the making of the contract?"

Plaintiff appeared in person.

The Advocate General (Honourable *J. Marriot*)' *Latham* and *Farran* for defendants.—The public notice given at Bellary and the other stations mentioned, is not a public notice within s. 43 of Act XVIII of 1854. If it be so, it has received the sanction of Government. No special form of sanction is required, and it is not

necessary that sanction should be applied for by the company: *Mitchell* v. *Lancashire and Yorkshire Railway Company.*(1) Our liability as carriers would cease within a reasonable time (Angell on Carriers, p. 302) after the arrival of goods. As bailees only ordinary and reasonable care is required from us, and no negligence was found against us. No letter of demand was sent for the goods, nor was any notice given before suit. The bringing of an action in Bombay is not a demand, as the goods were not to be delivered at Bombay. It has been found by the First Judge that the 29 bags were unloaded in good condition. The presumption, then, should be that we were ready and willing to deliver them. *Midland Railway Company* v. *Bromley*(2) *Gilbert* v. *Dale.*(3) Twentyfour hours would be a reasonable time to keep the goods. The evidence is that we did not destroy the grain until it had become rotten from exposure to the rain. By the Madras Railway Company's Regulation No. II, perishable goods are liable to sale or destruction if not removed within 36 hours, and by Regulation No. I the company is not responsible for loss or injury occasioned by fire, water, theft, or any cause whatever to goods left on the company's permises, and not removed within 36 hours after their arrival. The consignee should have applied for the grain: *Wise* v. *G. Railway Company.*(4) *The East Indian Railway Company* v. *Jordan*(5) limits the application of s. 11 of Act XVIII of 1854, although the first portion of that section appears wider than that of the latter portion.

WESTROPP, C. J.—The first question is, whether a certain notice, published (posted) by the Madras Railway Company on the 20th November 1876, to the effect "that they will not be responsible for loss of, or damage to grain after it has been unloaded from the Company's waggons", and styled in that question the "Madras Rule," is "invalid for non-compliance with the provisions of s. 43 of Act XVIII of 1854." That section provides that "a copy of this Act, and of the General Regulations, Time Tables, and Tariff of Charges which shall from time to time be published by any railway company, with the sanction of the Local Government, shall be exhibited in some conspicuous place at each station of every railway, so

(1) L. R. 10 Q. B. 256 *per* Blackburn J., at p. 260.

(2) 17 C. B. 372.

(2) 5 L. J. Ex. 261, S. C. 1 H. & N. 63.

(3) 5 Ad. & E. 543, 5 T. 3. 339.

(5) 4 Beng. L. R. 97 O. J.

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that they may be easily seen and read; and all such documents shall be so exhibited in English and in the vernacular language of the district in which the station is situate, and in such other language, if any, as shall be required by order of the local Government." It does not appear, upon the case submitted to us, that the notice in question ever did receive the sanction of the Government of Madras, or ever was submitted to that Government. The Madras Chamber of Commerce did, in May 1877, invite the attention of this Government to a clause in a forwarding note, then newly framed by the Madras Railway Company, and took exception to that clause, which, though resembling, is not identical in its terms with the notice of the 20th November 1876. And even, if such identity existed, it does not thence follow that the Madras Government, although it seems to have in June 1877 sanctioned the clause, or, at least, to have pronounced it to be a fair one, would have sanctioned, or can be regarded as having sanctioned, the notice of November 1876. To sanction a clause in a form of contract which the consignor of goods is required to sign before the company accepts the goods for transmission, is one act, and to sanction the publication of a notice which the consignor may or may not have an opportunity of seeing, is another and quite different act. Without intending to give any opinion whether s. 6 of Act III of 1865 (1) is applicable to this case, we may observe that such a distinction, as we have been now suggesting, is clearly drawn and enforced in that enactment. There not being any such sanction of the Government of Madras as s. 43 of Act XVIII of 1854 contemplates, we think that the notice of November 1876 is unsupported by that section. There is, also, this further defect in the same notice, considered in connexion with that section, that there was not any such posting of that notice at each station on the Madras line as is enjoined by the same section. The posting took place only at Bellary and three other stations on that line. We hold that s. 43 affords no protection to the defendants in this case, so far as the notice of November 1876 is concerned.

