carried on a business and had been succeeded in such capacity by another person."

In our opinion, therefore, the assessee company was liable to be assessed in respect of the escaped income of Maneklal Chunilal.

The contention raised by the assessee company was that it was prevented by sufficient cause from complying with the notice issued under s. 22 (4) and that therefore the best judgment assessment passed by the Income Tax Officer was not a proper assessment. The sufficient cause urged by the assessee company was that it was not liable as the successor of Maneklal Chunilal to pay the tax on the escaped income of Maneklal Chunilal. It is because of this that the Tribunal has raised the question in the form in which it has done.

The question framed by the Tribunal is obviously not appropriate because the question as framed by the Tribunal suggests as if any authority had held that the assessee company was prevented by sufficient cause from complying with the terms of the notice issued under s. 22 (4). In fact what was held was that he was not so prevented. Therefore, we will insert the word "not" before the word "prevented", and after re-framing the question answer it in the affirmative. The assessee to pay the costs.

Notice of motion dismissed. No order as to costs.

Attorneys for applicants: *Ardeshir, Hormusji Dinshaw & Co.*

Attorneys for respondent: *N. K. Petigara.*

Answer accordingly.

P. M. P.

APPEAL FROM ORIGINAL CIVIL

Before Mr. M. C. Chagla, Chief Justice and Mr. Justice Tendolkar.

KALURAM SITARAM, A FIRM, APPELLANTS (ORIGINAL PLAINTIFFS) v. THE DOMINION OF INDIA RESPONDENTS (ORIGINAL DEFENDANTS).*

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Indian Railways Act (IX of 1890), ss. 72 (1), s. 75 (1)—Second Schedule—Risk-note in form 'x'—Consignment of bare silver bars not contained in packet or parcel—Such risk-note signed by consignors—Silver bars being articles specified in Second Schedule of value exceeding Rs. 300—Percentage on value as required by s. 75 (1) not paid—Whether s. 75 (1) applied—Whether risk-note in form 'x' applied only to cases falling within s. 75 (1).

* Appeal No. 77 of 1952: Suit No. 1671 of 1948.

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The plaintiff consigned 4 silver bars to himself from Bombay to Balia. The bars (being articles mentioned in the second schedule of the Indian Railway Act, 1890 and of the value exceeding Rs. 300) were delivered to the Railway bare unpacked and not made up in a packet or parcel. The plaintiffs also had not paid any percentage on the value of the silver bars by way of compensation for increased risk as required by s. 75 (*1*) of the Act. The Railway authorities wrongly delivered the four bars to Y. at Balia. The Plaintiffs therefore claimed damages for the loss of the 4 bars. The defendants contended that as the articles were among those mentioned in the second schedule of the value exceeding Rs. 300 on which the percentage on value as required by s. 75 (*1*) was not paid, they were not liable to the defendants.

Held, s. 75 (*1*) contemplates two objects: (1) article mentioned in the Second Schedule of the Indian Railways Act 1890, and (2) the object which constitutes the container for the articles. Therefore, unless there is a parcel or packet in which the article is contained s. 75 (*1*) can have no application.

Held, therefore, that as the silver bars were not contained in any packet or parcel, the defendants could not claim the protection of s. 75 (*1*) to escape their liability under s. 72 (*1*) of the Act.

Firm Mahesh Glass Works v. *Governor General in Council,*[1] followed.

Kundan Lal Baru Mal v. *Secretary of State,*[2] dissented from.

Whaite v. *The Lancashire and Yorkshire Railway Company,*[3] and *Studebaker Distributors Limited* v. *Charlton Steam Shipping Company Limited,*[4] referred to.

It is the plain duty of the Court to give effect to the plain words used by the Legislature about which there is no ambiguity and no difficulty in construing. Moreover, as s. 75 constitutes a limitation upon the statutory liability of the Railway Administration as defined in s. 72 (*1*), the section must be strictly construed.

The plaintiffs had signed risk-notes in form 'x' in respect of the consignment of the silver bars whereby the plaintiffs agreed to hold the Railway Administration harmless and free from all responsibility for any loss etc. of the silver bars. The plaintiffs contended that the risk-note applied only to cases which were covered by s. 75.

