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If this undertaking be not fulfilled, liberty is reserved to the plaintiff to seek in another suit restitution of conjugal rights. We accordingly allow the appeal, set aside the decrees of the Courts below and dismiss the plaintiff's suit with costs in all Court.

Appeal decreed.

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December 18.

FULL BENCH.

Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Sir William Burkitt and Mr. Justice Richards.

CHUNNI LAL AND OTHERS (PLAINTIFFS) *v.* THE NIZAM'S GUARANTEED STATE RAILWAY COMPANY, LD., (DEFENDANT).*

Contract—Railway Company—Receipt of goods by one company for carriage over its own and another Company's line—Liability in respect of overcharge made by delivering Company—Bye-laws—Power of Railway Company to alter the principle of calculation of rates.

Two wagon loads of chillies were received by the Station Master at Bezwada on the Nizam's Guaranteed State Railway for carriage to Agra station on the Great Indian Peninsula Railway at a rate of Rs. 270 per wagon for the whole distance. On arrival at Agra the Great Indian Peninsula Railway Company's station master demanded payment of higher rates, calculated per maund, and refused delivery until such rates were paid. The consignees paid under protest and sued both Railway Companies for a refund of the excess charges.

Held that the contract for carriage of the goods for the whole distance was one entire contract with the receiving company, who where liable for the overcharge, if any, wrongfully demanded from the consignees. *Muschamp* v. *Lancaster and Preston Junction Railway Company* (1), *Webber* v. *The Great Western Railway Company* (2) and *Kalu Ram Maigraj* v. *The Madras Railway Company* (3) followed.

Held also that a bye-law of the Great Indian Peninsula Railway Company, which reserved to the Railway the right of remeasurement, reweighment, recalculation and reclassification of rates, terminals and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or under-charged, did not authorize the Great Indian Peninsula Railway Company to alter the contract between the parties and charge at the place of destination maund rates instead of wagon rates.

* Second Appeal No. 623 of 1904, from a decree of H. G. Warburton, Esq., District Judge of Agra, dated the 16th of April 1904, reversing a decree of Babu Baidya Nath Das, Munsif of Agra, dated the 31st of November 1903.

(1) (1841) 8 M. and W., 421; 58 R. R., 758. (2) (1865) 3 H. and C., 771.
(3) (1881) I. L. R., 3 Mad., 240.

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THE facts of this case are fully stated in the judgment of the Chief Justice.

The Hon'ble Pandit *Sundar Lal*, for the appellants.

Babu *Kedar Nath* and Babu *Mohan Lal Sandal*, for the respondents.

STANLEY, C. J.—This appeal is connected with Second Appeal No. 595 of 1904. The litigation arose under the following circumstances. The plaintiffs appellants, who carry on a grocery business at Rawatpara, Agra, under the style of Govind Ram Har Prasad, desiring to obtain chillies from Bezwada, inquired of the rate for the carriage of chillies per wagon load from Bezwada to Agra Fort and Agra Cantonment Stations from the station master at the Bezwada station on His Highness the Nizam's Guaranteed State Railway, and were informed by him by letter, dated the 13th of September 1902, that the rate was Rs. 270 per wagon load. The plaintiffs also made the same inquiry from the station master at the Agra Cantonment Station and obtained the same information. Acting upon this information they ordered two wagon loads of chillies from Bezwada and consigned the same to Agra Fort Station, obtaining two railway receipts, in each of which the freight at the rate quoted to them, *viz.*, Rs. 270 is entered. On the arrival of the goods at Agra Fort Station, the station master demanded payment of higher rates, namely, maund rates, and refused to deliver the goods except on payment of the higher rates. The plaintiffs in order to obtain delivery paid the excess under protest and took delivery. They then brought a suit against the Great Indian Peninsula Railway Company and the Nizam's Guaranteed State Railway Company for the recovery of the amount so paid in excess of the amount mentioned in the railway receipts, and they claimed a decree for this amount with interest by way of damages, against either or both the defendant Companies. The Railway Companies defended the suit, Mr. Alexander, District Traffic Superintendent of the Great Indian Peninsula Railway Company, representing both the Railways at the hearing before the learned Munsif. The Munsif dismissed the suit against the last mentioned Company, but held that the Nizam's Railway was liable to refund the amount paid in excess of the amount for which that Company agreed to carry the goods, as

