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possession of his estate, in discharge of a debt which has been adjudged to be due from it, is valid, though it appears reasonable and equitable, may not be altogether free from doubt. But, in the case in which this reference has been made, it is not clear that the two widows, who took upon themselves to sell the plaintiff's share, were lawfully in possession of it to her exclusion, and they were certainly not legally competent to act on her behalf as her guardians. Under the circumstances, it would seem, therefore, that she is entitled to recover her share, on payment of her share of her father's debt which was discharged by the sale (1).

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BEFORE A FULL BENCH.

(Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, Mr. Justice Spankie, and Mr. Justice Oldfield.)

LYELL (DEFENDANT) *v.* GANGA DAI (PLAINTIFF).*

Carrier.—Duty of Persons sending goods of a dangerous nature—Notice—Act XVIII. of 1854, *s.* 15*—Act XIII. of* 1855*—Negligence—Action for compensation for destruction of life.*

Held (PEARSON, J. dissenting) that a person who sends an article of a dangerous and explosive nature to a railway company to be carried by such company, without notifying to the servants of the company the dangerous nature of the article, is liable for the consequences of an explosion, whether it occurs in a manner which he could not have foreseen as probable, or not.

Held, also (PEARSON, J. dissenting), that such a person is liable for the consequences of an explosion occurring in a manner which he could not have foreseen, if he omits to take reasonable precautions to preclude the risk of explosion.

Mode of estimating damages under Act XIII. of 1855 *discussed.*

THE plaintiff sued, under Act XIII. of 1855, to recover Rs. 9,360, damages for the loss of her husband, Bábu Ganpat Rai, deceased.

(1). The case having been returned to the Division Bench (Turner and Oldfield, JJ.), it was remanded to the lower appellate Court to try the following issues :—"Was the plaintiff a party to, and properly represented in, the suit in which the creditors of her ancestor obtained decrees which were subsequently satisfied by the sale proceeds? What is the sum she was bound to contribute in payment of the debts discharged out of the sale proceeds?"

*Appeal under cl. 10 of the Letters Patent, No. 2 of 1875.

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The plaint stated that the plaintiff's husband was in the service of the East Indian Railway Company at Allahabad, and entrusted with the duty of despatching goods. On the 29th November, 1872, the defendant, through his servant William Henry Pollard, sent to the Allahabad Railway Station a box containing combustible and dangerous substances for despatch to Gwalior, without notifying the contents, as he was bound to do by law, and the said box was placed as usual in the railway station near the very place where the plaintiff's husband was performing his duty. Suddenly the said box, owing to its having been filled with explosive materials, exploded, and thereby the plaintiff's husband was wounded in so serious a manner, that he died from the effects of the injury he had received; and thus, independently of the comfort, happiness, prospects, and security, which a wife enjoys during the lifetime of her husband, the plaintiff has been deprived of the advantages derivable from his salary. At the time of the fatal occurrence the plaintiff's husband was 31 years old, and assuming the natural term of human life to be 70 years, the plaintiff has, independently of his prospects of promotion, sustained a loss to the extent claimed, calculated on the salary of the place he held on the date of his death. Hence the suit.

The defendant alleged in his written statement (1) that the box in question did not contain any combustible or dangerous substance as alleged by the plaintiff, and that the occurrence of the explosion was still a mystery to all experts in chemistry; (2) That there was no reason to suppose that the plaintiff's husband lost his life through the omission to declare the contents of the box in question, for even if it had been marked "dangerous," there would be evidence to show that the railway authorities would have placed the box precisely where it was located before despatch, and the deceased would have presumably dealt with it in no different manner than he did when the explosion unaccountably took place; (3) That the amount of damages laid was grossly excessive.