Held, negativing the contention, that the risk-note in form 'x' deals with all cases of "excepted" articles being consigned and not only when they are consigned in any packet or parcel. It constitutes a further limitation upon the liability of the Railway Administration under s. 72 (*1*) which arises by reason of the agreement which falls under s. 72 (*2*). It authorizes the railway administration, where they are called upon to carry "excepted" articles, to require the consignor to elect whether he wants to pay additional freight, in which case the railway administration would be liable under s. 72 (*1*), or not to pay additional freight, in which case they would be harmless and free from all responsibility for any loss destruction or deterioration of his articles consigned.

[1] [1950] A. I. R. All. 543.
[2] (1929) 11 Lah. 4.
[3] (1874) L. R. 9, Ex. 67.
[4] [1938] 1 K. B. 459.

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Held, therefore, that as the consignors had signed the risk-note in respect of the silver bars, the defendants were not liable to the plaintiffs for their loss.

Kaluram Sitaram, a firm (Plaintiff) consigned to himself as consignees from Victoria Terminus, Bombay to Balia, situate on Oudh Tirhat Railway two silver bars under railway receipt dated June 20, 1947, which reached Balia on June 23, 1947. They similarly sent two more silver bars under railway receipts, dated July 11, 1947 which reached Balia on July 14, 1947. All the four silver bars were bare, unpacked and not made up in a packet or parcel. In respect of each of these consignments, the plaintiff had signed risk-notes in form 'X' approved by the Governor-General-in-Council under s. 72 (*2*) (*b*) of the Indian Railway Act, 1890. The Plaintiff sent the two railway receipts under which the four silver bars were sent to the Allahabad Bank at Banaras with instructions to deliver the same to one Yogindranath Ravindranath against payment of the amount for which Hundis were drawn. As Yogindranath Ravindranath did not make any payment the Allahabad Bank, Benaras, returned the two railway receipts to the Plaintiff in Bombay.

On October 1, 1947 a partner of the plaintiff firm saw the Railway Authorities at Balia and presented the two railway receipts and asked for delivery of the 4 silver bars. The Railway Station Master at Balia informed him that these four silver bars were not with the Railway Company adding that from the records it appeared that these 4 silver bars had been delivered to one Yogindranath during the time when one Nyaz Ahmmed was a Parcel Clerk at that station. The Railway Station-Master made endorsements on both the railway receipts as follows.—

"The consignment is not on hand. From the Records it appears that this has been delivered to Yogindranath in time of B. C. Nyaz Ahmed.

Sd/-
Station-Master,
1-10-1947"

Thereupon the Plaintiff gave requisite notices both under s. 77 of the Indian Railways Act, 1890 and under s. 80 of the Code of Civil Procedure Code, 1907 and filed the present suit claiming Rs. 20,496-15-6 by way of compensation on account of failure of the Railway Authorities to deliver the four silver bars.

The suit was heard by Shah J. who dismissed it with costs on March 14, 1952.

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The plaintiff appealed.

M. V. Desai, with *N. A. Mody*, for the appellants.

H. D. Banaji, with *Sir Jamshedji B. Kanga*, for the respondents.

Chagla C. J.—This appeal arises out of a judgment of Mr. Justice Shah by which he dismissed the plaintiff's suit. It appears that the plaintiff consigned four silver bars to self from the Victoria Terminus Station, Bombay, to Balia which is situated on the Oudh Tirhat Railway. The records of the Oudh Railway show that these bars reached Balia and the records further show that they were delivered to a person who signed his name as Yogendranath in the parcel delivery book maintained by that railway. The plaintiffs had sent the two railway receipts, under which these bars were despatched, to the Allahabad Bank at Benaras with instructions to deliver the railway receipts to one Yogendranath Ravindranath against payment of the amount for which rundis were drawn. Yogendranath did not make the payment and the Allahabad Bank returned the railway receipts to the plaintiffs in Bombay. When the plaintiff made inquiries of the railway authorities as to the bars, he was informed that they had been delivered to one Yogendranath. Thereupon, having served the statutory notice under s. 80 of the Civil Procedure Code, the plaintiff filed this suit claiming a sum of Rs. 20,496-15-6 as damaged for non-delivery of these four silver bars.

