APPELLATE CIVIL

Before Mr. Justice Bhagwati and Mr. Justice Dixit.

1952
Feb. 5

GOVERNOR GENERAL OF INDIA IN COUNCIL (ORIGINAL DEFENDANT), APPELLANT *v.* THE JUBILEE MILLS, LTD. (ORIGINAL PLAINTIFF), RESPONDENT.*

Indian Railways Act (IX of 1890), s. 72—Indian Contract Act (IX of 1872), s. 149—Delivery of goods to be carried by railway administration—Goods deposited by consignor on railway platform with permission of Station Master—Railway receipt not granted to consignor—Goods destroyed by fire by spark from passing engine—Liability of railway administration for damage.

The plaintiff, who was desirous of consigning certain bales of cotton by railway, took them to a railway station and tendered the same for despatch to the station master. As no wagon was immediately available for the purpose, the consignment was, with the permission and authority of the station master, stacked on the platform of the station from where they could be loaded straight into the wagon. Earlier the goods had been weighed; after they were deposited in the railway premises a consignment note was made out and delivered to the station master, an entry in the indent book asking for allotment of wagons was made and wagons were later sanctioned. No forwarding note was however tendered by the plaintiff nor was a railway receipt given to him by the railway administration. While the goods were thus lying on the railway platform pending arrival of the wagons they caught fire by a spark from a passing engine and were partially destroyed. The plaintiff having sued the Governor-General of India-in-Council (defendant) in damages for the loss of goods, the defendant contended that the bales were not delivered to the Railway Administration for carriage within the meaning of s. 72 of the Indian Railways Act, 1890, and consequently its liability as a bailee thereof had not come into existence. The trial Court negatived that contention and decreed the suit. In appeal:—

Held, that the goods had been delivered to the Railway Administration for carriage and the Administration had become the bailee in respect thereof;

that, therefore, the suit was rightly decreed.

Ramchandra Natha v. *G. I. P. Railway Company*,[1] distinguished.

Munna Lal v. *East Indian Railway Company*,[2] *Secretary of State for India* v. *Sheobhagwan Chiranjilal*,[3] and *Narsingirji Manufacturing Co.* v. *G. I. P. Railway*,[4] followed.

Jalim Singh Kotary v. *Secretary of State for India*,[5] and *Hardayal Ram Das Ray* v. *Bengal and North-Western Railway*,[6] referred to.

---

* First Appeal No. 502 of 1948.

(1) (1915) 39 Bom. 485.
(2) [1923] A. I. R. All. 71.
(3) (1935) 58 All. 576.
(4) (1918) 21 Bom. L. R. 406.
(5) (1904) 31 Cal. 951.
(6) (1929) 8 Pat. 808.

FIRST APPEAL from the decision of I. A. Shaikh, Civil Judge (Senior Division), at Surat.

Suit for money.

The Jubilee Mills Ltd. (plaintiff) purchased cotton through the commission agency of Messrs. Motabhai Gulabdas, a firm of Commission Agents in Surat. Out of the cotton thus purchased a quantity of 84 bales was to be consigned by rail from Kosamba railway station. On April 2, 1945, one Chhotubhai Chaturbhai acting as the representative of Messrs. Motabhai Gulabdas approached the station master at Kosamba for the consignment of these bales and was told to bring the goods to the station the next day.

On April 3, 1945, Chhotubhai Chaturbhai got the bales weighed, brought them within the station yard and deposited them on the down platform at the instance of the station master. He then made an entry in the Indent book asking for allotment of wagons and delivered it to the station master. He also filled in a consignment note and gave it to the station master who accepted it and kept it with himself. The station master asked for allotment of wagons from the Controller's office at Bulsar and the allotment was sanctioned but the wagons did not arrive and the bales continued to remain on the down platform from and after April 3, 1945.

On April 6, 1945, while the bales were thus lying on the platform pending the arrival of the wagons they caught fire by a spark from a passing engine and were partially destroyed. A panchnama was made on April 14, 1945, of bales which were salvaged from the fire and the salvage was thereafter sold to one Parbhubhai Chhitabhai for a sum of Rs. 4,200. Parbhubhai Chhitabhai got it repressed into 56 bales at a cost of Rs. 958-10-0 and sold those 56 bales to Victoria Mills for the sum of Rs. 4,200.

