[3 Mad. 240.]

ORIGINAL CIVIL.

The 18th July, 1881.

PRESENT :

MR. JUSTICE KINDERSLEY.

Kalu Ram Maigraj.....(Plaintiff).

versus

The Madras Railway Company.....(Defendants).*

Railway Companies, interchange of traffic between—Agency—Limitation in suit against carrier for loss of goods.

When two Railway Companies interchange traffic, goods, and passengers with through tickets, rates, and invoices, payment being made at either end and profits shared by mileage, the receiving Company, by granting a receipt-note for goods to be carried over and delivered at a station of the delivering company's line, does not thereby contract with the consignor of the goods as agent of the delivering Company.

An action against a Railway Company for loss of goods, when there is no contract, is governed by Schedule II, Clause 30, of the Limitation Act.

Haji Mahomed Isack v. *B. I. S. N. Co.* (I. L. R., 3 Mad., 107) followed.

THE facts of this case sufficiently appear in the Judgment.

Mr. *Grant* for the Plaintiff.

The case of *Gill* v. *The Manchester, Sheffield and Lincolnshire Railway Company* (L. R., 2 Q. B., 186) shows that when Railway Companies enter into an arrangement such as exists between these Companies, the receiving Company becomes the agent of the delivering Company to contract with the consignor of goods. After the arrival of the goods at *Bellary* the *Madras Company* became warehousemen and liable as bailees under an implied contract to take good care of the goods which were stored in an open yard (Section 151 of the *Contract Act*).† *Surutram Bahya* v. *G. I. P. Ry.* Co. (I. L. R., 2 Bom., 97) Section 49 or Section 115 of Schedule II of the *Limitation Act*, and not Sections 30 and 31, is applicable to this case.

[241] We applied for our goods within a reasonable time and could not get them.

The Advocate-General (Hon. *P. O'Sullivan*) and Mr. *Wedderburn* for the Defendants.

In *Gill's* case there was an elaborate arrangement amounting to a partnership agreement between the Companies. Nothing of the sort has been proved here. The contract was one and entire with the receiving Company to deliver at *Bellary*. *Muschamp* v. *Lancaster and Preston Junction Railway Co.* (8 M. & W., 421); *Wilby* v. *West Cornwall Railway Co.* (2 H. & N., 703); *Mytton* v. *Midland Railway Co.* (4 H. & N., 615); *Collins* v. *Bristol and Exeter Railway Co.* (11 Ex., 790; s. c. in error 1 H. & N., 517; and 7 H.L., 194).

There being no contract with us, the suit is barred. *Haji Mahomed Isack* v. *B. I. S. N. Co.* (I. L. R., 3 Mad., 107).

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*Civil Suit No. 335 of 1880 in the High Court of Madras.

†[Sec. 151 :—In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods of the same bulk, quality and value as the goods bailed.]

Care to be taken by bailee.

The loss of the goods was not due to any negligence of the defendants. The Company's servants did what they could under the circumstances, and the plaintiff's agent did not apply promptly, as he should have done considering the enormous traffic in grain.

Kindersley, J.—This suit has been brought against the *Madras Railway Company*, the plaintiff alleging that on the 6th September 1877 he consigned from *Sahanul*, a station on the *Oudh and Rohilkund Railway*, to himself at *Bellary* 218 bags of grain; that he contracted with the defendants as carriers, through their agents the *Oudh and Rohilkund Railway Company*, to pay the defendants, on delivery of the goods at *Bellary*; and that the defendants, by the said agents, agreed to convey the goods safely to *Bellary* and to deliver them to the plaintiff there within a reasonable time, taking care of them in the meantime. The plaint further charges that the goods arrived safely at the defendant's station at *Bellary*, where, owing to the defendants' negligence and want of proper care, they were damaged by rain and were afterwards destroyed by order of a Magistrate. The plaintiff, therefore, claims compensation for breach of contract and for loss of his goods.

