

whatever the grounds on which it proceeds it must come under that section. The argument so stated I think refutes itself; but if further refutation is needed, it will be found in two specific cases which dealt with applications to set aside sales which were held not to be made under section 311. These are *Golam Ahad Chowdhry v. Judhister Chundra Shaha*⁽¹⁾ and *Parashram v. Balmukund*⁽²⁾. I wish only to add that I consider that the District Judge has given ample reasons for the conclusion at which he has arrived and his decree should be confirmed.

Decree confirmed.

R. R.

1909.
HARIBAR
KANTA
v.
RAMA
PANDU.

APPELLATE CIVIL.

Before Sir Basil Scott, Rt., Chief Justice, and Mr. Justice Batchelor.

PUNDALIK UDAJI JADHAV, PLAINTIFF, v. THE AGENT, S. M. RAILWAY COMPANY.*

1909.
July 22.

The Indian Railways Act (IX of 1890), section 75, Schedule II, clause (1)—Parcel containing articles liable to be insured and also not liable to be insured—Loss of the parcel in transit on Railway line—Suit against Railway Company to recover damages with respect to goods not liable to be insured—Railway Company not liable—Articles—Package.

Plaintiff's agent at Poona consigned a parcel to plaintiff at Dhárwár. The parcel contained goods which, according to section 75 and Schedule II of the Indian Railways Act (IX of 1890), were liable to be insured as well as those not so liable. The parcel was lost in transit on the Southern Marátha Railway Line. The plaintiff thereupon sued the Railway Company to recover damages for the loss of the goods which were not liable to be insured. The defendant Company denied liability.

Held that the Railway Company was not liable. The words of section 75 of the Railway Act (IX of 1890) draw a distinction between articles mentioned in Schedule II of the Act and the parcel or package in which they are contained and provides that the Railway Administration shall not be responsible for the loss, destruction or deterioration of the parcel or package.

* Civil Reference No. 4 of 1909.

(1) (1902) 30 Cal. 142.

(2) (1908) 32 Bom. 572; 10 Bom. L. R. 753.

1909.

PUNDALIK

v.
S. M.RAILWAY
COMPANY.

REFERENCE by R. G. Bhadbhade, First Class Subordinate Judge of Dhárwár in his Small Cause jurisdiction under Order 46, Rule 1 of the Civil Procedure Code (Act V of 1908).

The facts which gave rise to the reference were as under :—

The plaintiff's agent at Poona consigned a parcel to the plaintiff at Dhárwár. The parcel contained silk and lace goods worth Rs. 145-4-0 and cotton fabrics worth Rs. 101-4-0. The parcel was lost in transit on the Southern Marátha Railway Line owing to the negligence of the Railway Company. The plaintiff therefore brought a suit in the Court of the First Class Subordinate Judge of Dhárwár in its Small Cause jurisdiction to recover damages, namely, Rs. 114-13-0 for the loss of the cotton fabrics. He claimed no damages for the loss of the silk fabrics because his agent at Poona had failed to insure the parcel under section 75 of the Indian Railways Act (IX of 1890).

The defendant Company admitted the loss of the parcel in transit and contended that they were not liable for the loss of the parcel as the plaintiff had not declared the contents of the parcel and had not insured it on payment of a higher charge as required by section 75 of the Indian Railways Act and the rules of the Company.

On the said pleadings the Subordinate Judge raised the following point for decision :—

“Whether the plaintiff's *Dalal's* failure to declare the contents of the mixed parcel and insure the same absolves the defendant Railway Company for loss of the cotton fabrics which were not required by the Railway Act or rules framed thereunder to be insured?”

The opinion of the Subordinate Judge on the point was in the negative.

He was, however, doubtful as to the correctness of his opinion and as his decree in the case was not appealable he referred the said point for an authoritative decision under Order 46, Rule 1 of the Civil Procedure Code (Act V of 1908). In making the reference the Subordinate Judge made the following observations :—

It is admitted by the defendants' pleader that under the repealed Railway Act of 1879 section 11 the defendants would have been liable for loss of the uninsurable fabrics. The view now pressed on the Court is that stated in the Commentary on the Railway Act by Messrs. Russell and Bayley, 2nd Ed., p. 199. It is stated therein that under the present section 75 protection extends to the entire parcel or package, including the articles which should, and those which need not have been declared. The words "of the parcel or package" in this section form an alteration of the law, and under section 11 of the repealed Act of 1879 and section 10 of the Act of 1854 protection was only extended to the contents of the parcel which should have been declared under those Acts. The above propositions appear from the foot note (b) of the Commentary to have been stated on the authority of two cases one decided by the Chief Court of Punjab (1) *Mohamed Abdul v. The Secretary of State for India in Council* (2) and a case decided in 1895 by the Court of the Small Causes at Bombay.