It appeared at the trial that on the 19th of November, 1872, the defendant, who carried on the business of a chemist in Allahabad, received from a customer at Gwalior an order for certain chemicals, and among others for a detonating powder. He delivered this order

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to an assistant, Mr. Pollard, a qualified chemist, directing him to execute it, and to despatch the articles. The defendant had previously supplied his customers with detonating powder composed of equal parts of black sulphuret of antimony and chlorate of potash. These ingredients were not compounded in the shop but sent to customers in separate bottles. On this occasion, however, Mr. Pollard, without having received any express orders, prepared a detonating powder composed of one part sulphur and three parts of chlorate of potash, and these ingredients he compounded and placed in one bottle. Having delivered the articles ordered to the packer, Mr. Pollard went to the defendant and consulted him about it. The defendant inquired of Mr. Pollard how he had prepared the detonating powder, and Mr. Pollard informed him. The defendant observed that he supposed the ingredients had been placed in separate bottles. Mr. Pollard replied that they had been placed in one bottle. The defendant inquired if that was quite safe. Mr. Pollard said that he had frequently made it in England and kept it so. He added that the bottles were being packed and he would mark the box "*dangerous*," as a precautionary measure, to be taken care of by the railway company. The bottle containing in all 1lb. of detonating powder was wrapped in paper and tow, and placed with seven other bottles (similarly prepared) in a box, which was sent by a coolie to the railway station to be despatched by passenger train. The forwarding note which was sent with the box contained no description of the character of the contents. The box was not marked dangerous, nor was any notice given, nor did anything exist which could suggest to the servants of the company that the box contained any explosive substance or required care in manipulation. The box was weighed and placed in the parcel room. Outside the door of the parcel room was a semi-circular counter, boarded to the floor, with an opening in the centre affording passage to the parcel room. The space enclosed by it was of limited extent. After attending to his duties in connection with a train which was leaving the station, the deceased, whose duty it was to receive parcels, directed the coolie to bring the box from the parcel room. He did so, and placed it inside the counter and near the passage. The deceased, standing at the counter, commenced to write the usual receipt, and while he was engaged in so doing, the contents of the box exploded. The front

of the counter was blown out, the deceased was severely wounded, and died from the effects of the injuries sustained.

There was no direct evidence as to the cause of the explosion. A clerk in the station-master's office, Ganpat Rai by name, was standing outside the counter speaking to the deceased when the explosion occurred. He stated that the box was not visible to him, the counter being so constructed that it was impossible to see from the outside what was lying inside. The coolie who carried the box from the defendant's premises to the railway station deposed as follows :—" I had placed the box just at the passage of the counter. The Babu was writing the receipt when the box exploded. I ran off towards the west. I carried the box on my head to the railway. It did not tumble down on the way, nor did it tumble down when it was weighed, nor when I took it to the office, nor when I brought it from the office and placed it inside the counter. It received no shock. No one kicked at the box, for nobody went that way." The witness was standing outside the counter at the time of the explosion and about a yard from it.

The station-master at Allahabad, who was called by the plaintiff, stated in cross-examination as follows :—" I don't know what the clerk (deceased) would have done with the box, if it had been marked " dangerous ;" but if it had been so marked it was his duty to report it to me. In the meanwhile, of course, he would have allowed the box to remain on the platform. There is no separate place in our Allahabad Station for keeping such parcels. There is nothing in the rules of the railway company to compel Mr. Lyell to declare the contents of such a parcel unless he knew that it was dangerous." In re-examination the witness deposed that, in the case of dangerous articles, except gunpowder and kerosine oil, he thought the consignor was bound to notify the dangerous character of the articles to the railway authorities, so that they might consider whether to receive the article or not, and to make special charges as to rate, and special arrangements to insure safe transit.

In the opinion of the experts examined the explosion might have been due to the application to the detonating powder of some external agency, such as friction or percussion. Two of these

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experts stated that the spontaneous explosion of a detonating powder so composed was a thing unknown. The third, assuming the box suffered no violence of any sort, was of opinion that the explosion might have taken place owing to chemical action having arisen between the ingredients constituting the detonating powder.

