ORIGINAL CIVIL.

Before Sir Basil Scott, Kt., Chief Justice and Mr. Justice Macleod.

1918. September 3.

THE GREAT INDIAN PENINSULA RAILWAY CO., APPELLANTS (DEFENDANTS) *v.* RAMCHANDRA JAGANNATH, RESPONDENT (PLAINTIFF).*

The Indian Railways Act (IX of 1890), section 75 (1), (2) and (3)—"Value" and "true value" in section 75 of the Indian Railways Act, meaning of—"Value" means intrinsic or market value—Value in some cases may mean special value to the owner—Loss means the value of property lost and nothing more—Loss does not include remote and consequential damage—Loss must be estimated by the same measure of damages in cases under section 75 and in cases to which section 75 not applicable—Object of section 75 of the Indian Railways Act—Section 75, bar to an action for amount exceeding one hundred rupees for loss and consequences unless a declaration is made.

On the 16th September, 1916, the plaintiff delivered to the defendant Railway Company at the Victoria Terminus Station, Bombay, a parcel containing twenty-four account books consigned to the plaintiff's firm at Nagpur. After the arrival of the parcel at Nagpur it was misdelivered, on the 19th September, by a mistake of the defendants' parcel clerk to the Superintendent of the Central Jail, Nagpur. The mistake was discovered when the plaintiff's agent came to ask for delivery on the 21st September. Inquiries were made of the Jail Superintendent and it was ascertained that the books had been destroyed by him thinking that they were the papers consigned to him from Khandwa for destruction. After some correspondence between the parties, the plaintiff sued the defendants stating that the account books which contained the record of all the dealings and transactions of the plaintiff's firm were lost to him by reason of the negligence of the defendants. The plaintiff estimated his loss at Rs. 25,000, and claimed that sum or such other sum as might seem just to the Court as damages. The defendants in their written statement repudiated the claim on the ground that the parcel containing the account books came under the head of "writings," an excepted article under section 75 of the Indian Railways Act, 1890, and that the contents which exceeded in value one hundred rupees had not been declared and insured at the time of delivery of the parcel to the railway administration as required by the aforesaid section. By consent, the suit was placed on board for the trial of the preliminary issue "whether the defendants are protected from liability to the plaintiff under section 75 of the Indian Railways

* O. C. J. Suit No. 1038 of 1917 : Appeal No. 4 of 1918.

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Act, 1890." The trial Judge decided that the defendants were not protected from liability under the section inasmuch as the value of the account books which must be taken to mean intrinsic value was admittedly less than Rs. 100 and that the loss which occurred after delivery to the wrong person was not a loss within the meaning of the section.

Held, reversing the decision of the trial Judge, by Scott C. J.—

(1) that section 75 of the Indian Railways Act, 1890, was intended to apply to articles of special value declared by the Legislature in the Second Schedule or which may be added to the Schedule by Notification of the Governor General in Council in the Gazette of India, and that such articles must be free from any *pretium affectionis* on the part of the owner, that is to say, articles which could be valued by any sufficiently trained expert quite apart from the feelings of the owner;

(2) that the damages recoverable against the Railway Company was the value of the property lost and nothing more;

(3) that although section 75 did not directly protect the Railway Company since the goods were not of the value of a hundred rupees, it would be entirely inconsistent with the Act to hold that if the goods had been of a value exceeding a hundred rupees the true value would be the limit of the defendants' liability, yet, since the goods were of a value less than a hundred rupees the plaintiff might sue for any remote and consequential damage which he might allege to have suffered from the loss;

(4) that the loss for which the Railway Company were liable must be estimated by the same measure of damages both in cases under section 75 and in cases to which section 75 was not applicable, and that the most which the plaintiff could claim successfully, having regard to the evidence was Rs. 70 the value of the articles, a sum for which he had not sued and could not sue in the High Court under clause 12 of the Letters Patent.

Held, by Macleod J.—

(1) that the protection afforded by section 75 of the Indian Railways Act, 1890, lasted as long as the Railway Company were liable as carriers and their liability would continue after the goods had arrived at their destination for such reasonable time as would be required for the consignee to come to take delivery;

(2) that the mere fact that the plaintiff was claiming more than Rs. 100 for the loss of an undeclared excepted article barred him under section 75 of the Act from asserting that its value was under Rs. 100, and the question what was the value of the goods did not arise.

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(3) that the object of section 75 of the Indian Railways Act was to protect a Railway Company from liability for the loss, destruction or deterioration of parcels entrusted to them for carriage containing articles of special value exceeding Rs. 100 unless they have notice of the contents, so that (*a*) they could demand a percentage on the value declared by way of compensation for increased risk and (*b*) they could take extra precautions for the safe carriage of such parcels; the whole object of the section would be defeated if the consignor could claim consequential damages for the loss of an excepted article without insuring it, on the ground that its market value was under Rs. 100.