The defendants denied that they had entered into any contract with the plaintiff. They stated that the goods arrived at *Bellary* about the 25th September, but that the plaintiff having failed **[242]** to apply for delivery of the goods within a reasonable time after their arrival, the goods were wetted and spoiled by the rain without any negligence or want of proper care on their part. The defendants also stated that if they had been guilty of negligence, they would not be liable to the plaintiff, as they held the goods merely as agents for the *Oudh and Rohilkund Railway Company*, and made no contract with the plaintiff. They further contended that the suit was barred by the *Act for Limitation of Suits*.

The plaintiff's Gumasta, *Ramasahai*, has given evidence to the effect that in the month of Bhadripad (September-October) 1877, he went to *Bellary*, and presenting the receipt-note given by the *Oudh and Rohilkund Railway Company*, demanded delivery of the grain, but was told by one of the native officials, to whom consignees were presenting receipt-notes, that the goods had not arrived. He remained at *Bellary* for twenty days, making repeated applications at the station for delivery of the goods, but he was always told that they had not arrived. On two occasions he searched in the yard for his master's bags, but could not find them. When he had been at *Bellary* about four days, one of the officials of the Railway, *Murugasa Mudali*, marked the date on his receipt-note 12-10-77. Therefore the plaintiff may have arrived at *Bellary* about the 8th of October.

Now it has been proved by officials who were employed in superintending the unloading of goods at *Bellary* at that time, and who refer to books kept in the course of business, that the wagons containing the plaintiff's grain arrived at *Bellary* on the 24th September, and were unloaded on the following day. The delivery book does not show that they were ever delivered to any one. Heavy rain fell in the latter part of September, Prices fell, and many of the consignees neglected to remove their goods. The result was an accumulation of grain in the yard. The goods shed being full, it was necessary to keep the greater part of the grain in the yard. There was not enough tarpaulin to cover it all. Heavy rain fell in the latter part of September and in the beginning of October, and the greater part of the grain which was in the yard was damaged and had to be destroyed. Even that which was covered with tarpaulins did not escape. The witness, *Murugasa Mudali*, states that, when the receipt-note

[243] was brought to him as Goods Delivery Clerk at *Bellary* station on the 12th October, he pointed the bags out to the man who produced the receipt-note. He said he would come in the evening and pay for them. The bags were then lying in the yard; they were already damaged by the rain. They were never removed or paid for; they were probably destroyed a few days afterwards with the other goods which had been damaged. This witness's account appears to be probably true. The Railway servants were anxious to have the goods removed. It was equally natural that, with a falling market and the goods already damaged the plaintiff's Gumasta would not care to accept delivery. At the same time it is probable that he would profess himself ready to take delivery. When the grain began to swell, the bags burst. The good grain was then separated from that which was rotten. The rotten grain was sent away by order of a Magistrate, and what was saved was sold. I do not find that the bags of grain were damaged from any negligence or want of proper care on the part of the defendants or their servants. Consignees did not readily take delivery after the rain commenced. Grain accumulated in very large quantities. The goods shed would only hold a small portion of it; there was no cover for the rest. The officials covered as many bags as they could with tarpaulins and date mats, but many even of such bags were damaged. The true cause of the plaintiff's loss was that he did not apply for delivery within a reasonable time after the arrival of the bags at *Bellary*. The defendants have not been shown to have been guilty of negligence.

At the hearing it was contended for the defence that the defendants entered into no contract with the plaintiff; that the *Oudh and Rohilkund Railway Company* did not act as agents for the defendants, but the defendants acted as agents for the *Oudh and Rohilkund Railway Company*; and that, therefore, the suit would not lie against these defendants upon the contract which the plaintiff made with the *Oudh and Rohilkund Railway Company*. It was further contended that if the suit were founded in tort, independently of contract, the suit was barred by the *Act of Limitation*, Schedule II, Section 30.