Now, before consigning these bars the plaintiff had signed a risk note in form 'X', and the question that arises for our consideration is, what is the liability of the railway administration under that risk note, and in order to determine that liability we have in the first instance to consider the effect of ss. 72 and 75 of the Indian Railway Act. Section 72 defines the responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway and that responsibility is in all respects the same as that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act. Sub-s. (2) of s. 72 renders any agreement which limits the responsibility of the railway administration defined in sub-s. (1) as void. There is an exception to this sub-section and that exception is that if there is an agreement in writing signed by or on behalf of the person sending or delivering to the railway administration the animals or goods, and is otherwise in a form approved by the Central Government, then an agreement to limit

the responsibility may be given effect to. Then s. 75 is a statutory limitation upon the responsibility of the railway administration under s. 72 (*1*), and that section provides that when there are articles mentioned in the Second Schedule which are contained in any parcel or package and the value of such articles exceeds Rs. 300, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package. But there is an exception to this limitation of the liability of the railway administration, and the exception is that if the person who sends or delivers the parcel or package containing the articles causes its value and contents to be declared and further if on being required by the railway administration pays a percentage on the value so declared by way of compensation for increased risk, then the responsibility of the railway administration would continue to be the same as under s. 72 (*1*).

Now, in this particular case the silver bars which were consigned by the plaintiff are articles which are mentioned in the second schedule. The facts established in the Court below show that these silver bars were not contained in any parcel or package. They were delivered bare unpacked and were carried by the railway administration in that condition, and the first question that we have to consider is whether s. 75 applied to an article which is mentioned in the second schedule which is not contained in any parcel or package. In this case the plaintiff did not declare the value of the silver bars, nor did he pay any percentage on the value, and therefore, if the silver bars fall within the ambit of s. 75 (*1*), then undoubtedly the railway administration would not be responsible for the loss of these silver bars. Mr. Banaji's contention for the Dominion of India is that once articles mentioned in the second schedule are delivered to the railway administration, s. 75 comes into operation, whether they are contained in a parcel or package or not. Mr. Banaji says that it is difficult to understand why the Legislature should have attempted to make a distinction between an article delivered to the railway administration in a parcel or package and an article delivered without its being packed. Mr. Banaji says that the whole principle underlying s. 75 is that when an article is delivered to the railway administration of the nature mentioned in the second schedule, the railway administration takes a greater risk in transporting that article and, therefore, it is exempted from the liability under s. 72 (*1*) unless the consignor declares the value of the article and gives an opportunity to the railway administration to decide

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whether it would carry that article without charging an additional insurance premium or not. Mr. Banaji further contends that if that is the principle underlying s. 75, that principle should apply whether the articles mentioned in the second schedule are in a parcel or not. We agree with Mr. Banaji that we find it rather difficult to understand why the Legislature should have emphasised the fact that the articles mentioned in the second schedule should be contained in any parcel or package before s. 75 (1) could apply. But it is our duty to give effect to the plain words used by the Legislature about which there is no ambiguity and about which there is no difficulty in construing. Mr. Banaji has relied on certain well established principles that the Court may even in an extreme case do violence to the language of a statute if the Court is satisfied that but for doing so hardship or inconvenience would be caused. But we do not see what hardship or inconvenience would be caused to the railway authority if we construe s. 75 in the manner we are proposing to do. It must not be forgotten that there is no obligation upon the railway administration to carry any article which a consignor wants to consign. Therefore, if a consignor wants the railway administration to consign silver bars which he has not put in a parcel or a package, it would be open to the railway administration to refuse to accept delivery of the silver bars. It would be equally open to the railway administration to insist upon the consignor putting the silver bars in a parcel or a package so as to attract the application of s. 75. But if the railway administration, notwithstanding the clear language of s. 75, chooses to carry silver bars in an open uncovered state, the railway administration cannot be heard to say that we should so construe s. 75 as to limit the responsibility and the liability of the railway administration although the plain words of s. 75 do not justify such limitation. It must further be borne in mind that as s. 75 constitutes a limitation upon the statutory liability of the railway administration defined in s. 72 (*1*), this limitation must be strictly construed, and, therefore, we must again turn to the plain words of the section itself in order to decide what exactly is meant by "articles contained in any parcel or package." It is suggested by Mr. Banaji that we must read the expression "articles contained in any parcel or package" as articles which constitute a parcel or package, and Mr. Banaji says that once the silver bars were carried by the railway administration they constituted a parcel or a package and, therefore, s. 75 (*1*) applied. In my opinion it is impossible to accept that

