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JAGAN NATH v. GANGA DAT DUBE.

Chhatrapat Singh Dugar v. *Kharag Singh Lachmiram* (1), and also *Triloki Nath* v. *Badri Das* (2). We think that the order dismissing the application of Panda Jagan Nath was wrong. We allow the appeal, set aside the order of the court below and adjudicate Panda Jagan Nath an insolvent. The case will now be sent back to the court below to proceed with the insolvency matter in due course of law. The appellant will have his costs in this Court.

Appeal allowed.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

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March, 3.

SHIAM NARAIN TIKKOO AND OTHERS (PLAINTIFFS) *v.* THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY (DEFENDANT).*

Railway Company—Death of passenger alleged to have been caused by neligence—Suit for damages by representative of deceased—Nature of liability of Company—Venue—Act No. XIII of 1855 *(Indian Fatal Accidents Act.)*

An action against a Railway Company for damages on account of the death of a passenger alleged to have been caused by the negligence of the Company's servants is not an action *ex contractu*, but is an action based on tort and on the provisions of the Indian Fatal Accidents Act, 1855. Such an action, therefore, cannot be brought at the place where the deceased person's ticket was taken.

There is no general obligation upon a Railway Company to carry passengers who have taken tickets "safely." *Austin* v. *The Great Western Railway Company* (3) and *The East Indian Railway Company* v. *Kalidas Mukerji*, (4) referred to.

THIS was an appeal against an order of the Subordinate Judge of Agra returning a plaint for presentation to the proper court. The suit was a suit brought against the Bombay, Baroda and Central India Railway Company in the following circumstances. There were four plaintiffs, one adult and three minors. The allegation is that the first plaintiff, his wife and three children (the other three minor plaintiffs) were travelling from Agra to Kuchaman Road and purchased tickets at Agra. The party changed their carriage at Bandikui Station and got into another train. It is alleged that in the course of this part of the journey the carriage door opened through the neglect

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*First Appeal No. 68 of 1918, from an order of Kauleshar Nath Rai, Subordinate Judge of Agra, dated the 25th of April, 1918.

(1) (1916) I. L. R., 44 Calc., 535.
(2) (1914) I. L. R., 38 All., 259.
(3) (1867) L. R., 2 Q. B., 442.
(4) (1901) I. L. R., 28 Calc., 401.

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of the defendant Railway Company, either in not locking the door or not seeing that it was properly fastened. The plaintiff's wife fell out and subsequently died. One of his minor girls Ram Dulari, plaintiff no. 3, also fell out and was injured. Rupees 25,000 were claimed by the family as damages for the death of the wife of plaintiff no. 1 and Rs. 5,000 claimed by Ram Dulari and Sham Dulari for injuries caused to them. Various pleas were raised by the defendant Company. They contended that the causes of action in respect of the death of the wife and the injuries to the daughters could not be joined. They also pleaded that the Agra court had no jurisdiction as the cause of action did not arise in that district. There were of course also pleas denying neglect and liability. The court below held that it had no jurisdiction to entertain the suit and directed the plaint to be returned for presentation in the proper court.

The plaintiffs appealed to the High Court.

The Hon'ble Dr. *Tej Bahadur Sapru*, for the appellants.

Mr. *G. W. Dillon*, for the respondent.

RICHARDS, C. J., and BANERJI, J. :—This appeal arises out of a suit brought against the Bombay, Baroda and Central India Railway. There were four plaintiffs, one adult and three minors. The allegation is that the first plaintiff, his wife and three children, (the three minor plaintiffs) were travelling from Agra to Kuchaman Road and purchased tickets at Agra. The party changed their carriage at Bandikui Station and got into another train. It is alleged that in the course of this part of the journey the carriage door opened out through the neglect of the defendant Railway Company, either in not locking the door or in not seeing that it was properly fastened. The plaintiff's wife fell out and subsequently died. One of his minor girls Ram Dulari, plaintiff no. 3, also fell out and was injured. Rupees 25,000 were claimed by the family as damages for the death of the wife of plaintiff no. 1 and Rs. 5,000 claimed by Ram Dulari and Sham Dulari for injuries caused to them. Various pleas were raised by the defendant Company. They contended that the causes of action in respect of the death of the wife and the injuries to the daughters could not be joined. They also pleaded that the Agra court had no jurisdiction as the cause of action

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did not arise in that district. There were of course also pleas denying neglect and liability. The court below held that it had no jurisdiction to entertain the suit and directed the plaint to be returned for presentation in the proper court. The plaintiffs have appealed.

