APPELLATE CIVIL.

Before Sir R. S. Benson, Officiating Chief Justice, and Mr. Justice Sankaran-Nair.

1909. September 15, 22.

A. L. A. R. ARUNACHELLAM CHETTIAR AND OTHERS (PLAINTIFFS), APPELLANTS,

v.

THE MADRAS RAILWAY COMPANY (DEFENDANT), RESPONDENT.*

Carrier, liability of—Construction of contract—Consignor bound by ordinary train arrangements made by Company.

A consigned certain cotton by railway from *E* station to *K* station. Under the terms of the risk note signed by the consignor, the company was exempted from liability for any loss *before, during or after transit over the Railway.* Under the train arrangements made by the Railway Company, goods consigned from *E* to *K* were carried beyond *K* to *C*, and then back from *C* to *K*. The goods were damaged while at *C*. In a suit to recover compensation for the loss so caused:

Held, that the loss occurred during transit from *E* to *K* and that the company was protected by the terms of the risk note.

Every customer dealing with a company is bound not only by the ordinary route but also by the ordinary train arrangements according to which it professes to carry. *Tobin* v. *London & North-Western Railway Company*, (2 Ir. Rep. 22 at p. 35), referred to.

SECOND APPEAL against the decree of Mundappa Bangera, Subordinate Judge of South Malabar at Calicut in Appeal Suit No. 267 of 1906, presented against the decree of P. S. Sesha Iyer, Principal District Munsif of Calicut in Original Suit No. 618 of 1905.

The facts necessary for this report are set out in the judgment.

P. R. Sundara Ayyar for appellants.

D. M. C. Downing for respondent.

JUDGMENT.—In this case the defendants, the Madras Railway Company, contracted to carry a consignment of cotton for the plaintiffs from Erode station to Kallai station. The company carried the cotton in an iron covered goods wagon When the train reached Kallai station the wagon was not detached but was carried on a couple of miles to the next station (Calicut) where it was kept in the station yard during the night to be sent back to Kallai by another train in the morning. Early in the morning

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* Second Appeal No. 1022 of 1906.

smoke was seen to be issuing from the wagon and water had to be poured on it to quench the fire. When the cotton was delivered to the plaintiffs part of it was damaged by the fire and water. The plaintiff's suit was for the compensation for this damage.

The defendants alleged that they were protected by the terms of the risk note, exhibit I, which is signed by the plaintiff's consignor and formed part of the contract. The Courts below have found that there was no negligence on the part of the defendants The argument urged by the plaintiff's vakil before us is that the contract was to carry the goods from Erode to Kallai, and that as the defendants carried them further, viz., to Calicut, for their own convenience, that was done at their own risk, and they were not protected by the terms of the risk note. Both Courts have found that the cotton was taken by the usual route adopted and publicly notified (exhibit IV) by the defendants as that by which goods booked from Erode to Kallai are taken and that the defendants are protected by the terms of the risk note.

We think that the decision of the Courts below is right. In the risk note the plaintiffs' consignor says "I, the undersigned, do, in consideration of such lower charge, agree and undertake to hold the said railway administration and all other railway administrations working in connection therewith, and also all other transport agents or carriers employed by them, respectively, over whose railways or by or through whose transport agency or agencies the said goods or animals may be carried in *transit from Erode station to Kallai station* harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever *before, during and after transit over the said railway* or other railway lines working in connection therewith or by any other transport agency or agencies employed by them respectively for the carriage of the whole or any part of the said consignment." Under the risk note the defendants are protected from damages caused "before, during and after transit."

Having regard to the finding that the cotton was carried by the usual route adopted by the railway, we think that it must be held that the damage occurred "during" transit from Erode to Kallai within the meaning of the risk note. Even if it could be held that, as the damage occurred after the wagon first reached

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Kallai and had been carried beyond that station to Calicut, the damage did not occur "during" transit to Kallai, it would not be possible to hold that it did not in that view occur "after" transit to Kallai. The words "before during and after transit" seem to cover the whole period from the time the goods were delivered to the defendants at Erode up to the time they were re-delivered to the plaintiffs at Kallai.

The plaintiffs' vakil has relied on the case of *Sleat* v. *Fagg*(1) but we do not think that the case is on all fours with the present case.

With reference to the plaintiffs' plea that they were not aware of the Railway Company's arrangement that goods should be sent to Kallai *viâ* Calicut, and that it was an unreasonable arrangement imposing an extra risk on them against which the risk note would not protect the defendants, we may refer to the observations of Mr. Justice Gibson in the case of *Tobin* v. *London and North-Western Railway Company*(2) where it was held that "The consignor is bound to enquire as to trains and hour of arrival, and cannot, by omitting to do so, enhance the obligation of the carrier, or submit the reasonableness of their ordinary traffic arrangements to the review of a jury. Juries would, of course, take different views, according to the train service of their locality; and, if the management of goods traffic depended on their decision, it would become a chaos resulting in the ruin of the company under an avalanche of litigation. Whether he inquire or not, every customer dealing with a company is bound not only by the ordinary route (*Hales* v. *London North-Western Railway Company*(3)), but also by the ordinary train arrangements and hours of arrival according to which they profess to carry. This is distinctly laid down in the judgments in *Bolland's Case*(4); and my own decision in *M'Nally's Case*(5) is to the same effect." On the ground that the defendants are protected by the terms of the risk note, we dismiss the second appeal with costs.

Messrs. *David & Brightwell*, Attorneys for respondent.

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(1) (1822) 24 Rev. Rep., 407.
(2) 2 Irish Rep. 22 at p. 35.
(3) 4 B. & S., 66.
(4) 15 Ir.C.L.R., 560.
(5) 26 Ir.L.T.R., 138.