contention. It is clear that s. 75 (*1*) contemplates two objects; the article mentioned in the second schedule and the object which constitutes the container for the article. Therefore, unless you have a parcel or a package in which the article is contained, s. 75 (*1*) can have no application. The further words of s. 75 (*1*) also make it clear that this is the only possible construction of s. 75 (*1*) because s. 75 (*1*) requires the consignor to declare the contents of the parcel or package in order to fix the railway administration with responsibility under s. 72 (*1*). The contents of a parcel or package can only be declared provided there is a parcel or a package and something is contained in the parcel or package.

Two High Courts have taken different views of the proper meaning to be attached to this expression, and Mr. Banaji has strongly relied on the decision of the Lahore High Court which supports his view, and the decision is to be found in *Kundan Lal Baru Mal* v. *Secretary of State*.[1] That was also a case of a bar of silver which was consigned under the risk note in form 'X' and the Court held that it was not open to the consignor to challenge the facts mentioned in the risk note 'X' because that constituted the contract between the parties. With respect, we feel difficulty in accepting this decision as correct because if the contract between the parties was void no possible estoppel can arise from a void contract, and whatever the parties might have agreed to, if the contract was void, under s. 72 (*2*) such a void contract could not possibly limit the responsibility of the railway administration under s. 72 (*1*). But having decided this matter on this basis the learned Judges of the Lahore High Court proceeded to consider the construction of s. 75 and they held that a single bar of silver constituted a packet or parcel for the purpose of s. 75 and they rejected the contention that s. 75 did not apply because the silver bar was not packed in a box or surrounded by any form of packet, and in order to come to this conclusion they relied on a judgment of the English Court in *Whaite* v. *The Lancashire and Yorkshire Railway Co.*[2] When we look at the facts of that case, with respect to the learned Judges of the Lahore High Court, that case does not decide the point that came up for their decision. All that that case laid down was that where you have certain pictures laid one upon the other without any covering or packet in a waggon which had no top, the waggon did constitute a parcel or a package and the pictures could not be said

[1] (1929) 11 Lah. 4.

[2] (1874) L. R. 9 Ex. 67.

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not to be contained in a parcel or package, and what the English Court pointed out was that it would be absurd to suppose that because the parcel was of immence size and value, therefore, it ceased to be a parcel, and also that it was quite immaterial that the goods were placed loose inside the uncovered waggon. Therefore, all that this English case decides is that a packet or a parcel may be an open packet or parcel; it may be a packet or parcel which would make it possible for an observer to see what is contained in the parcel or packet; the parcel or packet may not sufficiently conceal the identity of what is contained in the parcel or packet. Notwithstanding all this, if the parcel or packet constitutes a container, then it would be a parcel or packet in law. But when you have a silver bar in its bare condition transported by the railway administration, it is difficult to understand how it could be said that the silver bar was contained in a parcel or a packet.