(4) that "Value" in section 75 of the Act did not necessarily mean "market value"; in some cases articles might have a special value to the owner beyond the market value and if the owner wished to recover this value, he must declare and insure the goods, the liability of the company in the event of the loss being limited to the true value by section 75 (2) of the Act.

Millen v. *Brasch*[1], *Crouch* v. *The London and North-Western Railway Company*[2], *Riley* v. *Horne*[3], referred to.

Hearn v. *London and South Western Railway Company*,[4] distinguished.

ACTION for damages against a Railway Company for loss of parcel.

The plaintiff was the owner of the firm of Brickbhan Juggonath doing business at Itwary Bazar in Nagpur, of guarantee commission agents of the Bombay Dyeing and Manufacturing Co., Ltd. The defendants were a Railway Company registered in England having its chief office and principal place of business in Bombay.

On the 16th of September, 1916, the plaintiff delivered to the defendants and the defendants accepted at the Victoria Terminus Station, a parcel containing twenty-four account books consigned to the plaintiff's firm at Nagpur for carriage from Victoria Terminus to Nagpur. The railway receipt passed by the defendant

(1) (1882) 10 Q. B. D. 142 at p. 146.
(2) (1849) 2 Car. & K. 789.
(3) (1828) 5 Bing. 217 at p. 222.
(4) (1855) 10 Ex. 793.

company to the plaintiff in respect of the said parcel was to the following effect :— 1918.

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[*For Owner.*]

Great Indian Peninsula Railway. Date 16-9-1916.

RAILWAY RECEIPT.

In connection with— From—

Full Parcel's Way Bill No. 9530. / 243 Victoria Terminus to Nagpur, Market, Bombay.

Sender's name—Ramchandra. To whom consigned—Brickbhan Jagannath.

Description.	Actual Weight.			Freight to pay.
	Mds.	Seers.		Rs.
One parcel.		30		3

W. K.

Station Clerk.

Special attention is drawn to the notices on the back which contain the conditions upon which the parcels are received for conveyance. This receipt should be sent by the consignor to the person to whom the parcel is to be delivered.

The parcel arrived at Nagpur on the 18th September, 1916.

On the 19th September, it was misdelivered to a representative (*chaprasi*) of the Superintendent of the Central Jail at Nagpur, who had applied for delivery of a parcel which had been booked from Khandwa Station under a Parcels Way Bill No. 2431 bearing the same weight and date as the plaintiff's parcel. The parcel for which the jail *chaprasi* had come, had been despatched in order that the papers containing it might be destroyed in the Nagpur Jail. On the plaintiff's agent presenting the railway receipt, he was informed that the parcel belonging to the plaintiff had been received at Nagpur, but that the same had been through inadvertence and mistake of a railway clerk delivered

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to the Superintendent of the Central Jail at Nagpur. The head parcels clerk thereupon communicated with the office of the Superintendent of the Jail and was informed that the contents of the parcel had been destroyed at the instance of the Superintendent who thought that it contained the papers consigned from Khandwa.

The plaintiff submitted that the defendants acted with gross negligence as a result of which the account books were lost to him. In paragraph 6 of the plaint the plaintiff alleged that the account books contained in the parcel contained the record of all the dealings and transactions of the plaintiff's firm with their various customers in respect of the agency business at Nagpur and were the only source from which the plaintiff could ascertain the debtors and creditors of his firm. The plaintiff further said that he would be put to a heavy loss which he estimated at a sum of Rs. 25,000 by reason of the loss and destruction of the books and submitted that he was entitled to recover the said sum of Rs. 25,000 from the defendants as damages suffered by him by reason of the defendants' wrongful action.

The defendants in their written statement stated that neither were they nor was their railway servant who received the parcel aware that it contained account books. The parcel was charged at ordinary rate for parcels and was received subject to the notices on the back of the railway receipt which contained the conditions upon which the parcel was received for conveyance.

The main defence was, however, set forth in paragraph 2 of the written statement which ran as follows :—

"The defendants say that the contents of the said parcel which are now alleged to have consisted of 24

account books were 'writings' within the meaning of the Second Schedule to the Indian Railways Act, 1890, and the plaintiff has admitted that they exceed Rs. 100 in value. Neither the plaintiff nor the person sending or delivering the said parcel to the defendants caused its value or contents to be declared or declared them at the time of the delivery of the said parcel for carriage by railway as required by section 75 of the said Act."

The defendants denied that they acted with gross negligence or that they committed a breach of any contract with the plaintiff or that they were guilty of any grossly negligent or wrongful action. The mistake in delivering the plaintiff's parcel to the representative of the Superintendent of jail was not discovered until the 22nd September, 1916, when the railway receipt No. 9530/243 was produced by the plaintiff's agent and it was then ascertained that the parcel to which it referred had already been delivered to the Superintendent of the jail. Under the circumstances aforesaid and by virtue of section 75 of the Indian Railways Act, 1890, the defendants repudiated liability for the loss or destruction of the parcel.