S. 15 of Act XVIII. of 1854 (an Act relating to railways in India), enacts that "no person shall carry upon any such railway any dangerous goods, or be entitled to require any such railway company to carry upon such railway any baggage or goods which, in the judgment of the company, or any of their servants, shall be of a dangerous nature; and if any person shall carry upon such railway any dangerous goods, or shall deliver to such railway company any such goods for the purpose of being carried upon such railway, without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing of the nature thereof to the book-keeper or other servant of the company to whom the same shall be delivered for the purpose of being so carried, he shall be liable to a fine not exceeding two hundred rupees for every such offence; and it shall be lawful for any such company or any of their servants to refuse to carry any luggage or parcel that they may suspect to contain goods of a dangerous nature, and to require the same to be opened to ascertain the fact previously to carrying the same; and in case any such luggage or parcel shall be received by the company for the purpose of being carried on the railway, it shall be lawful for the company, or any of their servants, to stop the transit thereof until they shall be satisfied as to the nature of the contents of the luggage or parcel."

The Court of first instance, holding it proved that the box contained some dangerous chemical preparation; that its dangerous character was fully known to the defendant and his servant; that the omission of the defendant to mark the box "dangerous" amounted to a wrongful neglect or default which entitled the plaintiff to maintain the suit, and that the death of the deceased was caused by such wrongful neglect or default, gave the plaintiff a decree for Rs. 5,253.

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On appeal by the defendant to the High Court, the learned Judges of the Division Court (Stuart, C.J. and Pearson, J.) before which the appeal came on for hearing differed in opinion.

The judgments of the learned Judges were as follows :—

STUART, C. J.—It has been with no little difficulty and hesitation that I have arrived at the conclusion that we ought to dismiss this appeal, at least substantially, for I must propose a modification of the Subordinate Judge's decision and order.

Mr. Lyell, the defendant, is no doubt, under the circumstances, entitled to much consideration, and even to a certain sympathy, and, if the nature of the case had admitted of it, I would have been glad to have determined his liability to be merely nominal. His manifest good faith in the whole transaction, the absence of any motive or idea on his part inconsistent with conduct entirely innocent, nay the fact that by the manipulation of the dangerous materials which caused the explosion, the filling and packing of the bottles, and the careful preparation of the box for transit by railway, Mr. Lyell and Mr. Pollard exposed themselves to the greatest possible risk, a risk that might have cost them their lives, are all surely sufficient to absolve Mr. Lyell from liability in any grossly culpable sense. But notwithstanding these just claims to consideration and sympathy, he cannot be relieved of liability, and a liability proportionate in some degree to the nature of the plaintiff's claim, and to the extent of the loss she has suffered. Of the serious nature of that loss there can be no doubt, and it is not disputed that her husband's death was occasioned by the explosion of the box at the railway station.

On the evidence it is not easy satisfactorily to determine what it was that occasioned the fatal explosion. The weight of it is, I think, against the suggestion that it was occasioned by friction. The more reasonable conclusion is that the explosion was spontaneous while the box was lying on the railway platform, owing in all probability to some unexplained chemical action among the contents of the bottles, and such is the theory suggested by the plaint itself, for, in claiming damages, that pleading alleges that Mr. Lyell "sent to the Allahabad railway station a box containing combus-