Now, this judgment came to be considered by the Allahabad High Court in *Firm Mahest Glass Works* v. *Governor General in Council*,[1] and the Allahabad High Court in a well considered judgment has found it difficult to accept the decision arrived at by the Lahore High Court. The Allahabad High Court was considering a case where bangles were transported and the bangles were tied together so as to constitute, what the learned Judges called, garlands, and they held that where glass bangles are made into garlands by passing a string round a number of bangles and tying its two ends together, the garlands come within the meaning of parcel or package. Therefore, here there were two objects; there was a string and there were the bangles which the string kept together; and it was on those facts that the Allahabad High Court took the view that it could be said that the bangles were contained in a parcel or a packet. In discussing this question they referred to a rather striking case reported in *Studebaker Distributors Ltd.* v. *Charlton Steam Shipping Co. Ltd.*[2] In that case Studebaker cars were put on board a ship without any covering, and the consignment was governed by a bill of lading which contained a clause to the effect that it was agreed that the value of each package shipped thereunder did not exceed the sum of 250 dollars, and the carrier's liability shall in no case exceed that sum, unless a value in excess thereof be specially declared and stated in the bill of lading and extra freight as may be agreed on was paid. The cargo was damaged during the voyage and the question arose

[1] [1950] A. I. R. All. 543. [2] (1938) 1 K. B. 459.

whether the Steam Ship Co. was entitled to the protection given by this clause, and the matter had to be determined on the construction to be put upon the word "package", and Lord Justice Goddard at p. 467 of the report states: "Package must indicate something packed." Therefore, he held that the Shipping Co. was entitled to the protection of that clause, and at p. 546 Mr. Justice Desai in his judgment says:

"I consider that a bare article like a car or a silver bar or a bangle cannot possibly be described as a parcel or package; in order that an article can be said to be contained in a parcel or package, it is necessary that some other article is used with it in order to protect it, or cover it, or keep it in position or keep it together with another article or articles."

Therefore, according to the learned Judge, and with respect rightly, in order that s. 75 should apply there should not only be one article but two articles and one should play the role of a container to the other, and Mr. Justice Desai points out that as there was absolutely nothing used with the silver bar in the Lahore case, he was unable to agree that that bar came within the meaning of a parcel or package, and he goes on to say that even if a string had been tied round it, it might have been possible to say that it was a parcel or a package.

In our opinion, with respect, the view taken by the Allahabad High Court on a construction of s. 75 is to be preferred to the view taken by the Lahore High Court. Therefore as far as s. 75 is concerned, inasmuch as the silver bars were not contained in any parcel or package, the railway administration cannot claim the protection of s. 75 (*1*) in order to escape its liability under s. 72 (*1*).

The next question that has got to be considered is whether the risk note in form 'X' protects the railway administration. Now, the scheme of ss. 72 and 75 is fairly clear. As I have already pointed out, s. 75 constitutes a statutory limitation upon the liability of the railway administration under s. 72 (*1*), but apart from that statutory limitation further limitations upon the liability of the railway administration can be set up provided they satisfied the two conditions laid down in sub-s. (*2*), and what is urged by the railway administration is that risk note 'X' constitutes a further limitation upon the liability of the railway administration under sub-s. (*2*) of s. 72. Risk note 'X' has been approved by the Central Government and the risk note was signed as required by sub-cl. (*a*). To that extent both conditions (*a*) and (*b*) of s. 72 (*2*) are satisfied, but what is urged by the

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plaintiff is that the particular form is not appropriate to the transaction to which it is sought to be applied. Turning to this risk note, it states in terms that it is approved by the Governor General in Council under s. 72 (2) (b) of the Indian Railways Act IX of 1890, and then it gives a direction in what cases this has got to be used and it states "to be used when the sender elects to despatch an excepted article or articles specified in the second schedule to the Indian Railways Act IX of 1890, whose value exceeds one hundred rupees without payment of the percentage on value authorized in s. 75 of that Act." It is not disputed that in this case the sender despatched an excepted article which is specified in the second schedule, nor is it disputed that the value of the article exceeded Rs. 100, but what is urged is that the form only applies where there is a liability upon the consignor to pay a percentage on the value of the article under s. 75. In other words, according to Mr. Desai for the plaintiff, this risk note applies to those very cases which are covered by s. 75. It is difficult to understand why such a risk note was found necessary if there was already a statutory limitation upon the liability of the railway administration under s. 75 (1). The only answer that Mr. Desai could give was that as s. 75 (1) requires the consignor to pay a percentage on the value of the article only if required by the railway administration, in order to keep a record of the fact that the consignor had been called upon to pay an additional freight, this risk note had to be entered into by the consignor. This explanation seems to us to be entirely unsatisfactory. It is difficult to believe that a form should have been prepared and the sanction of the Governor General solemnly taken merely in order to enable a railway administration to keep a record of something which could easily have been recorded in the ordinary course in the books of the railway administration. But it is not sufficient for us to be satisfied that it is not probable that the risk note was devised merely in order to keep a record as suggested by Mr. Desai, and that it is not probable that it could refer to the very cases which are covered by s. 75. We must be satisfied that the particular transaction we are dealing with, falls within the ambit of this risk note so as to entitle the railway administration to escape the responsibility under s. 72 (1) of the Act.