Section 75 of the Indian Railways Act, 1890, ran as follows :—

"75. (1) When any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

(2) When any parcel or package, of which the value has been declared under sub-section (1) has been lost, or destroyed or has deteriorated, the

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compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the Second Schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein."

The Second Schedule referred to in sub-section (1) mentioned maps, writings and title deeds."

A consent order was obtained by the parties that the suit should be placed on the board for the trial of the preliminary issue, viz., "whether the defendants are protected from liability to the plaintiff under section 75 of the Indian Railways Act of 1890."

The trial of this issue came on for hearing before Kajiji J. whose finding was in the negative.

The learned Judge held that the value of articles within the Second Schedule meant intrinsic value and not the value which for some special reason peculiar to the sender he attached to the goods. His Lordship accordingly decided that the value of the books did not exceed Rs. 100 and further that even if the value of the books was over Rs. 100, the loss occurred after delivery to the wrong person so that section 75 offered no protection to the defendants. The following was the material portion of the judgment of the learned Judge :—

KAJIJI, J. :—Pursuant to the consent Chamber Order, dated 20th December, 1917, this suit appeared before me for the trial of the preliminary issue, viz. :—

"Whether the defendants are protected from liability to the plaintiff under section 75 of the Indian Railways Act, 1890."

The material portion of section 75 runs as follows :—

"When any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway,

and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk."

It is conceded by Mr. Setalvad for the plaintiff that the account books are included in the term "writings" mentioned in item (*i*) of the Second Schedule to the Indian Railways Act, 1890. Mr. Setalvad for the plaintiff states that the value of the account books in question does not exceed Rs. 100 and therefore section 75 of the Indian Railways Act, 1890, has no application to the present case and further contends that even if the value exceeds Rs. 100, section 75 does not exempt the Railway Company from liability for the loss of the account books that has occurred by delivery of the parcel to a wrong person. The first question, therefore, to determine is: "Does the value of the articles in the parcel, viz., the twenty-four account books, exceed Rs. 100?" From the evidence recorded it appears that these books of accounts when purchased cost the plaintiff between Rs. 60 and 70 and that if these had been sold either when they were delivered at the Victoria Terminus Station or when they reached Nagpur would have fetched a few rupees as waste paper. It is contended by the counsel for the plaintiff that the term "value" in section 75 means intrinsic value or the market value of the articles and not a fancy value which a person sending or delivering a parcel or package puts on the articles in it. The word "value" is unfortunately not defined in the Act. It is clear to my mind that the term "value of the articles" does not mean cost of the articles, for if the Legislature intended that the term "value" meant cost, it could

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have easily used the word "cost" instead of the word "value". It seems to me, however, that we get some indication of what the Legislature intended the word "value" to mean, if we look to the nature of the articles mentioned in the Second Schedule to the Act. The articles are, e. g., gold, silver, plated articles, pearls, precious stones, jewels, watches, Government Securities, Hundis, Bills of Exchange, paintings, silk, &c., and if we bear in mind the object of section 75 which is that the Railway administration receiving the excepted articles may be apprised of its nature in order that it may give a proportionate degree of protection and that as it incurs an additional danger and risk it should have an increased compensation, it is clear that the articles with which the Legislature is dealing are valuable articles whose intrinsic value is appreciable in the market. I, therefore, hold that "value" of articles in section 75 means intrinsic value of the articles, i. e., market value, i. e., the price for which they would reasonably sell at the time in the market as well as the value in the market independently of any circumstances peculiar to the plaintiff. I am fortified in this opinion by the cases of *Stoessiger* v. *The South-Eastern Railway Company*[1] and *Blankensee* v. *London and North-Western Railway Company*[2]. The result is that the preliminary issue must be found in the negative and against the defendants. But, assuming that the interpretation I have put on the term "value" is erroneous and that the value of the account books in question exceeds Rs. 100 by adding something for the written portion contained in them and that the person sending or delivering the parcel was bound to declare its value and contents and did not do so and the loss occurs, then the question for determination is: "Does section 75 of

[1] (1854), 23 L. J. Q. B. 293. [2] (1881) 45 L. T. 761.