On October 25, 1945, the plaintiff brought the present suit claiming a sum of Rs. 18,499 from the Governor General of India in Council (defendant) on the basis of the sale to the Victoria Mills as damages sustained by them by reason of the gross negligence and misconduct of the Railway Administration.

The defendant contended *inter alia* that the bales were not delivered to the Railway Administration for carriage within the meaning of s. 72 of the Indian Railways Act, 1890, that the said bales were brought into the station yard by Chhotubhai

1952

GOVERNOR GENERAL OF INDIA v. THE JUBILEE MILLS LTD.

Bhagwati J.

Chaturbhai without the permission of the station master and that therefore he was not liable for the damage caused to the bales.

The trial Judge found that the bales had been brought into the station yard by Chhotubhai Chaturbhai with the authority of the station master, that they had been delivered by Chhotubhai Chaturbhai to the Railway administration, and that the Railway Administration had failed and neglected to take proper care of the said bales as bailee under s. 72 of the Indian Railways Act, 1890. Therefore, he decreed the plaintiff's claim for Rs. 17,920 on the basis of 80 p.c. loss having occurred in accordance with the contents of the panchnama dated April 14, 1945.

The defendant appealed to the High Court.

A. A. Adarkar, with *Crawford, Bailey & Co.*, for the appellant.

C. K. Shah and *S. M. Adhikari*, for the respondent.

BHAGWATI J. [After narrating the facts the judgment proceeded]. Mr. Adarkar next contended that even if these bales were stacked in this manner by Chhotubhai with the permission of the station master and at his instance, it did not amount to a "delivery of goods for carriage" within the meaning of that expression as used in s. 72 of the Indian Railways Act. It would only be if the goods were delivered to the administration to be carried by railway that the responsibility of the railway administration for loss, destruction or deterioration thereof would be that of a bailee under ss. 152 and 161 of the Indian Contract Act, and having regard to that provision contained in s. 72 of the Railways Act, Mr. Adarkar contended that the goods were not delivered to the railway administration for carriage. He relied upon a decision of our appellate Court reported in *Ramchandra Natha* v. *G. I. P. Railway Company*[1] in support of this contention of his. In that case the plaintiffs had brought certain goods to the railway premises and handed a consignment note to the clerk of the railway company. No receipt was given as the goods were not weighed and loaded. In the meanwhile a fire broke out on the premises and destroyed the goods. The plaintiffs sued the railway company for the loss of the goods, and the lower Court held that the company was not liable for the loss in absence of a railway receipt as provided for in r. 2 framed under s. 47,

[1] (1915) 39 Bom. 485.

sub-s. (*1*) (*f*), of the Railways Act. The plaintiffs applied under the extra-ordinary jurisdiction under s. 115 of the Civil Procedure Code and it was held by the High Court that the commencement of the liability of the company for goods delivered to be carried under s. 72 was in no way dependent upon the fact of a receipt having been granted, but must be determined on evidence quite independently of r. 2 under s. 47 (*1*) (*f*) of the Railways Act. Rule 2 was also challenged by the plaintiffs and was held by the Court to be bad because it sought to define and by defining changed what would otherwise be the meaning of s. 72 of the Railways Act. In the course of the judgment Mr. Justice Heaton remarked (p. 489):

> "A 'delivery to be carried by railway' (within the meaning of s. 72 of the Railways Act) means something more than a mere depositing of goods on the railway premises: it means some sort of acceptance by the railway, a taking as well as a giving. When that taking occurs is a matter which depends on the course of business and the facts of each particular case; but it certainly may be completed before a railway receipt is granted."

Mr. Justice Shah also who was a member of the bench observed as under (p. 491):

> "The delivery contemplated by s. 72 is an actual delivery and marks the beginning of the Company's responsibility. That delivery would no doubt involve not merely the bringing of the goods on the railway premises but acceptance thereof by the Company for the purpose of carrying the same by railway. Such acceptance may be expressed or implied in a variety of ways by the usual course of business, and may be quite independent of any receipt being granted by the Company. Of course it will depend upon the circumstances of each case and the usual course of business of the railway administration as to whether the goods can be said to be delivered to be carried by railway under s. 72 of the Act."