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tible and dangerous substances for despatch to Gwalior, without notifying the nature of its contents, as he was bound to do by law, and the said box was placed as usual in the railway station near the place where the plaintiff's husband was performing his duty. Suddenly the said box, owing to its having been filled with explosive materials, exploded, and thereby the plaintiff's husband was wounded in so serious a manner, that, despite of his being placed and treated in the Government hospital, he did not recover, but died from the effects of the injury he had received," and such, as well as we can see and understand, was the truth of the matter. But with reference to Mr. Lyell's liability, it is, in my view, immaterial how the explosion took place. It may be that Mr. Lyell's professional knowledge and experience were not such as to have led him to anticipate such an accident, especially by spontaneous explosion, and any want of such knowledge and experience on his part is, on the evidence, not to be wondered at. That circumstance of itself, however, does not relieve him of liability. As a skilled and professed chemist, he was bound to protect the public, whether railway clerks or others, to the utmost of his power, and with the use of every precaution against any possible consequences of his dealing with and sending by railway, or by other means of carriage, chemical substances which, it appears from the evidence, both he and Mr. Pollard knew to be explosive, and therefore dangerous; and even if they did not know as much, they must be assumed and taken to have known, at least Mr. Lyell, as a professed and skilled chemist, must be taken to have known, the real and dangerous character of the contents of the box, and he cannot be excused for not having notified that fact to the railway company and the public by a distinct inscription on the box of the word "dangerous," or some other equally suitable term, or in some other way, or by some other means. Indeed, it appears from the record that he was aware of the importance of such a precaution; and as to s. 15, Act XVIII. of 1854, no doubt that enactment is penal and contemplates a criminal prosecution, but such a law does not interfere with, much less take away, the civil remedy. On the contrary, I consider it assists a civil suit for damages, by the warning it has placed on the statute book to all persons in the position of the defendant to be careful to use all proper precautions against accidents of this kind.

However, therefore, Mr. Lyell's conduct may be explained and in a sense palliated, his legal liability to the plaintiff, is, in my opinion, undoubted, and he must pay damages. The only question, therefore, that remains is how, and to what amount, these damages ought to be assessed.

The impression made upon me at the hearing of this appeal was that, if there was a case for damages at all, these should be merely nominal, and that the lowest possible figures would, under all the circumstances, have satisfied the justice of the case. But the anxious consideration I have since given to it has convinced me that such a result would neither be consistent with the nature of the suit, nor with fairness to the plaintiff. Her loss is extreme, and, the defendant's liability to her being once reached, her claim for compensation must, in principle as well as in substance, be admitted. The law in force in India on this subject is regulated by Act XIII. of 1855, which, on the preamble that "it is often times right and expedient that the wrong-doer in such case should be answerable in damages for the injury so caused by him," proceeds to enact that the party injured may maintain an action, and that "every such action shall be for the benefit of the wife, husband, &c.," and that "in every such action the Court may give such damages as it may think proportioned to the loss resulting from such death." There are no children in the present case, so that the loss is that of the plaintiff herself exclusively. The Subordinate Judge, in considering the question of damages, very properly takes into account the deceased's age, which he estimates was from 30 to 35 years, adding that, "by all accounts, the deceased was a strong, healthy, robust man, and that it is not improbable that he might have lived to the age of 70 years," and he decides upon an allowance of Rs. 200 a year, or Rs. 17 per month, which required an investment of Rs. 5,253. It appears to me, however, that the Subordinate Judge has conceived an undue estimate of native life. The proportion of natives who attain the age of 70 is, I believe, very small; and the atmosphere, work, and attendance at an office connected with a railway station, such as that in Allahabad, is, in my opinion, not favourable to longevity, and all things considered, it appears to me that the offer suggested by Mr. Howard (on the assumption of his client's liability) is a fair one. That suggested offer was a monthly

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allowance of Rs. 15 secured by the investment of Rs. 3,000. Whether the investment of such a sum would produce a monthly allowance of Rs. 15, or whether it is necessary that the plaintiff should have such a monthly allowance I do not determine, but I consider that I sufficiently meet the legal conditions of the suit and the just claims of the plaintiff by awarding to her as damages the sum of Rs. 3,000. To that extent, therefore, I would modify the decree of the Subordinate Judge, and *quoad ultra* dismiss the appeal, with costs in both Courts.

I have not thought it necessary to say any thing respecting the position of Mr. Pollard in the case. He, no doubt, was also a skilled chemist and was stated to have been, and I persume still is, a member of the Pharmaceutical Society, and if he had acted on his own responsibility without reference to his connection with Mr. Lyell, his separate liability would have been undoubted. But he was at the time the servant of Mr. Lyell, was, so to speak, Mr. Lyell's hand in the matter, and, as the Subordinate Judge puts it, his omission or neglect was the omission or neglect of his master. But I need not enlarge further on this subject, as Mr. Pollard's immunity from liability was, I believe, not disputed by the plaintiff's counsel.