the Indian Railways Act, 1890, give absolute protection to the Railway Company for loss under every circumstance?" Mr. Setalvad for the plaintiff has contended that section 75 does not apply to a case of loss by misdelivery and that the application of the section must be limited to the loss which occurs in their capacity as carriers, and that once the goods reach their destination safely the capacity of the Railway Company as carriers ceases and thereafter they hold them as mere bailees, and that loss, under section 75, means loss to the Railway Company and not loss to the owner. In my opinion "loss" on the true construction of section 75 is a loss by the carrier such as by abstraction by a stranger or by his own servants or by losing them from vehicles in the course of carriage or by mislaying them so as not to know where to find them, and the like. It includes temporary as well as permanent loss. I, therefore, hold that on the true construction of section 75 of the Indian Railways Act, 1890, the loss for which a railway company is protected from liability must be a loss to the Railway Company itself and it must be a loss which occurs whilst the goods are in their possession in the capacity as carriers and cannot apply to a loss to the owner, and this is clear from *Hearn* v. *London and South Western Railway Company*[1], where it was held that the loss or injury to goods against which a carrier is protected by the 11 Geo. IV and 1 Will. IV, c. 68 (which is practically in the same terms as section 75) is a loss by the carrier of the articles committed to him or injury to them whilst in his care and not a loss sustained by the owner in consequence of non-delivery of the articles in due time or altogether or the loss of the use of the article by him. I think the interpretation put on the word "loss" by Chatterji J. in *Changa Mal* v. *The Bengal N.-W. Railway Company*[2] is correct where

(1) (1855) 10 Ex. 793. (2) (1897) P. R. No. 6 of 1897.

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he held that negligent misdelivery of goods to a person other than the owner is not such a loss of goods within the meaning of section 77. The following authorities were cited at the Bar: *Heugh* v. *London and North Western Railway Company*[1], *M'Kean* v. *M'Ivor*[2]; *Stephenson* v. *Hart*[3]; *Millen* v. *Brasch*[4] and *Morritt* v. *North Eastern Railway Company*[5]. After giving the best consideration to them, the principles deducible from these authorities are that whether the goods are to be delivered to the consignee at his house or at the station or office of the carrier at the termination of the journey depends on agreement and on the usual course of business. If the goods are delivered at the house to which they are addressed the carrier has done all he contracted to do and the mere fact that he delivers to some other person than the consignee at that house is no proof of breach of duty on his part. But if he delivers at any other place to any person other than the consignee he does so at his peril. But where the carrier is not bound to deliver at the house of the consignee his liability as carrier ceases when he has brought the goods to the station of destination and has tendered or delivered them within a reasonable time to the consignee or has allowed the consignee reasonable time in which to remove the goods. What that time is must depend upon the circumstances of each particular case.

In this case the parcel arrived at Nagpur safely and was delivered by the agent of the Railway Company to a person other than the consignee and as the loss occurred after delivery to the wrong person, I hold that section 75 of the Indian Railways Act offers no protection to the defendant Company and therefore the

(1) (1870) L. R. 5 Ex. 51.
(2) (1870) L. R. 6 Ex. 36.
(3) (1828) 4 Bing. 476.
(4) (1882) 10 Q. B. D. 142.
(5) (1876) 1 Q. B. D. 302.

preliminary issue must be found against the defendants and in the negative. Costs of the hearing of the preliminary issue will be costs in the cause.

The defendants appealed.

Campbell, with him *Strangman*, Advocate General, for the appellants.

Setalvad, with *Jinnah*, for the respondents.

Campbell:—Account books come within the meaning of "writings" mentioned in the Second Schedule. Value is important as the same has to be declared to put the carrier on guard, so that he may know the extent of the risk and take necessary precautions. The insurance is on the value declared. The amount sued for represents the value of the account books. Value means the value to the consignor of the goods. Value does not necessarily mean market value. Both "value" and "contents" have to be declared under the section: see also "special value" appearing in the marginal note and Second Schedule to the Act. The mere fact that the plaintiff is claiming more than Rs. 100 for the loss of an undeclared excepted article puts him out of Court under section 75 of the Indian Railways Act. The plaintiff cannot assert that for purposes of declaration the value is under Rs. 100, though the actual loss may be far in excess of Rs. 100. Loss cannot be distinguished from damages resulting from the loss.

"Loss" under the section does not mean loss to the Company. It is loss to the consignor. Loss is not merely confined to that in the course of carriage as might be suggested from the wording of the preamble. The liability of the company would continue after the arrival of goods at their destination for such reasonable time as would be required for the consignee to take

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delivery: see *Heugh* v. *London and North Western Railway Company*[1] and *Ramchandra Natha* v. *G.I.P. Railway Company*[2].

Millen v. *Brasch*[3] entirely supports my contention that the carrier is protected from liability for the consequences of loss of undeclared goods: see also *Morritt* v. *North Eastern Railway Company*[4]; *Balaram Harichand* v. *The S. M. Railway Company, Limited*[5] and *Smackman* v. *General Steam Navigation Company*[6].

Setalvad:—Admitting account books to be "writings" within the meaning of the Second Schedule, their value is under Rs. 100. "Value" in section 75 of the Indian Railways Act means the intrinsic value and not the value which for some special reason peculiar to the sender he attaches to the articles. The latter is important for ascertaining damages to the sender, once the liability of the carrier is established: see the last item in the Second Schedule which shows that the section was intended to apply to articles of special value declared by the Legislature. Rare documents like Persian or Sanskrit manuscripts have intrinsic value. Their "true value" would be the same as their intrinsic value—not so in the case of account books. The intrinsic or "true value" of the account books was less than Rs. 100. Therefore, there was no duty to make a declaration, and the carrier was liable for loss and consequential damage: compare Russell and Bayley, "Indian Railways Act," 2nd Edition. p. 198, where value is taken as intrinsic value.