Mr. Adarkar laid great stress on these observations of Mr. Justice Heaton and Mr. Justice Shah and contended before us that what was done in the present case was that Chhotubhai merely brought the goods within the station yard and stacked the same on the down platform without anything more. If that was so, there would be considerable force in this contention of Mr. Adarkar. Mr. Adarkar, however, ignored the fact that according to the evidence of the station master himself no goods could be brought within the station yard without his consent. That was the normal course of affairs and it was sought to be established in the evidence of the station master that the goods in fact were brought by Chhotubhai without his permission and without his consent and authority. As we have observed before, this was a pure embellishment

1952

Governor General of India v. The Jubilee Mills Ltd.

Bhagwati J.

on the part of the station master. He had in fact given his permission to Chhotubhai to bring the goods within the station yard and Chhotubhai had brought the same within the station yard with the consent and authority of the station master. If the goods were thus brought within the station yard with the consent and authority of the station master, the bringing of the goods into the station yard and the stacking thereof on the down platform was not "a mere bringing of the goods on the railway premises" or "mere depositing of the goods on the railway premises" as contemplated in the above passages from the judgments of Mr. Justice Heaton and Mr. Justice Shah. There was something more than that. There was the permission of the station master to bring the goods within the station yard and the goods were brought there with his consent and authority and stacked on the down platform at his instance. This circumstance makes all the difference in the present case. There was the acceptance of the goods by the station master who was the representative of the railway administration, and this taking in or acceptance of the goods was sufficient, in our opinion, to constitute the railway administration the bailee of these goods within the meaning of s. 72 of the Indian Railways Act.

Mr. Adarkar then relied upon a decision of the Calcutta High Court reported in *Jalim Singh Kotary* v. *Secretary of State for India*[1] where it was held that "delivered" in s. 72 of the Indian Railways Act refers merely to a physical event and is a word devoid of any legal significance. He particularly relied upon the observations at p. 959 where the contention of the company was dealt with by the learned Judge.

"I think it is not unreasonable that as long as the consignor's servant is seeing the goods through the process of booking, marking and weighing, the Railway Company should not be responsible; but that the Company should become responsible, if the booking process is interrupted for any substantial time and the goods are left in their possession, as in such a case they practically must be."

The *ratio decidendi* of this case was that the booking process should commence and until the booking process commenced, the goods would be in the possession of the consignor and would not be delivered to the railway administration for carriage. We have therefore got to see what is involved in the booking process. The booking process consists of the

[1] (1904) 31 Cal. 951.

bringing of the goods within the station yard, the weighment and marking thereof, the preparation of the consignment note and the handing over of the railway receipt by the railway administration to the consignor. All these would be the steps in the booking process, but the booking process commences when the earliest act in this series is done by the consignor. In the case of the goods in question before us, the weighment had been done already by Chhotubhai in the ginning factory of Motiram Raghavji and the necessary marking so far as the consignor himself was concerned was presumably done by him at that time. The permission of the station master was then sought to bring the goods within the station yard which having been given the goods were brought within the station yard by Chhotubhai. In our opinion the booking process thus commenced when the goods were brought within the station yard with the consent and authority of the station master and were stacked on the down platform by Chhotubhai at the instance of the station master. If the booking process was interrupted thereafter by reason of the non-availability of the wagons, it did not militate against the taking in or the acceptance of the goods by the station master and the goods could be said to have been delivered to the railway administration for carriage.

Mr. Adarkar next drew our attention to the decision of the Patna High Court reported in *Hardayal Ram Dass Ray* v. *Bengal and North-Western Railway.*[1] The facts of that case were very peculiar. A certain number of bags of turmeric had been left in a goods shed by the servant of the plaintiff in the absence of the railway servants and the bags were neither marked nor weighed but the consignment notes were handed over to the marker who was discharging the duties of the goods clerk. The matter came to the High Court in second appeal and the High Court had before it the finding recorded by the lower Court as a finding of fact that the mere acceptance of the consignment notes was not equivalent to acceptance of the goods by the company and the goods had not been delivered to the railway company. This finding of fact could not be challenged in second appeal and it was on the basis of this finding of fact that the High Court came to the conclusion that the plaintiff was rightly non-suited. In the course of the judgment, however, Mr. Justice Fazal Ali, as he

[1] (1929) 8 Pat. 808.