The second question submitted to us is whether the Madras Rule, viz. the same notice, is void as being in contravention of the provisions of s. 11 of Act XVIII of 1854. That section runs

(1) *Vide* s. 10 of that Act.

thus : "The liability of such Railway Company for loss or injury to any articles or goods to be carried by them, other than those specially provided for by this Act, shall not be deemed or construed to be limited, or in anywise affected, by any public notice given or any private contract made by them ; but such Railway Company shall be answerable for such loss or injury when it shall have been caused by gross negligence or misconduct on the part of their agents or servants." The first portion of that section seems to be qualified by the concluding sentence. Taken as a whole, the section appears to us to mean that a railway company shall be responsible for loss or injury caused by gross negligence or misconduct of their agents or servants (except in cases otherwise specially provided for by the Act : *e.g.*, such cases, at least, as are mentioned in ss. 9 and 10), notwithstanding any public notice given or private contract made by such companies to the contrary. At common law an ordinary carrier for hire might, by special contract, protect himself even against loss or injury occasioned by the gross negligence of himself or his agents : *Austin* v. *The Manchester Sheffield and Lincolnshire Railway Company*,(1) *Chippandale* v. *The Lancashire and Yorkshire Railway Company* (2) *Carr* v. *The Loncashire and Yorkshire Railway Company*,(3) and *per* Blackburn, J., in *Peek* v. *North Staffordshire Railway Company*, (4) and *per* Cockburn, C.J.(5) The object of the 11th section appears to have been to fetter railway companies thus far in their power of contracting as to preclude them from being able by any stipulation to escape from liability for loss or injury to articles or goods caused by the gross negligence or misconduct of their agents or servants. True, the words "public notice" occur in the 11th section as well as the words "private contract". But there is not, for the purposes of this section and irrespectively of s. 43 (of which we have already disposed), any substantial difference between those phrases. Blackburn, J., in the case last quoted said : "But in *Kerr* v. *Willan*(6) decided in 1817, and I think in all of the subsequent cases, it was held that

(1) 16 Q. B. 600, and see 10 C. B. 454.
(2) 21 L. J. Q. B. 22.
(3) 7 Exch. 707.
(4) 10 H. L. C. 473, see 500 to 506.
(5) *Ibid.* p. 556 to 558, and see cases collected in note to pl. 265 of Angell on Carriers (4th ed.)
(6) 6 M. & Sel. 150.

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the notice to be effectual must be brought home to the particular customer, which in my opinion, shows that the condition" *(i.e.*, in the public notice) "operated entirely by way of contract and not by way of restriction in the public profession. So completely was the necessity of bringing the notice home to the particular party established, that Mr. Smith in the first edition of his Leading Cases (which was published in 1837) says: 'If this notice was not communicated to the employer, it was, of course, ineffectual.' And this expression of the self-evident nature of the proposition has been allowed to stand in all of the editions of his work, without remark or qualification by any of his very learned editors. Mr. Smith proceeds to add: 'But if it could be brought home to his knowledge, it was looked upon as incorporated into his agreement with the carrier, and he become bound by the contents.' That very learned gentleman evidently considered that, at the time when he wrote (1837) it had became settled that the notice operated as a special contract with those to whom it was brought home, and not as a public condition, limiting the profession of the carrier."(1) In the present case it has been expressly found, by the learned Chief Judge of the Court of Small Causes, that there was not any evidence that either the plaintiff or his agents at Poona or Bellary had ever seen or heard of the public notice of November 1876, or the subsequently-framed new consignment note approved by the Government of Madras. In the consignment note given to the plaintiff's agent at Poona, when he delivered the grain to the defendants for conveyance to Bellary, there is not any such stipulation as that in the public notice of November 1876, or in the Madras new consignment note, and it has not been contended or alleged that there was any other special contract between the parties than that sought to be built upon the notice of November 1876, taken in connection with the Poona note. As neither the plaintiff nor his agents are shown to have had any knowledge of that notice, it is unnecessary for us to say whether, if the plaintiff or his agents had knowledge of that notice at the time of making the consignment, it (the notice) would have constituted such a stipulation as might contravene s. 11 of Act XVIII of 1854; or whether it might be read together with that section,

(1.) *Per* Blackburn, J., in *Peek* v. *North, Staff. Railway Co.*, 10 H, L. C. at p. 496.

and treated as effectual, except so far as its operation would be limited in its scope by that section. Nor do we deem it necessary to consider now whether the consent of the local Government would be indispensable to public notices or private contracts under s. 11, as suggested by Sir Barnes Peacock, C.J., in *The East India Railway* v. *Jordan*.(1)

The third question is this: "Arrival of the goods at Bellary having been proved, and no application by the plaintiff within a reasonable time for delivery having been proved, was the *onus* rightly laid on the defendants of proving that the goods were ready for delivery to the plaintiff for a reasonable time after their arrival?" We answer this question in the affirmative. The case of *Patscheider* v. *Great Western Railway Company*,(2) cited by the Chief Judge, related to the personal baggage of a passenger, but we think that the same principle there quoted by Cleasby, J., from Redfield on Carriers—that "it is the duty of a railway company, in regard to the luggage of a passenger which has reached its destination, to have the baggage ready for delivery upon the platform at the usual place of delivery until the owner, in the exercise of due diligence, can call and receive it, and it is the owner's duty to call for and remove it within a reasonable time"—applies to a consignment of goods, and that the railway company ought to have the goods after they have reached the station of their destination ready there for delivery until the consignee, in the exercise of due diligence, can call for and receive them; and it is his duty to call for and remove them within a reasonable time. The burden lies on the railway company to show that they had the goods ready for delivery for a reasonable time after arrival. This burden the Chief Judge considered that the defendants had not discharged. It seems, however, that the plaintiff assumed that the *onus* lay upon himself, in the first instance, to prove that he demanded delivery of the goods, and that he failed to obtain it. This he essayed to establish, but the Chief Judge disbelived the evidence, given on behalf of the plaintiff, that application had been made on his behalf at the station at Bellary for the goods, and we do not gather that during the trial it was contended that the defendants were bound to

