

APPELLATE CIVIL.

Before Mr. Justice Crowe and Mr. Justice Aston.

1902.
November 12.

MALKARJUN SHIDAPA (ORIGINAL PLAINTIFF), APPELLANT, v. THE SOUTHERN MARATHA RAILWAY COMPANY (ORIGINAL DEFENDANTS), RESPONDENTS.*

Railway Company—Carriage of goods—Contract—Formation of contract—Rules of Company for consignment of goods—Re-booking of goods after arrival at original destination—Instructions to station master to re-book.

The rules of a Railway Company prescribed certain procedure for the booking of goods. In accordance with those rules certain goods were booked from Trichinopoly to Bágalkot. The plaintiff requested A., the goods clerk and station master at Hotgi (on defendants' Railway), to have the goods re-booked from Bágalkot to Hotgi, and for this purpose handed him the railway receipt with a written application, which, however, was not in the form of consignment used by the Company. A. accordingly sent a service telegram to the station master at Bágalkot asking him to re-book the goods. The station master there did not re-book the goods and they were delivered at Bágalkot. The plaintiff sued the Railway Company for damages for non-delivery at Hotgi.

Held, that the defendant Company had not contracted with the plaintiff to carry the goods from Bágalkot to Hotgi. The mere fact that the plaintiff got A., the station master at Hotgi, to send a service telegram to Bágalkot did not constitute a contract to bind the Company.

APPEAL from E. M. Pratt, District Judge of Sholápur, confirming the decree passed by Ráo Sáheb Mahadev Shridhar, First Class Subordinate Judge of Sholápur.

Suit to recover damages for non-delivery of goods.

The plaintiff sued the defendant Company to recover as damages for non-delivery the sum of Rs. 813-12-0, being the price of 15,500 cocoanuts which his agent at Trichinopoly consigned to him at Bágalkot on the Southern Maratha Railway on the 26th February, 1898. The railway receipt was of that date.

On the 1st or 2nd March, 1898, the plaintiff requested the goods clerk, who was also acting as station master at Hotgi (on the defendants' Railway), to have the consignment re-booked from Bágalkot to Hotgi, and for that purpose handed him a

* Second Appeal No. 340 of 1901.

written application to that effect, which was not in the form of consignment note in use by the Company. On the 2nd March the goods clerk at Hotgi sent a service telegram to the station master at Bágalkot, asking him to re-book the consignment. On the 6th March the station master at Bágalkot in reply stated that the goods had been delivered to one Bhimapa.

The plaintiff complained that the station master at Bágalkot did not forward the goods to Hotgi, and that, therefore, the plaintiff did not receive them. He gave notice of his claim to the Company on the 22nd March and 23rd April, 1898, and now sued to recover the above sum as damages, being the market rate of the goods at the date at which the goods ought to have been received.

The defendants pleaded that the original contract for carriage of the goods from Trichinopoly to Bágalkot had been duly performed, and that there was no valid contract for their further conveyance from Bágalkot to Hotgi; that the Hotgi goods clerk had no authority to contract for the re-booking, &c.

The Court of first instance dismissed the suit, holding that there had been no contract effected between the plaintiff and the defendants for the re-booking of the goods. In his judgment the Subordinate Judge said :

The question now is whether the telegram of the Hotgi goods clerk of the 2nd March, 1898, was sufficient to render the contract complete and binding on the defendants to carry the goods from Bágalkot, when they arrived, to Hotgi, and deliver them to the plaintiff there. The Company's rule requires that the sender of goods, when delivering them for despatch, must sign a consignment note in the prescribed form containing a declaration of the weight, description and place of destination of the goods consigned. On delivering the goods to the Company with the consignment note duly signed and filled in he receives a receipt, and then the contract to convey the goods to the place of destination mentioned is complete. There is no separate provision for re-booking, because it appears to me that such a provision is thought unnecessary. Goods once booked and despatched must arrive at their place of destination. If the consignee desires to have them carried further on to another station, there must be a fresh contract, a fresh consignment note given to the Company, and a fresh receipt obtained from them. There may not be a formal and actual delivery to the consignee; there may not be unloading and re-loading, at least where there is no objection to send the goods in the same wagon or vehicle; but there must be a contract duly made for the further conveyance of the goods,

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and such a contract can, under the Company's rules, only be effected by a consignment note signed by the original consignor or consignee. There is thus no difference between booking and re-booking, and that seems to me to account for the absence of any specific rule in connection with re-booking of goods.