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mentioned in the railway receipts. From this decree the Nizam's Railway appealed, but did not make the Great Indian Peninsula Railway Company a party to the appeal. In their memorandum of appeal they set up, amongst others, the following grounds of appeal, namely, that the amount claimed having been collected by the Great Indian Peninsula Railway the appellant Company was not liable to refund it; further that the appellant Company was not responsible for the quotations given by their station master at Bezwada, and that under the terms of the consignment note all goods were liable to recalculation of charges at destination. On the 23rd of January 1904, before the hearing of the appeal, the plaintiffs applied to the Court to bring upon the record the Great Indian Peninsula Railway Company as parties to the appeal. The learned District Judge, acting presumably under section 559 of the Code of Civil Procedure, acceded to this application and directed that a notice fixing the 25th of February 1904 for hearing should be issued. At the hearing it was contended on the part of the Great Indian Peninsula Railway Company that, inasmuch as the plaintiffs did not appeal against the decree of the Munsif so far as it dismissed their suit as against the Great Indian Peninsula Railway Company, no relief could be given to them in the appeal as against that company. The learned District Judge did not accede to this contention. He heard the appeal and came to the conclusion that the Great Indian Peninsula Railway Company was not justified in levying any freight over and above the amount specified in the freight notes, and was therefore liable to refund to the plaintiffs the amount claimed. Accordingly he decreed the claim of the plaintiffs against that company and allowed the appeal of the Nizam's State Railway.

In the view which I take of the case, it is unnecessary to determine the question whether the Court below was right in adding the Great Indian Peninsula Railway Company as a party to the appeal under the provisions of section 559 and in passing a decree against that company. This question is one of considerable difficulty. It seems to me, upon the facts which have been established in evidence, that the plaintiffs cannot in any event succeed as against the Great Indian Peninsula Railway.

The suit is one for damages for breach of a contract entered into with the Nizam's State Railway Company for the carriage of the goods from Bezwada to Agra Fort. Only one contract was entered into, namely, with the Nizam's State Railway. To this company the goods were delivered, and from it the freight notes were received. What the arrangements between the two companies are as regards the interchange of traffic has not been disclosed. When a railway company receives and undertakes to carry goods from a station on its railway to a place on another distinct railway with which it communicates, this is evidence of a contract with the receiving company for the whole distance, and the other railway company will be regarded as their agents and not as contracting with the bailor—*Muschamp* v. *Lancaster and Preston Junction Railway Company* (1), *Webber* v. *G. W. Railway Company* (2). A receipt given by a railway company for goods to be sent to a place on another railway and there to be delivered for one entire sum is one entire contract for the whole distance and constitutes an entire contract with the railway which gave the receipt note. In the case of *Kalu Ram Maigraj* v. *The Madras Railway Company* (3) it was held that when two railway companies interchanged 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 the 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 agents of the delivering company. The contract with the receiving company was held to be one and entire. So here in this case the contract was one and entire with the Nizam's State Railway Company and that railway alone appears to me to be responsible for the refusal to deliver the goods on payment of the freight agreed on.

For the foregoing reasons the suit against the Great Indian Peninsula Railway cannot in my opinion be maintained, but the Court of first instance properly, I think, held that the Nizam's State Railway Company is responsible in damages to the extent of the sum which was exacted from the plaintiffs by the Great

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Indian Peninsula Railway in excess of the sum for which the Nizam's Railway Company agreed to carry the goods.

But it is said that the Company is protected by the provisions of paragraph 31 of the Great Indian Peninsula Railway Goods Tariff. This paragraph runs as follows :—" It must be distinctly understood that the weight and description of goods, as given in the railway receipt and forwarding note, are inserted for the purpose of estimating the railway charges and the railway reserves the right of remeasurement, reweighment, recalculation and reclassification of rates, terminals and other charges at the place of destination and of collecting before the goods are delivered any amount that may have been omitted or undercharged." It is contended that under this rule it is open to the companies to alter the contract between the parties and charge at the place of destination maund rates in lieu of wagon rates. I agree in the view expressed by the learned District Judge that this rule does not give the company the power for which the companies contend. The action taken by the Great Indian Peninsula Railway in exacting maundage instead of wagon rates cannot in my opinion be considered to be covered by any of the words " remeasurement, reweighment, recalculation, or reclassification of rates."

It was further urged that the station master at Bezwada had no authority to enter into a special contract on behalf of the company. The answer to this argument is that the contract was an ordinary and not a special contract.

I would therefore set aside the decree of the lower appellate Court and restore the decree of the Court of first instance with costs against the Nizam's State Railway in all Courts. As the Great Indian Peninsula Railway has been the cause of this litigation I would direct that company to abide its own costs in all Courts.

BURKITT, J.—I concur.

RICHARDS, J.—I also concur.

BY THE COURT.—The order of the Court is that the decree of the lower appellate Court be set aside, and the decree of the Court of first instance restored with costs in all Courts, against the Nizam's State Railway Company. The Great Indian Peninsula Railway will abide its own costs in all Courts.

Appeal decreed.