When we turn to the body of the risk note, it states that the consignment is charged at the ordinary rates for carriage, "and whereas I have been required to pay and elected not to pay, a percentage on the value of the consignment by way of compen-

sation for increased risk," and what is strongly urged by Mr. Desai is that this statement coupled with what appears earlier and to which attention has been drawn, viz., "without payment of the percentage on value authorized in s. 75 of that Act", clearly goes to show that this risk note only applies in those cases where the railway administration is entitled to require the consignor to pay a percentage on the value of the consignment and where it is open to the consignor to elect whether to pay or not to pay, and Mr. Desai says that the only provision under the Railway Act where the railway administration can call upon the consignor to pay additional freight or a percentage on the value of the consignment is where under s. 75 the consignor sends an excepted article in a parcel or package, and as in this case the article was not sent in a parcel or package the railway administration had no right to require the consignor to pay any additional amount, and, therefore, this particular risk note cannot apply to a case which we are considering in this appeal. In our opinion, we must hesitate to give to this risk note a construction which would make it entirely redundant and superfluous, and if it is possible and unless the construction is strained, we should give to the risk note a meaning which would go to show that the risk note was designed for meeting cases and contingencies which are not and cannot be covered by s. 75 of the Act.

Now, it was open to the Central Government to permit the railway administration to limit its liability in respect of excepted articles specified in the second schedule whose value exceeded Rs. 100 irrespective of whether they were contained in a parcel or package. It was also competent to the Central Government to permit the railway administration to limit this liability on certain terms and conditions and the Central Government could well have told the railway administration that "you can only limit your liability in respect of these articles provided you give an option to the consignor to pay a higher freight and if he pays a higher freight then your liability under s. 72 (*1*) would continue," and that in our opinion is exactly what the risk note in form 'X' does. It authorises the railway administration, where they are called upon to carry excepted articles, to require the consignor to elect whether he wants to lay additional freight, in which case the railway administration would be liable under s. 72 (*1*), or not to pay additional freight, in which case they would be harmless and free from all responsibility for any loss, destruction or deterioration of the articles

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consigned, and therefore the risk note 'X' deals with all cases of excepted articles being consigned and not only where the excepted articles are consigned after being contained in any parcel or package.

Mr. Desai says that there is no provision in the Railway Act which entitles or authorises the railway administration to charge a percentage on the value of the article which is not contained in a parcel or package. Mr. Desai says that the authority of the railway administration to charge such percentage only arises under s. 75, and Mr. Desai further says that even assuming the Governor General had the right to authorise the payment of a percentage on value in respect of articles which are not contained in a parcel or package, no such percentage has in fact been fixed. This is obviously erroneous as the payment of the percentage on the value of the article is fixed by the risk note itself and what the risk note states is that the percentage is to be charged as authorised in s. 75 of that Act. Therefore, the risk note provides that the same percentage on value should be charged in respect of articles which do not fall within s. 75 as is to be charged with respect to the articles which fall within the ambit of s. 75. The reference to s. 75 is merely to obviate the necessity of setting out in the risk note the very percentage which is authorised under s. 75. Therefore the risk note in form 'X' constitutes a further limitation upon the liability of the railway administration under s. 72 (*1*) and this limitation is by reason of an agreement which falls under s. 72 (*2*) and the limitation clearly is that the railway administration is free from any responsibility under s. 72 in respect of excepted articles whose value exceed Rs. 100 unless the consignor pays the additional freight if so required to do by the railway administration. If he pays the additional freight, then the responsibility of the railway administration continues unaffected and is the same as under s. 72 (*1*). Therefore, inasmuch as we have clearly a case here of an article which is specified in the second schedule whose value admittedly exceeds Rs. 100 and in respect of which no additional freight was paid by the consignor, no liability arises against the railway administration in respect of the loss of these four silver bars.