Assuming, however, that the value was over Rs. 100, section 75 of the Indian Railways Act does not apply to the particular case in question. The preamble and

(1) (1870) L. R. 5 Ex. 51.
(2) (1915) 39 Bom. 485.
(3) (1882) 10 Q. B. D. 142 at p. 146.
(4) (1876) 1 Q. B. D. 302.
(5) (1894) 19 Bom. 159.
(6) (1903) 13 Com. Cas. 196.

the general intention of the Legislature indicate that section 75 relieves from liability while the goods are being carried only, and not after the destination is reached. After the arrival of the goods, the carrier becomes a bailee. Exemption from liability lasts so long as the goods are *in transit*. The Railway misdelivered the goods which were destroyed by the wrong consignee. "Loss" must be a loss to the Railway Company by the act of a third party and not a loss to the owner caused by misdelivery by the Railway Company. The case in point is *Hearn* v. *London and South Western Railway Company*[1], where Baron Parke takes "loss" to mean loss to the carrier and not to the owner: see *Heugh* v. *London and North Western Railway Company*[2]; *M'Kean* v. *M'Ivor*[3]; *Stephenson* v. *Hart*[4]; Halsbury's Laws of England, Vol. IV, page 23, footnote(*n*); Hodges on Railways, Vol. I, page 574. The two cases relied on by the appellants, viz. *Millen v. Brasch*[5] and *Morritt v. North Eastern Railway Company*[6] lean more in favour of my contention that the company is liable for consequences of loss.

In *Changa Mal* v. *The Bengal N.-W. Railway Company*[7] though a decision on section 77 of the Indian Railways Act, Chatterji J. was of the view that "loss" in section 77 must bear the same interpretation as in section 75 and that it is loss by the railway and not simply loss to the owner. *Balaram Harichand* v. *The S. M. Railway Company, Limited*[8], is not rightly decided.

SCOTT, C. J.:—On the 16th of September, 1916, the plaintiff delivered to the defendants and the defendants accepted at the Victoria Terminus Station a parcel

(1) (1855) 10 Ex. 793.
(2) (1870) L. R. 5 Ex. 51, at p. 57.
(3) (1870) L. R. 6 Ex. 36.
(4) (1828) 4 Bing. 476 at p. 482.
(5) (1882) 10 Q. B. D. 142 at p. 146.
(6) (1876) 1 Q. B. D. 302.
(7) (1897) P. R. No. 6 of 1897.
(8) (1894) 19 Bom. 159.

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containing twenty-four account books consigned to the plaintiff's firm at Nagpur for carriage from Victoria Terminus Station to Nagpur. The parcel arrived at Nagpur on the 18th September. On the 19th it was misdelivered to a chaprasi from the Nagpur Jail who had come for another parcel which was of the same weight and bore a similar number upon it. The parcel, for which the jail chaprasi had come, had been despatched from Khandwa, also on the 16th of September, in order that the papers contained in it might be destroyed in the Nagpur Jail. The plaintiff's books after being delivered to the Jail chaprasi were taken to the Jail Superintendent and were then destroyed by mistake owning to his thinking that they were the papers consigned from Khandwa. The plaintiff submits that the account-books have been lost to him by reason of the negligence of the defendants. In paragraph 6 of his plaint he says the account-books contained in the parcel contained the record of all the dealings and transactions of the plaintiff's firm with their various customers in respect of the agency business at Nagpur and were the only source from which the plaintiff could ascertain the debtors and creditors of his firm. The plaintiff says that he will be put to a heavy loss which the plaintiff estimates at a sum of Rs. 25,000 by reason of the loss and destruction of the said books and submits that he is entitled to recover the said sum of Rs. 25,000 from the defendants as damages suffered by him by reason of the defendants' wrongful action. In a letter of claim, dated the 30th October, 1916, the plaintiff's pleader states that the loss is roughly estimated at Rs. 21,000 together with interest due thereon at 12 per cent. per month from the due dates.

The suit came on for trial before Mr. Justice Kajiji by consent upon the preliminary issue whether the defendants are protected from liability to the plaintiff

under section 75 of the Indian Railways Act of 1890. That section provides that :—

"(1) When any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk."

The Second Schedule referred to in the section under item (*i*) mentions maps, writings and title-deeds.