1952

GOVERNOR GENERAL OF INDIA
v.
THE JUBILEE MILLS LTD.

Bhagwati J.

then was, referred to several authorities and deduced his conclusion from the same in the terms following (p. 816):

> "...the only general rule which may be deduced from these decisions is that, if there is something to show that the consignor has done all that is possible for him to put the goods in the possession of the Railway Company and that there is nothing left for him to do in that connection, and there is clear evidence, direct or circumstantial, that the Railway Company has accepted the custody of the goods, the liability of the Railway Company as a bailee will begin to operate."

And the learned Judge then proceeded to quote the observations of Mr. Justice Heaton in *Ramchandra Natha* v. *G. I. P. Railway Company,*[1] which we have quoted above. Apart from the fact that these observations of the learned Judge were clearly *obiter,* we do not see any particular reason to quarrel with the same because in substance they were the same as the observations of Mr. Justice Heaton in *Ramchandra Natha* v. *G. I. P. Railway Co.*[1] The consignor must have done all that was possible for him to do to put the goods in possession of the railway administration and there must be nothing left for him to do in that connection, i.e., in connection with the putting of the goods in the possession of the railway company. Having regard to the circumstances of the case before us at the time when these goods were brought into the station yard by Chhotubhai and stacked on the down platform at the instance of the station master, all that was possible for Chhotubhai to put the goods in the possession of the railway company was done by him. The goods had been weighed by him, and presumably marked by him, they were brought into the station yard and were stacked on the down platform for being loaded straight therefrom into the wagon when received at the Kosamba station. He also made the entry in the indent book for the supply of wagons by the railway administration and after that there was nothing more to be done by him until intimation was given to him that a wagon had actually been received at the Kosamba station. Even there the only thing which Chhotubhai was expected to do was that he should go to the railway station and have the goods marked by the railway servants and obtain the railway receipt in connection with the goods from them. These acts were however to be done by him after the intimation of the arrival of the wagon was received by him. Until then nothing further was to be done by him and he had done all that was possible for him, under the circumstances then obtained to put the goods in

[1] (1915) 39 Bom. 485.

the possession of the railway company. So far as the railway administration itself was concerned, there was clear evidence on the record that it had accepted the custody of the goods, the same having been brought in with the consent and authority of the station master and having been stacked on the down platform at his instance. All the conditions therefore were satisfied and the goods were in fact delivered to the railway administration for carriage within the meaning of s. 72 of the Railways Act and the liability of the railway company as bailee of the goods came into existence.

These were the cases relied upon by Mr. Adarkar in support of his contention. Unfortunately, however, for the defendant, they do not help him. Curiously enough in this decision reported in *Hardayal Ram Dass Ray* v. *Bengal and North-Western Railway*,[1] we find at page 815 mention of the case of *Munna Lal v. The E. I. Ry. Company.*[2] The reference in *Hardayal Ram Dass Ray* v. *Bengal and North-Western Railway* is given as (1924) 82 I. C. 772. But this case has been referred to in a later decision of the Allahabad High Court reported in *Secretary of State for India* v. *Sheobhagwan Chiranjilal*,[2] and the reference there is to *Munna Lal* v. *East Indian Railway Company.* The decision in this case as summarised at page 815 of *Hardayal Ram Das Ray* v. *Bengal and North-Western Railway*,[1] is as follows:—

"The facts which were found to have been proved were that certain goods had been delivered to the Station Master to be booked, but he being unable to book, on account of a stoppage of booking, kept the goods on the railway premises without definitely directing the plaintiff to remove the goods or telling him in unmistakable terms that the goods were being kept at his own risk, though at the same time not definitely accepting the goods at the railway risk. In these circumstances it was held that the conduct of the Station Master in retaining the goods in the railway shed afforded satisfactory evidence that he had accepted the bailment of the goods on behalf of the Railway Company."

This case is very near to the one which we have before us. The booking of the goods had been stopped and the goods were retained by the station master on the railway premises without definitely directing the plaintiff to remove the goods or telling him that the goods were being kept at his own risk. Even in these circumstances the conduct of the station master was held by the Court to afford satisfactory evidence that the goods had been accepted on behalf of the railway administ-

(1) (1929) 8 Pat. 808. (2) [1923] A. I. R. All. 71.
(3) (1935) 58 All. 576.