The further contention urged by Mr. Desai was that even so on the facts of this case it was not established that there was a loss of these four silver bars, and the only limitation on the liability of the railway administration is in respect of the loss, destruction or deterioration of the goods delivered to the rail-

way administration. Mr. Desai has taken us through the evidence in the case and has drawn our attention to the salient features, but he has not pressed this question of fact and has left it to us to make our observations on the merits of the matter so that the Dominion of India may take into consideration our observations and if possible give effect to our recommendations. Now this is a peculiar case in the sense that these four silver bars actually reached Balia. This is not a case where they were lost in transit. Having reached Balia, instead of being delivered to the person who had the railway receipts or, as the rules of the railway administration require, to a person who was prepared to execute an indemnity bond, they were delivered to a person who admittedly was not authorised to receive them, and this became possible by reason of the complicity of a servant of the railway administration who was the parcel clerk at the material time. Therefore, the loss caused to the plaintiff is entirely due to the negligence or, indeed if it is much more than that, the fraud practised by a servant of the railway administration. As a matter of fact the railway administration prosecuted both the parcel clerk, one Nazir Ahmed, and this Yogendranath who had obtained those silver bars, for misappropriation of these silver bars. It is true that perhaps in law misappropriation by a servant of the railway administration would constitute loss within the meaning of the statute, but apart from legal technicalities there is no doubt that the plaintiff has suffered not because of any accident, not because of any act of God, but because a servant of the railway administration happened to be dishonest and acted contrary to the rules of the railway administration and in breach of his authority.

Now, we have often had occasion to say that when the State deals with a citizen it should not ordinarily rely on technicalities and if the State is satisfied that the case of the citizen is a just one, even though legal defences may be open to it, it must act, as has been said by eminent Judges, as an honest person. In this case, at the instance of Sir Jamshedji, we have construed the law and on the law perhaps the plaintiff has no case at all. But turning away from the law and looking to the equities of the case there can be no doubt that the railway administration is responsible for the loss caused to the plaintiff. As I have said before, it was entirely due to the dishonest servant of the railway administration that the plaintiff suffered this heavy loss of over Rs. 20,000, and we are sure that the Dominion of India although we are dismissing this suit, will consider whether some

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reasonable compensation should not be paid to the plaintiff for the loss he has suffered. Sir Jamshedji has assured us that he would do his best to put forward this point of view to his client, the Dominion of India, and we have no doubt that the Dominion of India will be persuaded by Sir Jamshedji to take a fair, reasonable and equitable view of this case and do something to meet the justifiable grievance of the plaintiff.

The appeal must, however, fail and must be dismissed. With regard to costs, in view of what we have just said, we think this is a proper case where no order as to costs should be made.

Tendolkar J.—I agree, but would like to add a few observations with regard to the true effect of the risk note in form 'X'. It is clear that under s. 72 (*1*) of the Railways Act the railway administration is put in the same position as an ordinary bailee and its liability for the carriage of goods is that of an ordinary bailee. Section 75 constitutes a statutory exception to that liability. Another exception is to be found in s. 72 (*2*) under which it is open to a railway administration to obtain an agreement from the consignor limiting its responsibilities provided the two conditions laid down in that sub-section are satisfied, viz., (*a*) that the agreement is in writing signed by or on behalf of the consignor, and (*b*) it is in a form approved by the Central Government. There is in this case a risk note in form 'X' signed by the consignor. This form has been approved by the Central Government, but what is contended on behalf of the appellant is that the form is inappropriate to this particular consignment of silver bars and that the form only applies to cases which fall within s. 75, i. e., cases of consignment of excepted articles which are contained in any parcel or package and in respect of which the railway administration has the right to ask the consignor to pay a percentage on the value declared by the consignor of the contents of the parcel or package. This contention of the appellant is based on the fact that there is in the approved form of risk note 'X' a direction in the following words,

> "to be used when the sender elects to despatch an expected article or articles specified in the second schedule to the Indian Railways Act IX of 1890, whose value exceeds one hundred rupees without payment of the percentage on value authorised in s. 75 of that Act,"

and to a further recital in the form of the risk note itself which is in these words:

"Whereas I have been required to pay and elected not to pay, a percentage on the value of the consignment by way of compensation for increased risk."