It is contended for the company that upon the plaint it must be taken that the account-books were writings of a value exceeding a hundred rupees which was not declared to the railway administration at the time of the delivery of the parcel for carriage, and that consequently the defendants are not responsible for the loss or destruction of the parcel. The learned Judge has held upon the issue that the defendants are not protected from liability to the plaintiff under section 75 of the Act. He held that the value of articles within the Second Schedule means intrinsic value and not the value which for some special reason peculiar to the sender he attaches to the articles. The learned Judge also held that the destruction of the books by the Jail Superintendent by reason of which they could not be recovered was not a loss within the meaning of the section. I am of opinion that the learned Judge is right in his interpretation of the word "value" and wrong in his interpretation of the word "loss."

The evidence in the case is that although the plaintiff is suing for Rs. 25,000 which he estimates as his damage in consequence of the loss of books, the value of the

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books whether as sheets of paper bound together or as books with writing in them does not amount to a hundred rupees. It is apparent from the last item in the Second Schedule that the section is intended to apply to articles of special value declared by the Legislature in the Schedule or which may be added to the Schedule by Notification of the Governor General in Council in the Gazette of India. They must, therefore, be articles free from any *pretium affectionis* on the part of the owner, articles, that is to say, which could be valued by any sufficiently trained expert quite apart from the feelings of the owner. The conclusion to be derived from the Second Schedule is further re-inforced by the side-note to the section in the official publication of the Act. The section is there described as a further provision with respect to the liability of a railway administration as a carrier of articles of special value. It is to be observed also that sub-section (2) of the section provides that the compensation recoverable in respect of the loss of an article declared under the section shall not exceed the value so declared, and that the burden of proving the value so declared to have been the true value shall lie on the person claiming the compensation. It does not appear to me that the expression "true value" would be appropriate to the value put upon the article by the owner alone and not by any one else on account of sentiment or some special use to which he proposed to put the article.

With regard to the second point as to the meaning of the word "loss", it appears to me that it is sufficiently disposed of by a passage in the judgment of Lord Lindley in *Millen* v. *Brasch*[a]. He says :—

"Let us consider the question apart from authority, and let us take first the case of goods permanently lost. The damage to the owner of goods lost is their value, and possibly in some cases further special damage for their non-delivery in proper time. The damage to the owner of goods never delivered

[a] (1882) 10 Q. B. D. 142 at p. 146.

is precisely the same as if they had been lost. The Carriers' Act protects the carrier from liability for loss, and it would simply render the Act nugatory to hold him liable for detention, which is itself the result of the loss for which he is not liable.....It is to be observed that the Carriers' Act protects the carrier from 'liability for the loss of or injury to' undeclared goods; the Act does not simply relieve him from paying the value of undeclared goods which he loses; he is relieved from liability for their loss, and it would be to fritter away the Act and to depart from sound principles of construction to hold that "loss" in the Act only means "value" as distinguished from "loss" and its consequences....The result comes to this; if goods which ought to be declared and are not declared are lost, whether temporarily or permanently, the carrier is protected from liability for their loss and its consequences."

It was made a ground of complaint in the memorandum of appeal that the learned Judge had disallowed a question put to the plaintiff in cross-examination, namely, what amount the plaintiff would have expected to receive from the defendant Company had the plaintiff made a declaration as to the value of the articles at the time they were handed to the defendant Company for carriage, or, in the alternative, the question what would the plaintiff value the books at as writings when consigned. We allowed the questions to be put to the plaintiff during the argument of the appeal and the plaintiff's answer was that their value was Rs. 60 or 70 and they had less value after the accounts had been written in them than they had when purchased. I am, therefore, of opinion that the learned Judge was right in holding that section 75 did not protect the defendants from liability to the plaintiff, since upon the evidence the books were not of the value of a hundred rupees.

It is contended on behalf of the plaintiff that the case must now be tried upon the question of what loss or damage the plaintiff has suffered in consequence of the misdelivery of the books. It appears to me to be quite clear both from the passage in the judgment in *Millen* v. *Brasch*[1], which I have just referred to, and from

(1) (1882) 10 Q. B. D. 142 at p. 146.

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Crouch v. *The London and North-Western Railway Company*(1) and *Riley* v. *Horne*(2), that the damages recoverable against the Railway Company is the value of the property lost and nothing more, and that although section 75 does not directly protect the Railway Company since the goods are not of the value of a hundred rupees, it would be entirely inconsistent with the Act to hold that though if the goods had been of a value exceeding a hundred rupees, the true value would be the limit of the defendants' liability, yet, since the goods are of a value less than a hundred rupees, the plaintiff may sue for any remote and consequential damage which he may allege he has suffered from the loss. In my opinion the loss for which the Railway Company are liable must be estimated by the same measure of damage both in cases under section 75 and in cases to which section 75 is not applicable. It is, therefore, uselss to send back the case for evidence and a finding as to the consequential damages the plaintiff may have suffered; to allow any such consequential damage beyond the value of the goods would be to render the Indian Railways Act contradictory and inoperative in regard to goods of small value.

