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of the date of receipt of this order. Seven days will be allowed for filing objections after the finding has been posted up in this Court.

The appellant's objection to the finding of the Subordinate Judge in regard to improvements are untenable. He did not, in the Lower Appellate Court, claim compensation for the kalam for which he now seeks compensation, nor did he, in the Court of First Instance, object to the principle on which the compensation for reclamation was calculated. He, in fact, accepted that principle, and he cannot now be allowed to object to it.

APPELLATE CIVIL.

Before Mr. Justice Subramania Ayyar and Mr. Justice Benson.

1897. December 10. 1898. February 1.

MADRAS RAILWAY COMPANY (DEFENDANT), PETITIONER,

v.

GOVINDA RAU (PLAINTIFF), RESPONDENT.*

Contract Act—Act IX of 1872, *s.* 73—*Railways Act—Act IX of* 1890, *s.* 72—*Condition under which goods despatched by Railway—Deterioration—Remoteness of damage.*

The plaintiff who was a tailor delivered a sewing machine and some cloths to the Madras Railway Company (the defendant) to be sent to a place where he expected to carry on his business with special profit by reason of a forthcoming festival. Through the fault of the Company's servants the goods were delayed in transmission and were not delivered until some days after the conclusion of the festival. The plaintiff had given no notice to the Company that the goods were required to be delivered within a fixed time for any special purpose, and he had signed a forwarding note under a statement that he agreed to be bound by the conditions at the back and one of those conditions was to the effect that the company is not liable "for any loss of or damage to any goods whatever by reason of accidental or unavoidable delays in transit or otherwise." The plaintiff now sued to recover from the Company a sum on account of his estimated profits and the travelling expenses of himself and his assistant at the place of delivery and their expenses for food and lodging while there:

Held (1), that as the plaintiff had not shown that the goods had undergone deterioration in value or otherwise the condition above cited was not void under Railways Act, 1890, section 72, although it had not been approved by the Governor-General in Council.

(2) that the plaintiff was bound by the condition even if he was in fact ignorant of its effect.

(3) that the damages claimed were too remote.

* Civil Revision Petition No. 80 of 1897.

PETITION under section 25 of the Provincial Small Cause Courts Act praying the High Court to revise the decree of P. S. Gurumurti Ayyar, District Munsif of Erode, in Small Cause Suit No. 1490 of 1896.

A suit for damages was brought by the plaintiff against the Madras Railway Company under the following circumstances. The plaintiff was a tailor. In view to make special profit at Karamadai during the car festival to be held at that place he delivered a sewing machine and a bundle of cloths to the defendant Company at the Erode Railway Station on the 29th February 1896 to despatch to that place. The plaintiff went to Karamadai and waited there till the 13th of March when the festival was over; but the goods were not delivered to him until the 26th of March. The plaintiff gave no notice of the purposes for which they were despatched and it appeared that he had placed his signature on the forwarding note under a statement that he was aware of the conditions on the back of the note and agreed to be bound thereby and on the back of the note there were certain conditions including that set out above. The damages claimed were the railway fare of the plaintiff and his assistant to Karamadai and their expenses there including the rent paid for the shop and also the special profit expected to be earned at Karamadai at the time of the car festival and the ordinary profit expected to be earned during the subsequent days when the sewing machine and the cloths were in charge of the defendants.

The District Munsif passed a decree for Rs. 16-4-0, being the amount of the railway fare of the plaintiff and his assistant to and from Karamadai and the sum actually spent by him when there.

The defendant preferred this petition.

Mr. *R. A. Nelson* for petitioner.

Respondent was not represented.

Mr. *R. A. Nelson*:—Railways Act, 1890, section 72, does not apply here as there was no loss, destruction or deterioration. Consequently the conditions on the forwarding note afford a complete answer to the suit. Moreover, the damages claimed are too remote and indirect. These damages did not arise naturally nor did the Company know that such would be the result of non-delivery not having been informed of the object or purpose with which the goods were sent. Contract Act, section 73; *Great*

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Western Railway Co. v. *Redmayne*(1); *Woodger* v. *Great Western Railway Company*(2); *Simpson* v. *London and North Western Railway Co.*(3); Mayne on damages, page 300.

SUBRAMANIA AYYAR, J.—The plaintiff, a tailor, with a view to make special profits during the car festival at a place called Karamadai in the Coimbatore District entrusted to the defendants, the Madras Railway Company, on the 29th February 1896, his sewing machine and a cloth bundle to be carried from Erode and to be delivered to him at Karamadai. The defendants were, however, not told why the articles were sent. Through the fault of the defendants' servants the articles were not carried to Karamadai until long after the date by which they should, in the usual course, have arrived at that station. Before they reached the place the festival had come to an end. The plaintiff, who had waited at Karamadai for a number of days expecting the arrival of the articles, having returned to Erode, the articles were transmitted back and were delivered to him there on the 26th March 1896.