The argument is that the words "without payment" in the direction imply that a percentage on value could have been legitimately demanded by the railway administration, and since in the case of excepted articles which are not contained in any parcel or package there was no authority in the railway administration to require the consignor to pay a percentage on the value, this form of the risk note cannot be applicable to such cases. The fallacy underlying this argument lies in the fact that when the Central Government has been authorised under s. 72 (2) (b) to approve of a form and thereby to enable the railway administration to escape part of its normal liability as an ordinary bailee, it is quite obviously open to the Central Government to say to the railway administration that "they shall not allow it to obtain a risk note in every case, that they shall approve of a form of risk note only in a limited class of cases", and to indicate what that class of cases will be. The direction contained at the head of the form approved indicates, in my opinion, the class of cases in which this risk note can be used and the Central Government in effect tells the railway administration that if it wishes to protect itself by obtaining a risk note from a consignor of excepted articles, it must in the first instance give to such consignor an option to pay a percentage on value authorised in s. 75 of that Act, whether or not the excepted articles are contained in a parcel or a package, and upon his failure to do so or upon his electing not to pay, they can ask him to execute a risk note in the form which is approved. The risk note, therefore, cannot come into existence until the railway administration has in the first instance offered to the consignor to take the entire risk if he pays the same percentage on value that he would have paid if the excepted articles were contained in a parcel or package and the consignor had elected not to pay the percentage on value. Therefore, the direction which is relied upon by the appellant and the recital in the risk note form 'X' are not indications of the fact that they relate only to cases which fall within s. 75, but on the contrary they indicate clearly that in cases which may not fall under s. 75 it is still open to the railway administration to offer to the consignor that they will carry the entire risk if the consignor is willing to make payment of the percentage on value authorised under s. 75 and if the consignor fails to do so

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the railway administration is entitled by virtue of the approval of the form under these circumstances by the Central Government to obtain a risk note in form 'X'. In the present case, therefore, in my opinion, the railway administration was perfectly entitled to obtain a risk note in the form in which they did and the railway administration has fully protected itself by this note.

I agree with the order proposed by my Lord the Chief Justice and I also join in the recommendation that Government will consider the case of the appellant from the point of view indicated in the judgment of my Lord the Chief Justice.

P. C.—Liberty to the appellant to withdraw the sum of Rs. 500 deposited for security of costs.

Attorneys for appellant: *Raghavayya, Nagindas & Co.*

Attorneys for respondent: *Little & Co.*

Appeal dismissed.

P. M. P.

INCOME-TAX REFERENCE

Before Mr. M. C. Chagla, Chief Justice, Mr. Justice Dixit and Mr. Justice Tendolkar.

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RAJPUTANA TEXTILES (AGENCIES) LIMITED, APPLICANTS *v.* THE COMMISSIONER OF INCOME-TAX, BOMBAY CITY, RESPONDENT.*

Taxation of Income (Investigation Commission) Act, (XXX of 1947) s. 8 (5)—Indian Income-tax Act (XI of 1922), s. 66 (1)—Single transaction of purchase and sale of shares—When such transaction is an adventure in the nature of trade.

Even a single transaction of purchase and sale of shares could be regarded as an adventure in the nature of trade if there is some element of trade attaching to the transaction and there is found in that transaction some activity or some organization which is associated with trade or trading.

R. T., the assessee company, entered into an agreement to purchase 1976000 shares of certain Mills at Rs. 4/4 per share. Out of these shares, R. T. sold 1374000 shares and made a profit of Rs. 13,52,600. This was the only transaction of purchase and sale of shares which it had entered into. It had neither utilized its own capital nor borrowed any capital for

*Income-tax Reference No. 31 of 1951.