It may be asked why goods are not booked through. The question was once raised by the Hotgi goods clerk, who pointed out in his reference to the Traffic Manager that the charges from Trichinopoly for booking goods direct to Hotgi are greater than the charges from Trichinopoly for booking to Bijápur and thence to Hotgi (*vide* Exhibit 125). The charges for through booking are still greater than the charges for booking first to Bágalkot and thence to Hotgi. The Traffic Manager did not allow through charges, but only charges from Bijápur to Hotgi, but he directed that the goods must be unloaded and re-loaded at the Bijápur Station (Exhibit 126). Goods booked from Trichinopoly must come in a wagon of the S. I. R. Company, and the wagon cannot be sent on but must be returned within a specified time; such a wagon must be emptied, and hence the Traffic Manager's direction to the Bijápur Station for unloading and re-loading.

Thus the plaintiff's motive in desiring the goods to be re-booked from Bágalkot and brought to Hotgi is easily seen. But in order to secure that object it was his duty to hand over to the Bágalkot station master the goods receipt and then apply to him to book the goods to Hotgi under a new consignment note. The handing over the goods receipt which he had received from Trichinopoly would have nominally amounted to a delivery, and the contract to carry the goods from Trichinopoly to Bágalkot would have been completely performed on both sides before a new contract to carry the goods further on from Bágalkot to Hotgi was entered into. There are witnesses Nos. 36, 62, 79, 110, 111, and 112 examined on behalf of the defendant on this point. All these witnesses, who are goods clerks, station masters and traffic inspectors of long standing in the employ of the defendant Company, state that there is virtually no difference between booking and re-booking of goods, and that the Company's rule which governs the booking must govern the re-booking. Even the Hotgi goods clerk (Exhibit 63) admits that a consignee wanting goods to be re-booked must, as a rule, produce the railway receipt and apply to the station master of the station where the goods have arrived or are destined to arrive.

In appeal the lower Court's decree was confirmed. In his judgment the Judge said:

The Company's contract with the plaintiff was to carry his goods to Bágalkot and deliver them there. The contract is not the subject of this suit. Plaintiff does not allege that he was refused delivery of the goods at Bágalkot. His complaint is that he wished them to be re-booked to Hotgi, and that they were not so re-booked. In his plaint he alleged that the station master and

goods clerk at Hotgi agreed to deliver the goods to him at Hotgi, and that the goods were not delivered in pursuance of this agreement by reason of a neglect of duty on the part of the station master at Bágalkot. The suit, therefore, is for breach of a subsequent contract entered into by the Company through their servant, the station master at Hotgi, to carry the goods from Bágalkot to Hotgi. It is clear, however, from the evidence of the Hotgi station master that he could not, and did not, enter into any such agreement. Mr. Kirloskar admits that he cannot contend that any contract was entered into between the plaintiff and the Hotgi station master. The plaintiff has, therefore, no cause of action. The obligation to carry the goods to Hotgi can only arise *ex contractu*. If the Company did not contract or did not agree to re-book, they cannot be liable.

The plaintiff appealed to the High Court.

G. S. Mulgaonkar for the appellant (plaintiff).

Kirkpatrick (with *Crauford, Brown & Co.*) for respondents (defendants). *Slim v. Great Northern Railway Company*⁽¹⁾ was referred to.

CROWE, J.:—It seems quite clear to us that the mere fact, that the plaintiff got the Hotgi station master to send a service telegram to Bágalkot to re-book the goods from Bágalkot to Hotgi, cannot possibly constitute a valid contract which would bind the Company, and the decision of the lower Appellate Court is perfectly correct.

We must, therefore, confirm the decree and reject the appeal with costs.

Decree confirmed.

(1) (1854) 14 C. B. 647.

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