It is quite clear that *primâ facie* a company should be sued at its principal place of business, which in this case is at Bombay. If, however, the plaintiffs could show that the cause of action wholly or in part arose at Agra, then the suit could be instituted at that place. The contention on behalf of the plaintiffs is that the buying of a ticket by each member of the family was a contract between the individual and the Railway Company to carry that individual "safely" from Agra to the place of destination as set forth in the ticket and that the suit accordingly being based upon contract, the cause of action either wholly or in part arose at Agra. On the other hand, the defendant company contended that the alleged neglect about the carriage-door was the "cause of action" and this occurred, if at all, outside the jurisdiction of the Agra court. In support of the contention of the plaintiffs certain English cases have been cited, and amongst them the cases of *Austin* v. *The Great Western Railway Company* (1) and *Foulkes* v. *The Metropolitan District Railway Company* (2). In the earlier of these two cases a mother sued for damages on the allegation that she, accompanied by her infant child, who was under three years of age, was travelling on the defendant company's railway when the accident happened whereby the child was injured. The jury found in favour of the plaintiff. A question had arisen as to whether or not the child was more than three years old. If it was under three years the mother was entitled to take it without the payment of any fare. For the purposes of argument it was assumed that the child was under three years of age, and on that assumption it was held that the verdict of the jury awarding damages could not be disturbed. Three of the Judges state that the right was founded on the contract which arose when the lady purchased her ticket and that the contract was to carry "safely." BLACKBURN, J., put the obligation on a different ground, namely the duty which the

(1) (1867) 2 Q. B., 442. (2) (1879) 4 C. P. D., 267.

company owed quite irrespective of the contract. In the case of the *East Indian Railway Company* v. *Kalidas Mukerji*, (1), the very case which we have just mentioned was referred to. In the case before their Lordships of the Privy Council the plaintiff's son had taken a ticket at Howrah. In the course of the journey another passenger entered the carriage having with him a lot of fire-works. The fire-works exploded and the plaintiff's son was injured and subsequently died of the injuries. Whereupon the plaintiff instituted the suit. The Indian courts held that the defendant company was liable because there was a duty independently of any implied contract to carry the passenger "safely." It was argued before their Lordships of the Privy Council that the extent of the obligation of the Railway Company is to carry "safely." In short it was said that they are common carriers of passengers. Their Lordships held that this was not the law. Their Lordships refer to the case of *Austin* v. *The Great Western Railway Company* (2): and say at page 410 of the report:—"In the one case it was a child under three years of age, between whom and the railway company, of course, there was no contract, and the other is a case of the same character. It is important perhaps to observe, what runs through the judgments, and to observe that Mr. *Asquith*, naturally enough, used the same phrase yesterday in his argument as enforcing the necessity of the Railway Company discharging themselves by any conceivable evidence, by saying that their contract was to carry safely. Their Lordships think it is desirable that the error should be plainly stated, because it may mislead others hereafter. It is enough to say that, in their Lordships' judgment, there is no such obligation on the part of the Railway Company." It must be admitted at once that the facts in the present case and the facts of the case to which we have just now referred are by no means identical. In the case before us the allegation is an allegation of neglect connected with the keeping of the door shut. In the case before their Lordships of the Privy Council the allegation was neglect in allowing a passenger to bring fire-works into the compartment. We think, however, that the case has a very distinct bearing upon the question as to whether the liability of

(1) (1901) I. L. R., 28 Calc., 401. (2) (1867) L. R., 2 Q. B., 442.

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the company in the present case is or is not founded upon contract. Even, however, if we assume that a person who purchases a ticket can sue the company "*ex contractu*" for injuries suffered during the course of the journey, it is important to point out that the foundation of the main claim put forward in this suit, that is, the claim for damages consequent upon the death of the wife of the plaintiff No. 1, is the Fatal Accidents Act of 1855. The preamble of that Act is as follows:—"Whereas no action or suit is now maintainable in any court against a person who by his wrongful act, neglect or default may have caused the death of another person and it is oftentimes right and expedient that the wrong doer in such case should be answerable in damages for the injury so caused by him." The contract to carry the deceased lady was a contract to carry herself. There was no privity between the plaintiffs and the company and no contract entered into by the company with the plaintiffs to carry this lady, and a suit, so far as relates to her death, is a suit based upon tort and on the provisions of the Fatal Accidents Act of 1855, and cannot, we think, be said to be based on contract. After full consideration we have come to the conclusion that the decision of the court below was correct. We accordingly dismiss the appeal with costs. The plaint will of course be returned for presentation to the proper court as directed by the court below.

Appeal dismissed.

Before Mr. Justice Muhammad Rafiq and Mr. Justice Lindsay.

1919
March, 8.

BALBHADDAR PRASAD AND OTHERS (DEFENDANTS) *v.* PRAG DAT AND ANOTHER (PLAINTIFFS) AND RANI KUNWAR AND OTHERS (DEFENDENTS)*

Hindu law—Hindu widow—Transfer by assignee from widow—Right of suit of reversioner—Act No. I of 1877 *(Specific Relief Act), section* 42 *—Limitation—Act No. IX of* 1908 *(Indian Limitation Act), schedule I, articles* 120 *and* 125.

An alienation made by the transferee from a Hindu female in possession with a limited estate, or by a stranger in possession holding under her, may furnish the nearest reversioner with a cause of action for a declaratory suit equally with an alienation made by the Hindu female herself.

To such a suit the limitation applicable is not that prescribed by article 125, but that prescribed by article 120 of the first schedule to the Indian Limitation Act, 1908.

*First Appeal No. 343 of 1916 from a decree of Muhammad Ali, Additional Subordinate Judge of Cawnpore, dated the 21st of August, 1916.