PEARSON, J.—The real cause of the explosion by which the plaintiff's husband lost his life does not appear to me to have been ascertained beyond all doubt. There is no evidence whatever to show, and I think that there is no reason to suppose, that the box which exploded contained either potassium or fulminating powder; and I must, therefore, proceed upon the assumption that the explosion is attributable to the detonating powder. The learned witnesses are agreed that such an explosion might be occasioned by heat, percussion, or friction, and are inclined to surmise that, in this instance, the explosion must have been occasioned by friction, which might have resulted from the breaking of the bottle containing the detonating powder, or from the other bottles coming into contact with it, or from such an accident as a fall. But there is no evidence to show that any thing occurred which could cause friction. On the contrary, the evidence goes to show that the explosion took place when the box was lying upon the ground, without any application of force to it, and, so to speak, spontaneously, and yet most of the learned

witnesses seem to be of opinion that such spontaneous explosion is impossible. Dr. Waldie, indeed, in answer to the question, "supposing it were proved that the box suffered no violence of any sort prior to explosion, what would you be disposed to attribute the explosion to," answered, "I should now suppose that, under the circumstances, the explosion might have taken place owing to chemical action having arisen between the ingredients constituting the detonating powder." He does not, therefore, reject the hypothesis of spontaneous explosion as wholly out of the question; and this hypothesis is, as I have already remarked, most in accordance with the evidence of what actually occurred. The detonating powder was composed of one part sulphur and three parts chlorate of potash. Whether or not it is the case, as the learned advocate for the appellant informs us, that such a composition, when the potash has been pounded too finely or the sulphur is not quite pure, is liable to spontaneous explosion, I cannot determine. The learned witnesses were not examined on the point. They all seem to intimate that they would not have anticipated the explosion of the powder in transit in a well secured bottle properly packed. That Mr. Pollard who prepared the powder did not know it to be liable to spontaneous explosion may be assumed as certain, for, had he known it to be so, he would never have exposed himself to the risk involved in mixing it. But I must conclude that he did know, or ought to have known, that its explosion might be caused by friction, and that, in its transit by railway, it was not exempt from the risk of friction, and that he was, therefore, legally bound to mark distinctly its dangerous nature on the outside of the package, or to give notice thereof in writing to the book-keeper or other servant of the company to whom it was delivered for the purpose of being forwarded. This duty he neglected to perform, and for that neglect he may have been punishable; but it is contended that, although he would have been liable to an action like the present had the death of any person ensued upon an explosion of the detonating powder caused by friction in the transit of the box containing it, he cannot be held liable for the consequence of its spontaneous explosion, which he could not be expected to have foreseen as probable, at a time when the box was lying untouched on the railway platform, and which could not have been prevented by any precautions which the

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railway company could have taken, even had they been made aware of what he knew, or should have known, that there was a danger arising from the possibility of friction in the event of the bottle containing the powder being broken, or the other bottles being brought into contact with it by a violent shaking of the box. This contention, which is founded on the presumption that it cannot be the intention of the law to hold a man answerable for an event which he could not reasonably be expected to have foreseen, appears to me to be sound and cogent, on the assumption that the explosion was spontaneous, and I prefer to adopt the hypothesis that it was spontaneous, supported as it is by the evidence of what really occurred, and Dr. Waldie's opinion that, under the circumstances evidenced, it might have been spontaneous, rather than the opinion of the other learned witnesses who believe that it could not have occurred spontaneously, and that it must have been due to friction, although there is no proof of friction having taken place. On this view of the case, I would decree the appeal and dismiss the suit, but order the parties to bear their own costs in both courts.

The defendant appealed to the Full Court, under the provisions of cl. 10 of the Letters Patent, against the judgment of the learned Chief Justice.