The plaintiff sued for damages said to have been sustained by him in consequence of the delay in the delivery of the articles. The District Munsif gave him a decree for Rs. 16-4-0, being the railway fare of the plaintiff and his assistant from Erode to Karamadai and back and their expenses for food and lodging while at Karamadai.

The first question that arises is whether the plaintiff is precluded from maintaining this suit by one of the conditions printed on the back of the forwarding note, exhibit I. That condition is to the effect that the defendants are not responsible for any loss of, or damage to, the goods by reason of accidental or unavoidable delay in transit or otherwise. It no doubt appears that exhibit I was neither read nor explained to the plaintiff. But, assuming that he was in fact ignorant of the condition in question, that does not affect the binding character of the contract evidenced by exhibit I, inasmuch as in the portion thereof which bears his mark it is expressly stated that he was aware of the conditions on the back and that he agreed to the articles being carried subject to such conditions. (Per Mellish, L. J., in *Parker* v. *South-Eastern Railway Co.*(4).) He is therefore precluded from

(1) L.R., 1 C.P., 329.
(2) L.R., 2 C.P., 318.
(3) L.R., 1 Q.B.D., 274.
(4) L.R., 2 C.P.D., 416 at p. 421.

maintaining this suit, unless such a condition is void under section 72 of the Indian Railways Act. The question then is whether the contract between the plaintiff and the defendants in so far as it purports to exonerate the latter from responsibility for delay is, as held by the District Munsif, void under section 72 of the Railways Act IX of 1890. In discussing this point I shall proceed on the supposition that the condition covers a delay which, as found here, was neither accidental nor unavoidable. The section referred to in so far as it is material for our present purpose runs thus:

"72 (1) The responsibility of a railway administration for the "loss, destruction or deterioration of . . . . goods delivered "to the administration to be carried by railway shall, subject to the "other provisions of this Act, be that of a bailee under sections "151, 152 and 161 of the Indian Contract Act, 1872.

"(2) An agreement purporting to limit that responsibility shall, "in so far as it purports to effect such limitation, be void unless it—

* * * *

"(*b*) is otherwise in a form approved by the Governor-General "in Council.

* * * * "

Now, in the present case, there was no loss or destruction of the articles consigned and the applicability of the section to the case depends upon the question whether there was, within the meaning of the enactment, a "deterioration," for which the contract purports to render the defendants not responsible, since the words "damage to the goods" in the contract may be taken to comprehend deterioration. The word deterioration imports the becoming reduced either in quality or in value (see the Standard Dictionary). Having regard to the nature of the articles and to the very limited delay, it is not possible to suggest that any deterioration in quality could have taken place. As regards the value of the cloth, however, it might well have been shown to have been otherwise with reference to what was laid down in *Wilson v. Lancashire and Yorkshire Railway Co.*(1). There the plaintiff, a cap manufacturer, sued the defendants for damages caused by the improper delay in delivering some cloth. The plaintiff had bought the article with a view to make it into caps for sale during the spring season of the year, but owing to the delay in transit the plaintiff was unable to sell or use any part of it or to manufacture

(1) 30 L.J., C.P., 232.

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any part of it into caps for sale in that season. Referring to the fall in the value of the cloth that could be shown to have taken place in consequence of the same arriving at a time when it was less in demand and less capable of being applied to an immediate use, Williams, Willes and Keating, JJ., spoke of it as "deterioration," and those learned Judges as well as Byles, J., held that in respect of such fall, the same being the direct and natural result of the delay, the carrier was liable even in the absence of notice of the purpose for which the article was sent. Clearly, therefore, in the case before us if the plaintiff had alleged and proved that, owing to the loss of the special opportunity for sale of which he wished to take advantage, the cloth had fallen in value compared to what he could have got for it had he been able to dispose of it at Karamadai as he intended, the plaintiff would have been entitled to a finding that there was a "deterioration" within the meaning of section 72, and that the condition relied on as operating to limit the responsibility of the defendants in respect of such deterioration is void, inasmuch as the contract is not shown to have complied with the provision contained in clause (*b*) of the section. But the plaintiff did not allege and prove that there was any deterioration as just explained. Section 72 does not, therefore, apply to the case, and it follows that the condition in question precludes the plaintiff from claiming the damages awarded to him by the District Munsif, since they are not due to any deterioration of the articles consigned. I should add that there was another objection, which the District Munsif overlooked, to those damages being allowed. They consist, as will be seen from what has already been stated, of the trainage for the plaintiff and his assistant from Erode to Karamadai and back, rent paid at Karamadai for the shop engaged by the plaintiff for doing his work as a tailor and food expenses for the plaintiff and his assistant during the time they were waiting at Karamadai for the arrival of the articles. It is scarcely necessary to point out that none of these expenses was the proximate and direct consequence of the delay in the delivery of the articles and were therefore not awardable as natural damages (see *Woodger* v. *Great Western Railway Company*(1) and *Gee* v. *Lancashire and Yorkshire Rail. Co.*(2)) as the difference between the price which could have been obtained at the festival and that on the date when the cloth was returned to the plaintiff