Moreover I am of opinion that the plaint in respect of the claim for Rs. 25,000 is demurrable, for that sum is calculated not upon any loss which has actually been suffered but in reference to a heavy loss which the plaintiff says he will be put to in the future. The most that the plaintiff could claim successfully from the Railway Company, having regard to his evidence, is Rs. 70, and that is a sum for which he has not sued and could not sue in the High Court: see Clause 12 of the Letters Patent.

(1) (1849) 2 Car. & K. 789.

(2) (1828) 5 Bing. 217 at p. 222.

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The appeal is allowed and the suit is dismissed with costs.

MACLEOD, J.:—On the 16th September, 1916, the plaintiff delivered to the defendant Railway Company at the Victoria Terminus Station, Bombay, a parcel containing twenty-four account-books consigned to the plaintiff's firm at Nagpur. After the parcel had arrived at Nagpur it was delivered, on the 19th September, by a mistake of the defendants' parcel clerk to the Superintendent of the Central Jail, Nagpur. The mistake was discovered when the plaintiff's agent came to ask for delivery. Inquiries were made of the Jail Superintendent and it was ascertained that the books had been destroyed. On the 30th October, the plaintiff's pleader wrote to the defendants that his client estimated the total loss owing to the loss of the account-books at Rs. 25,000 as it had become impossible for him to claim his dues from his various customers either out of Court or by instituting suits. The defendants, on the 18th December, 1916, repudiated the claim on the ground that the parcel came under the head of "writing", an excepted article under section 75 of the Indian Railways Act, and the contents had not been declared and insured. After a further demand was made on the 23rd January, 1917, defendants wrote declining to entertain the plaintiff's claim. The plaintiff, on the 7th September, filed this suit stating that owing to the loss and destruction of the books he would be put to a heavy loss which he estimated at 25,000 rupees, and claiming that sum or such other sum as might seem just to the Court as damages.

The defendants in their written statement pleaded that they were protected by section 75 of the Indian Railways Act,

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On the 20th December, 1917, a consent order was made that the suit should be placed on the board for the trial of the preliminary issue, viz., "whether the defendants are protected from liability to the plaintiff under section 75 of the Indian Railways Act of 1890?" The trial of this issue came on for hearing before Kajiji J. who decided that the value of the books did not exceed Rs. 100 and that therefore the preliminary issue must be found in the negative. The learned Judge further decided that even if the value of the books was over Rs. 100 the loss occurred after delivery to the wrong person so that section 75 offered no protection to the defendants.

Against this decision the defendants have appealed. Section 75 of the Indian Railways Act, 1890, runs as follows :—

"75. (1) When any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk.

"(2) When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared, and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation.

"(3) A railway administration may make it a condition of carrying a parcel declared to contain any article mentioned in the Second Schedule that a railway servant authorised in this behalf has been satisfied by examination or otherwise that the parcel actually contains the article declared to be therein."

It is admitted that the account-books come within the meaning of "writings" which are mentioned in the

Second Schedule. I am of opinion that the loss of the books was caused by the negligent act of the defendants' servant in delivering them to the wrong person, and was not caused after such delivery. Loss includes temporary loss and it does not matter that by an unfortunate accident after the loss by misdelivery the books were destroyed in the jail: see *Millen* v. *Brasch*[1] and *Smackman* v. *General Steam Navigation Co.*[2]. There seems to have been some misapprehension in the mind of the learned Judge when he said that on the true construction of section 75, loss for which a Railway Company is protected from liability must be loss to the Company. The preamble to the carriers' Act no doubt refers to the losses to the carriers resulting from their having to pay monies as compensation for goods lost in the course of carriage, but what they are liable for is the loss by them of the goods. The protection afforded by section 75 lasts as long as the Railway Company are liable as carriers. and their liability in this case would continue after the goods had arrived at their destination for such reasonable time as would be required for the consignee to come to take delivery. It cannot be contended that the time had expired on the 19th September. Then are defendants protected by section 75 of the Indian Railways Act?

In my opinion the mere fact that the plaintiff is claiming more than Rs. 100 for the loss of an undeclared excepted article precludes anything but an affirmative answer, or, in other words, bars him from asserting that its value is under Rs. 100, and the question what was the value of the goods does not arise.

The object of this section is to protect a Railway Company from liability for the loss, destruction or deterioration of parcel entrusted to them for carriage

(1) (1882) 10 Q. B. D. 142. (2) (1908) 13 Com. Cas. 196,

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containing articles of special value exceeding in value Rs. 100 unless they have notice of the contents, so that (*a*) they can demand a percentage on the value declared by way of compensation for increased risk, (*b*) they can take extra precautions for the safe carriage of such parcels. The whole object of the section would be defeated if the consignor could claim consequential damages for the loss of an excepted article without insuring it, on the ground that its market value was under Rs. 100.

The fallacy of this argument lies in thinking that loss and damages resulting from the loss can be distinguished, so that although the loss may be within the section the damages resulting from the loss are without it.