Mr. *Howard*, for the appellant, contended that, inasmuch as the explosion was spontaneous and the appellant could not have anticipated it, he could not be held liable for it. The learned Chief Justice overlooked the evidence of the station-master respecting the rules of the railway company relating to the despatch of parcels by passenger train. The appellant could not have anticipated the explosion, and was consequently not bound to notify the character of the contents of the box. The respondent has failed to prove that the death of her husband was occasioned by the omission of the appellant to give notice of the character of the contents of the box; and the sum awarded to the respondent is excessive.

The *Junior Government Pleader* (Babu *Dwarka Náth Banarji*), for the respondent, contended that the case was governed by the principle of law laid down in *Farrant* v. *Barnes* (1), *viz.*, that a person who sends an article of a dangerous nature, to be carried by a carrier,

(1) 31 L. J., C. P. 137; 11 C. B., N. S. 553; 8 Jur., N. S. 868.

is bound to take reasonable care that its dangerous nature should be communicated to the carrier and his servants who have to carry it; and if he does not do so, he is responsible for the probable consequences of such omission. The learned pleader also contended that Act XVIII. of 1854 imposed an obligation on the defendant to communicate the dangerous nature of the detonating powder to the railway company, the breach of which rendered him liable for the probable consequences of such breach. The evidence shows that it was the duty of the deceased to communicate the receipt of dangerous articles to the station-master, who, in the exercise of the discretion vested in him, might refuse to carry them. It is highly probable that, had the appellant communicated the contents of the box, the station-master would have refused to receive it. The accident could have therefore been prevented, and the life of the deceased saved.

STUART, C. J.—I listened with great attention to the able argument of Mr. Howard, the counsel for Mr. Lyell, in support of the reasons of appeal, but after carefully and anxiously considering all that he urged with reference to the facts, the evidence and the authorities which he cited, I see no ground for altering the opinion I originally formed on the question of Mr. Lyell's liability to the plaintiff, and the amount to be assessed as damages to her for the loss of her husband. I would, therefore, affirm the judgment of the Divisional Bench, and dismiss the appeal with additional costs.

PEARSON, J.—After hearing the case re-argued in appeal before the Full Court, I find no reason to alter the opinion expressed by me after hearing it argued in appeal before the Divisional Bench; and will add only a few remarks which will proceed, as did my former judgment, on the hypothesis that the explosion of the detonating powder was spontaneous. On that hypothesis, I still consider it to be most material to determine whether the death of the plaintiff's husband was the result of the defendant appellant's illegal omission to comply with the requirement of s. 15, Act XVIII. of 1854. My opinion on that point is that the misfortune cannot be held to have been due to that illegal omission. Had the appellant informed the book-keeper or other servant of the railway company to whom the package containing the detonating powder was deli-

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vered, that it contained detonating powder which was liable to explosion by friction or percussion, I cannot suppose that any other step would have been deemed necessary than to take care that the package should be secured from the risk of explosion by friction or percussion; for detonating powder is shown by the evidence not to have been regarded as being of so dangerous a nature as to require other precautions than are needed to obviate that particular risk; the risk of spontaneous explosion being one which has never heretofore been apprehended. No precautions that could have been used to avoid the risk of explosion by friction or percussion would have avoided the risk of spontaneous explosion. Under the circumstances, it seems to me now, as before, that, although the illegal omission of which the appellant was guilty may have been punishable under the Railway Act, the present suit for damages on the ground that Ganpat Rai's death was caused by that illegal omission cannot be sustained, the defendant not being justly liable on account of his illegal omission for what was not directly or presumably a consequence thereof. Putting out of sight the illegal omission on which the plaintiff's claim is based, there might have been a question whether the defendant could be justly held liable for what was certainly a consequence of his having prepared the detonating powder and having sent it to the railway premises for despatch by passenger train; and, in deciding such a question, it would, in my opinion, be necessary to consider whether the result which occurred was a natural and probable consequence which should have been foreseen by him; and upon the hypothesis, which I have adopted, that the explosion of the detonating powder was spontaneous, and upon the evidence which shows that such a spontaneous explosion is a thing altogether new to scientific experience, I should conclude that he ought to be exonerated from liability. Nor can I conceive that the illegal omission of which he was guilty can render him responsible for an event which was not a consequence of that omission, and which he could not reasonably have been expected to foresee and provide against. If A were to throw upon B some dirty water, of which the natural and probable effect would be to soil and spoil his clothes, and the dirty water by an unexpected and extraordinary action were to ignite the clothes and cause him to be burnt to death, I should be loth to maintain that A was responsible

for the effect which, contrary to all expectation and previous experience, had been actually produced, notwithstanding that his conduct in doing what was likely to cause injury to B's clothes was wrong and unjustifiable.