(1) 4 Beng. L. Rep. 97,102] (2) L. R. 3 Ex. Div. 153.

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show that they had the goods ready for delivery for a reasonable time after their arrival at Bellary station. The struggle at the trial seems to have been on the plaintiff's side to prove that delivery had been ineffectually demanded. This was calculated to throw the defendants off their guard. It would appear, and so we are informed by the learned counsel for the defendands, that the point as to the necessity for proof, by them, that the goods were, for a reasonable time after arrival, ready for delivery, was first raised in the judgment of the Court of Small Causes. The struggle being what it was, we think that the defendants must to a considerable extent have been taken by surprise by the raising of that point, for the first time, at the twelfth hour, viz. in the judgment of the Court, and ought to have further opportunity of proving readiness to deliver within a reasonable time; and we are of opinion that, under s. 8 of Act XXVI of 1864 we have power to direct, and we do now accordingly direct, a new trial for that purpose, and that it shall not be necessary for the Court of Small Causes to retake the evidence already taken, but that it may use the same on the retrial, and take such further evidence as may be admissible and relevant on the question of the readiness of the railway company to deliver within a reasonable time—and as to what is a reasonable time. Had these questions been distinctly raised at the original trial, we think it probable that the defendants would have offered in evidence Rule No. I of the Madras Railway Company's regulations, which points to thirty-six hours after arrival as a reasonable time. We are of opinion that the defendants should be at liberty to prove that the publication of that rule was sanctioned by the Madras Government, and then to put the rule itself in evidence. The concluding passage in the consignment note, signed at Poona by the plaintiff's agent, would render that rule binding on the plaintiff, if it and its sanction by the Madras Government be proved. The circumstance, already found by the Court of Small Causes, that the goods (*minus* one bag) reached Bellary station in safety; the improbability that they would have suddenly disappeared; the deliberate avoidance, by the consignee, of any attempt to obtain delivery, the bringing of this suit being, apparently, the first act in the nature of a demand on behalf of

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the plaintiff for delivery, and that, too, in Bombay, where the defendants are not and never were bound to deliver; the circumstance that the absence of any demand at Bellary prevented the attention of the defendants' servants being very specially called to the plaintiff's goods—are facts which, if they do not remove from the defendants, at least to some extent lighten the burden cast upon them of proving readiness to deliver within a reasonable time after arrival of the goods. The costs of this reference and of the suit should be disposed of by the Court of Small Causes on the retrial in such manner as it may deem just.

Order accordingly.

Plaintiff appeared in person.

Attorneys for the defendants.—Messrs. *Hearn, Cleveland* and *Little.*

ORIGINAL CIVIL.

(24)

Before Sir M. R. Westropp, Kt., Chief Justice, and Sir C. Sargent, Justice.

KUVERJI TULSIDAS, PLAINTIFF, *v.* THE GREAT INDIAN PENINSULA RAILWAY COMPANY, DEFENDANTS.*

1878 *December 6 and 7.*

Railway Company—Carrier, Liability of—Indian Contract Act (IX of 1874), ss. 151, 152—Act XVIII of 1854—Act III of 1865.

The English common-law rule, under which common carriers are held liable as insurers of goods against all risks except the act of God or the king's enemies, is not now in force in India. In cases not met by the special provisions of the Act relating to railways and carriers, the liability of carriers for loss or damage to goods entrusted to them is prescribed by ss. 151 and 152 of the Indian Contract Act (IX of 1872).

The plaintiff's goods were being carried in a train of the defendants from Naingaon to Egatpuri. During the journey the train was plundered by robbers, and the plaintiff's goods were stolen.

Held the defendants were entitled to the benefit of s. 152 of the Indian Contract Act, and should be permitted to give evidence that the robbers of the plaintiff's goods were not the servants or agents of the defendants, and that the defendants (by their servants and agents) took as much care of their goods as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods in question.

THIS was a case stated for the opinion of the High Court, under s. 7 of Act XXVI of 1864, by W. E. Hart, First Judge of the Court of Small Causes at Bombay.

* Small Cause Court Reference, Suit No. 11,211 of 1878.