Upon the evidence before me, I cannot find that there was any contract between the plaintiff and the defendants. The receipt-[244] note filed by the plaintiff is evidence of a contract between the plaintiff and the *Oudh and Rohilkund Railway Company*. It does not show that the company acted as the agents of the *Madras Railway Company*. It is merely evidence of an agreement between the plaintiff and the *Oudh and Rohilkund Railway Company* that the latter would convey the goods to *Bellary*, and that the plaintiff would pay a certain sum on delivery. It may, indeed, have been understood that the Company with whom the contract was made would perform it through the agency of other Companies; but that, in entering into the contract, the *Oudh and Rohilkund Railway Company* were themselves acting as agents of the defendants has not been shown. Mr. *Grant* has referred me to the case of *Gill* v. *The Manchester, Sheffield and Lincolnshire Railway Company* (L.R., 2 Q.B., 186). There the defendant Company had entered into a very complicated convention with another Railway Company, not only for a full and complete system of interchange of traffic, but that the two Companies should *aid* and *assist each other* in every possible way, as if the whole concerns of both Companies were amalgamated; and that every possible facility should be given by either party to develope and increase the traffic of both. Except for purposes of repairs, the stock was to be considered as one stock. A joint board of directors was to have charge of the working of the agreement. It was held that, by virtue of this agreement, the forwarding Company became

the agents of the delivering Company. That any such convention exists between the defendants and the *Oudh and Rohilkund Railway Company* has not been shown, but only an interchange of traffic, trucks running through, with through invoices, fares paid or to pay, and divided, not as in the other case in pursuance of the agreement, but according to the miles actually travelled on each line. The learned *Advocate-General* has referred me to the following cases, which show that a contract made with a Railway Company for the delivery of goods at a station on some other line of railway has been regarded in *England* as an entire contract made with the first Company alone, and not with that Company as the agent of the Company to whose station the goods were to be sent. *Muschamp* v. *Lancaster and* [245] *Preston Junction Railway Company* (8 M. & W., 421); *Wilby* v. *West Cornwall Railway Company* (2 H. & N., 703); *Mytton* v. *Midland Railway Company* (4 H. & N., 615); *Collins* v. *Bristol and Exeter Railway Company* (11 Ex., 790; S. C. in error 1 H. & N., 517, and 7 H. L., 194). I think that each case must be decided upon the evidence given as to the contract made. The *Madras Railway Company* might have entered into an agreement with the *Oudh and Rohilkund Railway Company*, which would in effect have constituted the latter their agents for receiving goods. But it has not been shown that they did so. Nor has it been shown that the *Oudh and Rohilkund Railway Company* in this case received the plaintiff's goods as the agents of the *Madras Railway Company*.

Then, as it has not been shown that there was any contract between the plaintiff and defendants, I must hold, following the decision of this Court in *Haji Mahomed Isack* v. *British India Steam Navigation Company* (L.R., 3 Mad., 107) that the suit, so far as it is founded not on contract, but upon the alleged negligence or want of proper care on the part of the defendants, is barred by the *Limitation Act*, Section 30 of Schedule II. As to costs, it must be remembered that, if the defendants may possibly have saved some of the plaintiff's grain, which is not distinctly proved, they have lost their freight, and the fault is clearly shown to have been on the side of the plaintiff. This suit is therefore dismissed with costs.

Attorneys for the Plaintiff: Messrs. *Grant* and *Laing*.

Attorneys for the Defendants: Messrs. *Barclay* and *Morgan*.

NOTE.—See *G. I. P. Ry. Co.* v. *Radhakisan Khushaldas* (*I.L.R.*, *5 Bom.*, *371.*)

NOTES.

[The same view was taken of the liability of the Railway Company not directly contracting, in (1906) 29 All. 228; (1901) 3 Bom. L. R. 260.

As regards limitation, see also (1894) 19 Bom. 165; 108 P. R. 1906 F. B.]