It was not contended in the pleading before the Full Court that the explosion was proved to have been caused by friction, or that it could not have been spontaneous. What was contended was that whether it was caused by friction or was spontaneous was a matter of no importance, the appellant being equally liable for what happened in either case, by reason of his illegal omission. This contention, for the reasons above-mentioned, I am unable to admit.

TURNER, SPANKIE, and OLDFIELD, JJ., concurred in the following judgment:—

There is, it must be admitted, no direct evidence to show the immediate cause of the explosion. Two out of three gentlemen examined as experts deposed that the powder could not have exploded spontaneously; the third, while admitting that in his experience he had never known the compound explode without friction or percussion, deposed that, assuming it proved that prior to the explosion the box had not suffered violence of any sort, he should attribute the explosion to "chemical action having arisen between the ingredients constituting the detonating powder." This answer is not elucidated by any further explanation. The coolie who had brought the box to the station deposed that it had not fallen or received a shock from the time he received it up to the time he placed it inside the counter, and that "no one kicked at the box, for nobody went that way," by which we understand him to mean that no one entered the passage in or near which he had placed the box. This answer does not exclude the possibility that the clerk while writing the receipt may have struck the box with his foot. The coolie was standing outside the counter at a distance of a yard from it. It does not appear that from the place in which he stood he could see the box. Another witness, Ganpat Rai, who spoke to the deceased just before the explosion, stated the counter was so constructed that a person outside could not see what was placed inside it. If the coolie could have seen the box from the place at which he stood, it is not likely that he would have kept his eyes on it, and

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if a blow was given to the box the explosion which would have immediately followed it would have rendered the sound of the blow inaudible. Even then if the compound be capable of spontaneous explosion, the evidence would fail to satisfy us that in the present instance it had so occurred.

We regard this point, however, as immaterial. That the appellant had reason to believe the compound was explosive is shown by the conversation which took place between him and Mr. Pollard, and it was incumbent on him, both on the general principles of law, and by the special provisions of the Railway Companies Act, XVIII. of 1854, to give notice of its contents to the company's servants. Had such notice been given, looking to the evidence of the station-master, it is possible the box would never have been received for despatch, and it is in the highest degree improbable that, had the deceased received notice of the dangerous nature of its contents, he would have permitted it to be placed in immediate contiguity to him. The case appears to fall within the principle of *Farrant* v. *Barnes* (1) cited in the Court of first instance. *Lynch* v. *Nurdin* (2) establishes the principle that a person may be liable for the consequences of an accident resulting from his own negligence in combination with other causes which he did not contemplate. In that case the defendant left his cart and horse unattended in the street; the plaintiff, a child seven years old, got upon the cart in play; another child incautiously led the horse on, and the plaintiff was thereby thrown down and hurt; it was held the defendant was liable to make compensation for the injury sustained by the plaintiff.

Furthermore, assuming that the explosion was spontaneous, it could not have occurred had the appellant followed the practice he had hitherto pursued of sending the ingredients of the powder in separate bottles. With a knowledge of the highly explosive character of the preparation, he omitted a precaution which his own practice proves he considered reasonable to preclude the risk of accident.

The sum awarded to the respondent appears to us by no means incommensurate with the pecuniary injury sustained by her. We would, therefore, affirm the decree and dismiss the appeal with costs.

(1) 31 L. J., C. P. 137; 11 C. B., N. S. 553; 8 Jur., N. S. 868. (2) 4 P. & D. 672; 1 Q. B. 29; 5 Jur., 797.