

the ground that the trial has been vitiated by a failure to comply with the mandatory provisions of section 312 of the Criminal Procedure Code. Whether the accused are to be retried is not within our province to determine, but for the reasons we have stated we doubt whether any useful purpose would be served by again placing them on their trial.

We direct that the accused be discharged forthwith from their bail bonds.

SUHRAWARDY J. concurred.

A. S. M. A.

Acquittal set aside.

ORIGINAL CIVIL.

Before Page J.

NARENDRA NATH SEN

v.

EAST INDIAN RAILWAY Co., LTD.*

1924.

April 8

Damages—Railway Company—Medicine—Gold and silver—Railways Act (IX of 1890), s. 75.

The gold and silver *bonâ fide* contained in medicine are not "gold, and silver coined or uncoined, manufactured or unmanufactured" within the meaning of s. 75 of the Railways Act and need not be declared as such in order to recover damages for the loss of the article.

The words "gold, and silver coined or uncoined, manufactured or unmanufactured" should not be technically construed, but a broad and common sense meaning should be attributed to them.

THIS was a suit for the recovery of Rs. 4,602-12 as damages for the loss of two cases of medicine which were entrusted with the East Indian Railway Company for carriage from Calcutta to Benares.

* Original Civil Suit No. 660 of 1920.

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 LEGAL
 REMEM-
 BRANCE,
 BENGAL,
 v.
 SATISH
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The defence was that the cases contained gold, silver and pearls, and as the plaintiff did not declare them as such as provided by section 75 of the Railways Act, the defendant company was not liable.

Mr. J. C. Hazra and *Mr. S. C. Dutt*, for the plaintiff.

Mr. Langford James and *Mr T. Ameer Ali*, for the defendant company.

PAGE J. This is a suit brought to recover damages for the non-delivery of certain cases of medicine consigned by the plaintiff on the defendant Railway from Calcutta to Benares. Five cases of medicine were delivered to the Railway Company at Calcutta on the 25th April 1921, and three cases arrived at Benares on the 11th May 1921. Two of the cases, however, were found to be missing. The material facts are few, and can be ascertained without difficulty. It is agreed that the two cases did not arrive at Benares, that they were lost during transit; and that no declaration was made or increased duty paid as provided by section 75 of the Railways Act (IX of 1890).

The defence of the Railway Company is that, as the plaintiff did not comply with the provisions of section 75, the Railway Company is exempted from all liability, because the defendant company alleges that the two cases in question contained gold, silver and pearls. Having regard to the large number of cases containing medicine which are consigned for transportation, I understand that this case involves the decision of a question of general importance to the Railway Companies. I am not satisfied on the evidence that the medicine contained in these cases contained pearls, and I am supported in that view by the evidence of the plaintiff, who stated that he could obtain the same medicinal result by the use of lime

instead of pearls. It is improbable, therefore, that he would have used the more expensive ingredient. As regards gold and silver, the problem which I have to solve is rather more difficult. I do not propose, nor do I think that it would be desirable, to attempt to define the words used in the second schedule to the Railways Act which are material in this case, namely, "gold and silver coined or uncoined, manufactured or unmanufactured." The question which I have to decide is whether the gold and silver which it is alleged was contained in this medicine was "gold and silver coined or uncoined, manufactured or unmanufactured" within the meaning of the second schedule. In my opinion, it was not. The contents of these two cases were medicine, largely in the form of pills concocted by an elaborate process, and in some instances, containing as one of the ingredients gold oxide or sulphite of silver. The process by which the pills were compounded resulted in the gold and silver being reduced to fine powder, in colour dark brown and black. According to the plaintiff it is not possible to cause them to be restored to their original condition as gold or silver in a free state. According to an expert called on behalf of the defendant company it is possible to do so, but only by the application of a further chemical process. Such substances, no doubt, may be regarded in one sense as being gold and silver, and it may be that what was put into these pills as part of the ingredients of the medicine was a form of metallic gold or silver, or as contended by the plaintiff, it may be that it was gold oxide and sulphite of silver. But, whichever view may be the correct one, these substances were not gold and silver in the sense in which such terms are understood in general parlance, and by ordinary people. In my opinion, a broad and common sense,

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rather than a technical, construction should be placed upon these words. I find as a fact that the medicine contained in these cases were *bonâ fide* made up for the purpose of the plaintiff's calling, and, having regard to the common sense meaning which I hold ought to be attributed to the words "gold and silver, coined or uncoined, manufactured or unmanufactured," in my opinion, the medicine contained in these two cases did not contain "gold and silver, coined or uncoined, manufactured or unmanufactured" within the meaning of those words as used in the second schedule. I expressly refrain from defining what is the meaning of those words in the second schedule, and for the purpose of this judgment I confine my observations to stating, that, whatever may be the meaning properly attributable to those words, they are not referable to the medicine contained in the cases which are the subject matter of this suit.

There remains the question of damages. The plaintiff has not refrained from adopting what appears to be almost the invariable course taken by a plaintiff who institutes a suit against a railway company. He has grossly exaggerated the value of his claim. In my opinion, having regard to the evidence, the plaintiff has not suffered the damages which he alleges, and the value of the two cases of medicine which have been lost I estimate to be Rs. 1,200. A decree, therefore, will be passed in favour of the plaintiff for Rs. 1,200 and costs on scale No. 2.

Attorney for the plaintiff: *S. M. Dutt.*

Attorneys for the defendant company: *Morgan & Co.*

B. M. S.