1952

GOVERNOR GENERAL OF INDIA
v.
THE JUBILEE MILLS LTD.

Bhagwati J.

ration. It is in evidence in the case before us that there was a difficulty about obtaining wagons. The goods had, however, been brought within the station yard with the consent and authority of the station master. The station master did not tell Chhotubhai to remove the goods nor did he tell him in any unmistakable terms that the goods were being kept on the down platform at his own risk. The conduct of the station master therefore afforded satisfactory evidence that these goods had been accepted by him from Chhotubhai and there was "delivery of the goods to the railway administration for carriage" within the meaning of the expression as used in s. 72 of the Railways Act. This decision in *Munna Lal* v. *East Indian Railway Company* was referred to by the Allahabad High Court in *Secretary of State for India* v. *Sheobhagwan Chiranjilal*. The facts of that case were that a consignment of bales of hemp was taken to a railway station and tendered for despatch to another station. It appeared that no wagon was immediately available for the purpose; so the consignment was, with the consent and permission of an authorised servant of the railway, deposited in the railway goods shed and allowed to remain there, pending the arrival of a suitable wagon. No forwarding note was tendered by the consignor, and no receipt was granted to him by the railway. The next day a part of the consignment which was lying in the goods shed was destroyed by fire caused by sparks from an engine alighting on the hemp. It was held that in the circumstances, the goods had been delivered to the railway within the meaning of s. 149 of the Contract Act and the railway had become a bailee in respect thereof, although neither a receipt had been given nor a forwarding note tendered. It is not often that one comes across an authority almost on all fours with the case which one has to deal with. It is, however, very significant to observe that the facts of the case in *Secretary of State for India* v. *Sheobhagwan Chiranjilal* were almost on all fours with the facts of the case before us. The consignment of these 84 bales was taken to the Kosamba railway station and tendered for despatch to another station. No wagon was immediately available to the station master at Kosamba for the purpose and therefore the consignment was, with the consent and permission of the station master at Kosamba, who was an authorised servant of the railway administration, deposited in the station premises and stacked on the down platform and allowed to be left there pending the arrival of a suitable wagon. No forwarding note was tendered

1952

GOVERNOR GENERAL OF INDIA
v.
THE JUBILEE MILLS LTD.

Bhagwati J.

by Chhotubhai and no receipt was granted to him by the railway administration, and within three days of the delivery of the goods in the station yard, if not the next day as in the Allahabad case, the consignment which was lying in the goods shed was destroyed by fire by a spark from an engine. Having regard to all these circumstances, we are also of the opinion, as the learned Judges of the Allahabad High Court were, that the goods had been delivered to the railway administration for carriage within the meaning of s. 149 of the Contract Act and the railway administration had become the bailee in respect thereof. This decision of the Allahabad High Court therefore considerably helps the contention of the plaintiff that the railway administration became the bailees of these 84 bales which were brought within the station yard by Chhotubhai with the consent and authority of the station master and were stacked on the down platform at his instance.

What is "taking in" or "acceptance of the goods" by the railway administration depends really on the facts and circumstances of each particular case, and no rigid and fast rule can be laid down in that behalf. Our attention was drawn by Mr. Adarkar to the notice which was put up by the station master at Kosamba, exh. 94, in the terms following:—

"All the merchants are hereby informed that no goods should be stacked in Railway premises unless personally ordered by the Station Master. Failing this if any goods found stacked in railway premises without the knowledge of the station staff or station master they will be solely held responsible for any damage or loss occurring to these goods not only that but any other goods that is liable to be involved by such unauthorised stacking in railway premises."

This notice is very suggestive. It assumes the responsibility of the railway administration where the goods are stacked on the railway premises under the personal orders of the station master, though it negatives that responsibility if the goods are found stacked in the railway premises without the knowledge of the station staff or the station master. If as the case here was, the station master, Kosamba, gave Chhotubhai permission to bring these goods into the station yard and Chhotubhai brought the goods in the station yard with the consent and authority of the station master and stacked them on the down platform at his instance, the very terms of this notice would support the plaintiff in its contention that the railway administration undertook the responsibility in connection with these goods as bailee under s. 72 of the Railways Act. Having regard to the observations made above, we have

1952

GOVERNOR GENERAL OF INDIA v. THE JUBILEE MILLS LTD.