(1) I.L.R., 2 C.P., 318. (2) 30 L.J., Exch., 11.

would have been (*Wilson* v. *Lancashire and Yorkshire Rail. Co.*(1)) already cited. No doubt had the plaintiff caused intimation to be given to the defendants when the articles were entrusted to them that he wanted them for sale or use at the festival, it may be that the items allowed by the District Munsif would be awardable as damages within the *contemplation* of the parties. But, as already stated, the defendants were not informed, when they undertook to carry the goods, that these were required by the plaintiff at the specific time at which and for the specific purpose for which he wanted them at Karamadai. The items allowed by the District Munsif were therefore too remote and ought not to have been decreed.

For all the reasons stated above I would set aside the decree of the District Munsif and dismiss the suit, but in the circumstances without costs.

BENSON, J.—The question for our decision is how far the Railway Company is liable for damages said to have been caused to the plaintiff by the Company's failure to deliver certain goods to the plaintiff within a reasonable time after they were entrusted to the Company to be carried from Erode to Karamadai. It is admitted that the Railway Company had no notice that the goods were required to be delivered within a fixed time for any special reason. Apart from any special contract, the responsibility of a Railway Company for the loss, destruction or deterioration of goods is declared by section 72 of the Railways Act (IX of 1890) to be that of a bailee as defined in sections 151, 152 and 161 of the Indian Contract Act, and the last section enacts that "if, by "the fault of the bailee, the goods are not returned, delivered, or "tendered at the proper time, he is responsible to the bailor for "any loss, destruction or deterioration of the goods from that time." In the present case there was no loss or destruction of the goods—nor was there any change in the absolute condition of the goods, but the word "deterioration" is wide enough to cover a falling off in the value of the goods due to their not having been delivered in time to enable the plaintiff to take advantage of the special market which would have been available during the festival at Karamadai if they had been delivered in due time. In other words, the plaintiff might have claimed as damages the difference between the ordinary value of the goods at Karamadai and the special value which they would have had, if they had been delivered to

(1) 30 L.J., C.P., 232.

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him at the time contemplated so as to be available for the special market then existing at Karamadai (*Wilson* v. *Lancashire and Yorkshire Rail. Co.*(1) and illustration (*q*) to section 73 of the Indian Contract Act, which illustration appears to be based on the English case). The plaintiff, however, did not allege or prove any such "deterioration," though there was a vague claim and vague evidence as to "loss of profit" owing to delay in delivery. It was, however, distinctly held in the above case, and illustration (*q*) to section 73 of the Contract Act distinctly shows that the plaintiff could not in such a case recover any damages for loss of profit. If "deterioration" in the sense above stated had been proved, the Railway Company would not have been protected by the special contract on the back of the forwarding note to the effect that the Company is not liable "for any loss of, or damage to, any goods "whatever by reason of accidental or unavoidable delays in transit "or otherwise," since the contract does not exclude "deterioration" in the above sense, but only loss of, or damage to, the goods unless indeed the words "damage to the goods" can be held to include "deterioration" due to extrinsic causes. Even if they could be so held (and I think it would be a strain on the language to do so), there is still the objection that it is not shown that the contract was in a form approved by the Governor-General in Council as required by section 72 of the Railways Act, and it may well be doubted whether sanction would have been given for so unreasonable a contract. For all these reasons the District Munsif was, I think right in disallowing the plaintiff's claim for loss of profits, but I think he was wrong in allowing the plaintiff the rail fare of himself and his assistant from Erode to Karamadai and back, and the cost of their food and lodging at Karamadai. Such damages could not have been in the contemplation of the parties when they made the contract, nor can they be said to have naturally arisen in the usual course of things from the breach, since the Railway Company had no notice of the reason why the things were being sent to Karamadai, or of the arrangements which the plaintiff was making to utilise them there. In other words, these damages are too remote and do not fall within the purview of section 73 of the Contract Act. I agree, therefore, in holding that the decree must be set aside and the suit dismissed, but in all the circumstances without costs.

(1) 30 L.J., C.P., 232.