Defendants' pleader has been able to procure for my perusal Mr. Tiruvengkatacharya's Railway cases in which the first case has been reported at p. 23. I have not been able to procure the copy of the Times of India in which the second case is said to be reported.

With due deference to the Judges of the Punjab Court, I must say that I do not share in their view and that of the learned Judge who referred the question for their opinion as to the construction of section 75 of the Railway Act of 1890.

In section 11 of the Act IV of 1899 the words (material for this case) are "the carrier by Railway shall not be liable for loss, &c., to such property unless the value, &c., are declared." In the new Act the words "loss, &c., of the parcel and package" are substituted for loss of such property.

A mere cursory reading might lead one to suppose that the Railway Company being exempted for loss of an uninsurable parcel the exemption extends to a mixed parcel containing goods not required to be insured. The Legislature has not made it a criminal offence on the part of a consignor to send a parcel without insurance if he so pleases.

It is admitted that under the English Carriers Act and the old Railway Acts the defendants' Company would have been liable for loss of the cotton fabrics.

Section 75 of the present Act appears under Ch. 7 about the responsibility of Railway Administration as common carriers. That chapter after stating the general liability of the Railway Company under section 72 makes further provisions in certain specified cases by section 73 as regards animals and by section 75 as regards articles of special value.

Under the usual canons of construction section 75 must be confined to the articles of special value mentioned in the second schedule of the Railway Act as to which insurance may be said to be in a way compulsory if the owner wishes to hold the Company liable for loss of his parcel on any account.

1909.

FUNDALIK
v.
S. M.
RAILWAY
COMPANY.

1909.

PUNDALIK
v.
S. M.
RAILWAY
COMPANY.

In Maxwell on the Interpretation of Statutes, 4th Ed., p. 89, it is stated..... In the interpretation of general words and phrases the principle of strictly adapting the meaning to the particular subject-matter in reference to which the words are used, finds its most frequent application while expressing truly enough all that the Legislature intended they frequently express more in their literal meaning and natural force.

That in such cases general words are to be restricted to the fitness of the matter with reference to the subject-matter in the mind of the Legislature. Further there is a presumption that the Legislature does not intend to make any alteration in the Law beyond what it expressly declares by express terms or by implication (Maxwell pp. 122, 123).

I do not therefore think that the construction of section 75 of the Railway Act adopted by the Punjab Court is right. Under the Indian Law Reports Act (XVIII of 1875, section 3) this Court is not bound to follow that Court's ruling or that of the Bombay Court of Small Causes.

However in view of the above rulings, and having regard to the liberal grammatical construction of section 75, I entertain some doubt as to the correctness of my opinion and as there is no ruling on the point by the other High Courts, I submit the question for an authoritative decision by the High Court.

Shankarrao N. Karnad (amicus curiæ) for the plaintiff:—The responsibility of a Railway Company for loss of goods entrusted to them is governed by section 72 of the Railway Act. This section saddles the Company with liability in general as that of a bailee under sections 151, 152 and 161 of the Indian Contract Act. If the goods are of special value such as those mentioned in the second schedule of the Railway Act, then section 75 applies. This section requires that the sender, in order to claim compensation for loss, must cause the value of the goods contained in the package to be declared at the time of delivery of the parcel to the Railway Company. The package in this case was a mixed parcel. It contained cotton as well as silk goods. Section 75 contemplates a package of silk goods alone. It does not refer to a package of mixed goods. The words "of the parcel or package" have made an alteration in the old law. The section in the Acts of 1854 and 1879 which correspond to section 75 of the present Act should be considered in determining the scope of that section. It is submitted that section 75 should be construed liberally: Maxwell on the Interpretation of

Statutes, 4th Ed., pp. 89, 122 and 123. Sections 72 and 75 do not exclude each other. Where the package contains articles of special value along with others, section 75 would apply to the goods of special value and in the case of the other goods, section 72 would apply. Section 75 applies only to goods mentioned in the second Schedule while with respect to other goods contained in the package, the Railway Company would be responsible for their loss under section 72. The Punjab case referred to by the Subordinate Judge in his reference was decided under the old Acts.

S. V. Patilkar (amicus curiæ) for the defendant was not called upon.

SCOTT, C. J. :—We are of opinion that the protection given by section 75 of the Indian Railways Act (IX of 1890) extends to the whole parcel in which silk goods such as are mentioned in clause (1) of the 2nd Schedule are contained, whether the rest of the parcel is composed of articles mentioned in the 2nd Schedule or not.

This appears from the words of the section which draws a distinction between the articles mentioned in the Schedule and the parcel or package in which they are contained, and provides that the Railway Administration shall not be responsible for the loss, destruction or deterioration of the parcel or package.

We therefore answer the point submitted for our decision in the affirmative.

Order accordingly.

G. B. R.

1909.
PUNDALIK
S. M.
RAILWAY
COMPANY.