Dixit J.

come to the conclusion that the learned Judge below was right in the decision which he reached, viz., that the said bales were delivered to the railway for carriage.

[The rest of the judgment is not material to the report.]

DIXIT J. [After dealing with the evidence in the case the judgment proceeded.] On the question of law, I have little to add. The question turns upon the meaning of the words "goods delivered to be carried by railway" as used in s. 72 of the Indian Railways Act. The words "delivered to be carried" may be read literally, and if they are given their natural meaning, it seems to me that in this case the permission of the station master being proved, the goods were delivered to the railway authorities within the meaning of the section. As to what constitutes "delivery" must depend on the facts of each case. It was pointed out by Mr. Justice Heaton in *Ramchandra Natha* v. *G. I. P. Railway Company*[1] that there must be something more than a mere depositing of goods on the railway premises and that there must be some sort of acceptance on the part of the railway for a taking as well as a giving. In the nature of things, when the goods are delivered to be carried, some interval of time must elapse between the receipt of the goods and their departure. Sometimes the period may be considerable. It seems to me that in such cases when once the goods are given into the possession of the railway authorities, the delivery must be taken to be complete as the period of the transit may be preceded by the custody of the goods with the authorities. In this particular case, on the evidence, it is clear that the goods were brought on the down platform of the station with the permission of the station master, a consignment note was made, and an entry in the indent book was also made, wagons were sanctioned but the wagons were not immediately available. It seems to me, therefore, that on these facts, it is clear that the goods were "delivered to be carried" within the meaning of s. 72 of the Railways Act. The view which I take seems to be in accord with the decision of this Court in *Narsinggirji Mafg. Co.* v. *G. I. P. Railway.*[2] In that case the goods were brought to the Sholapur railway station. The goods were taken into the goods yard, they were weighed and given marked numbers, and there was also a consignment note. It was argued that there was no delivery. But the Court rejected the argument. The only difference between the present case and the case

(1) (1915) 39 Bom. 485.

(2) (1918) 21 Bom. L. R. 406.

just cited is that in that case the goods were weighed. In this particular case the evidence is that the goods had been already weighed in the premises of the ginning factory of Motiram Raghavji. It is possible that the station master was told that the goods had been weighed, and that fact may have been accepted by the station master. Mr. Adarkar contended that unless there is something more than a mere possession of the goods by the railway authorities the delivery cannot be said to be complete, but I am unable to accept this argument. As I said, it is possible to read the words, "goods delivered to be carried" according to their natural meaning. If the natural meaning is given to these words, Mr. Adarkar has clearly no case. On the other hand, if something more must happen before the delivery can be legally constituted, then in that event, the evidence is clear in this case, I think, which goes to show that the goods were taken charge of by the railway authorities, that the consignment note was made, that an indent entry was made, that the wagons were sanctioned, but that the goods could not be despatched for want of wagons. It seems to me, therefore, that there was in this case a "delivery" within the meaning of s. 72 of the Railways Act.

I agree, therefore, with the order proposed by my learned brother.

Appeal partly allowed.

M. W. P.

APPELLATE CIVIL

Before Mr. Justice Rajadhyaksha and Mr. Justice Vyas.

1952
Feb. 22

JIBHAOO HARISING RAJPUT (ORIGINAL CREDITOR), PETITIONER *v.* AJABSING FAKIRA RAJPUT (ORIGINAL DEBTOR), OPPONENT.*

Bombay Agricultural Debtors Relief Act (Bom. XXVIII of 1947), s. 24 (1)—Invalid oral sale—Sale alleged to be in nature of mortgage—Power of Debt Adjustment Court to inquire into nature of transaction and give relief—"Transfer," meaning of—Whether includes inoperative sale—Charge for purchase money—Charge if lost by delivery of possession to creditor—Transfer of Property Act (IV of 1882), s. 55 (6) (b).

The word "transfer" in sub-s. (1) of s. 24 of the Bombay Agricultural Debtors Relief Act, 1947, means a transfer which is *ex facie* valid. Hence

* Civil Revision Application No. 135 of 1951 (with C. R. A. No. 374 of 1951).