The question of value in the first instance can only arise when a claim is made against a Railway Company for a sum below the limit and the company pleads that the value of the article exceeds the limit, as in *Stoessiger* v. *The South-Eastern Railway Company*[1] where it was held that an embryo bill of exchange without the name of the drawer was of no value until filled up by the drawer and in *Blankensee* v. *London and North-Western Railway Company*.[2], where the company pleaded successfully that the value of certain jewellery consigned was the price obtained by the consignor and not the price he paid. Coleridge C. J. said : " 'value' means the value to the consignor of the goods " ; and Manisty J. said : " Suppose the Act of Parliament had never passed,...and this parcel had been lost, can any one doubt but that the plaintiffs in an action... could have recovered the amount which the article was worth to them ? " These *dicta* are important as showing that "value" need not necessarily mean "market value."

[1] (1854) 23 L. J. Q. B. 293, [2] (1881) 45 L. T. 761 at pp. 762,

No doubt in many cases the value of an article to the owner is the "market value," but it would be easy to enumerate articles within the Second Schedule such as plans and manuscripts which may have a special value to the owner beyond the market value, and it seems obvious to me that if he wishes to recover this value he must declare and insure the goods. If, however, a loss occurs the liability of the company is limited by section 75 (2) to the true value. And whether the "true value" is the "market value" or some special value which the consignor can prove the goods were worth to him is a question which I do not think has yet been decided. The most instructive case of all those cited to us is *Millen* v. *Brasch*[1]. The plaintiff's agent delivered to the defendant a trunk to be sent by rail to Liverpool and there shipped by steamer to Italy. By mistake the defendants shipped it to America. The trunk contained, amongst other things, silk dresses and a Sealskin jacket, excepted articles within the Carriers' Act and of a value over £10. The plaintiff claimed £210 for the loss of the trunk and injury to its contents. Thereafter the defendants recovered back the trunk and delivered it to the plaintiff. They admitted there had been miscarriage, loss of time and injury to the contents. In the lower Court it was held that the goods were lost though the loss was only temporary, that the defendants were liable for the injury to articles under the value of £10 but not for the injury to articles over the value of £10. Still for the detention of those articles £5 were awarded as damages. On appeal, the Court differentiated the case of *Hearn* v. *London and South Western Railway Company*[2], where the company had been held liable for detention as there the goods had not been lost. It was

(1) (1882) 10 Q. B. D. 142. (2) (1855) 10 Ex. 793.

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held that as the goods were found to have been lost it was impossible to hold the carriers liable for detention caused by loss. The Act protected carriers from liability for the loss or injury to undeclared goods and did not simply relieve them from paying the value of undeclared goods which they lost. They were relieved from liability for their loss and it would be to fritter away the Act and to depart from sound principles of construction to hold that loss in the Act only meant value as distinguished from loss and its consequences.

No doubt in that case the value of the goods was admittedly over £10 but the remarks above quoted appear to be an authority for the proposition that a consignor cannot say "The loss of the articles is one thing and the consequences of the loss are another, so that I can sue for the consequential damage without insuring the goods". It must follow that when a consignor makes a claim against a carrier for the loss of excepted goods and the consequences of the loss, he is claiming the value of the goods to him and if his claim is over Rs. 100 he cannot be allowed to say that the loss and the consequences of the loss to any one else would not be worth Rs. 100 and that therefore he was not bound to declare and insure them.

That this argument is correct admits of a very simple proof.

The plaintiff says "value" means "cost price". Supposing this parcel had contained account-books which had cost Rs. 110 and the plaintiff had not declared them under the Act, it is obvious that the Company would have been protected from liability for their loss and the consequences of their loss. If the plaintiff had declared them he could not have recovered more than Rs. 110.

Supposing, again, the plaintiff had said to the defendants when the books were consigned, "these books are of

the value of Rs. 60 or 70, but if they are lost I may suffer damages to the extent of Rs. 25,000 and if you lose them I shall claim that amount from you". Is it conceivable that the defendants would not have been entitled to refuse to carry them and be responsible for their loss unless a percentage were paid to cover the increased risk? If the plaintiff's contention were correct the company would have been bound to carry the books at the ordinary rates. It would be a *reductio ad absurdum* to hold that the Railway Company might be liable to an unlimited extent for the loss of an excepted article under the value of Rs. 100 while their liability for the loss of such an article over the value of Rs. 100 was limited to the declared value.

In my opinion section 75 is an absolute bar to an action against a Railway Company for any amount exceeding Rs. 100 for the loss and the consequences of the loss of excepted goods entrusted to them for carriage unless a declaration has been made under the section. Otherwise the risk attached to the carriage of undeclared excepted goods would become intolerable.

I agree with the learned Chief Justice, though on somewhat different grounds that the appeal should be allowed and the suit dismissed with costs.

Solicitors for appellants: Messrs. *Little & Co.*

Solicitors for respondents: Messrs. *Manilal & Kher.*

Suit dismissed.

G. G. N.