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effect of sections 7, 30 and 52 of the Presidency Towns Insolvency Act.

The interests of a father in the entire joint family property extend over the whole property, and it seems difficult to hold that he has no interest in the entire property because if a partition were to take place, the interests of his sons would be cut out and set apart. As, in my opinion, the case decided by their Lordships does not overrule the previous rulings of this Court and other High Courts, I find it impossible to take a different view. The appeal is dismissed with costs.

Appeal dismissed.

[Compare *Allahabad Bank Ltd.* v. *Bhagwan Das Johari*, p. 343, *supra*.—ED.]

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Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Lindsay.

MULCHAND NEMI CHAND (DEFENDANT) *v.* BASDEO RAM SARUP (PLAINTIFF).*

Suit for damages—Negligence—Storage of cotton in bulk without sufficient precautions against fire.

Defendants hired a large room in the lower storey of a house and therein stored a large quantity of cotton in bales. The room was totally unventilated, and the cotton was left there during the hottest part of the year without any more attention than a perfunctory inspection every few days. Shortly after the commencement of the rains, the cotton caught fire, though from what precise cause was not satisfactorily established, and the house was considerably damaged in consequence.

Held that the defendants were responsible for the damage caused to the plaintiffs' house, inasmuch as the fire would not have happened had they exercised proper watchfulness and

* First Appeal No. 211 of 1922, from a decree of Harihar Prasad, Additional Subordinate Judge of Agra, dated the 25th of April, 1922.

control over the cotton. *Scott* v. *London Dock Co.*, (1), *Byrne* v. *Boadle* (2) and *Rivers Steam Navigation Co.*, v. *Choutmull Doogar* (3), referred to.

THE facts of this case were as follows :—

The defendants were brokers of Ajmere, and also carried on a business as cotton commission agents at Agra. On the 25th of March, 1920, they had occasion to require premises at Agra to store some 388 bales of cotton, of which 363 bales were the property of a firm called Sukar Nand, Shiam Lal. They hired on a monthly rent a big room on the ground floor of the plaintiffs' house at Belanganj, Agra. The cotton was deposited therein and remained there during April, May and June. It was in evidence that the room was entirely unventilated save for three doors which were almost always closed. In this year (1920) the rains commenced at Agra during July and they had been on for some days when, on the 28th of July, in the afternoon smoke was seen issuing from the room. The alarm was raised, the doors were eventually opened and the cotton was found to be on fire. The fire was not got under until great damage had been done to the upper portion of the house.

The plaintiffs sued the defendants for damages, basing their claim largely on the allegation that the plaintiffs had themselves intentionally set fire to the cotton.

The trial court, though on what precise findings was not altogether clear, gave the plaintiffs a decree for Rs. 12,800. The defendants appealed.

Sir *Tej Bahadur Sapru*, Dr. *Surendra Nath Sen*, Mr. *B. Malik*, Munshi *Baleshwari Prasad* and Munshi *Ajudhia Nath*, for the appellants.

(1) (1865) 34 L. J. (Ex.), 220. (2) (1863) 33 L. J. (Ex.), 13.
(3) (1898) I.L.R., 26 Calc., 898.

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Mr. *B. E. O'Conor*, Dr. *Kailas Nath Katju* and Munshi *Narain Prasad Asthana*, for the respondents.

The judgement of the Court (MEARS, C. J., and LINDSAY, J.), after stating the facts as above and rejecting the plaintiffs' hypothesis of incendiarism, thus continued :—

It is impossible to understand from the judgement whether Mr. Harihar Prasad really thought it a case of incendiarism or that the cotton was ignited by fire brought negligently into contact with it by the servants of defendants, or whether liability should fall on the defendants upon the ground that admittedly a fire broke out on premises occupied by them and under their control under circumstances which put the burden of proving that they had acted in all respects with reasonable care.

In the result he gave the plaintiffs a decree for Rs. 12,800, based not upon a calculation of the amount which it would cost to make good the damage done but on the capital value of the destroyed portion of the house, regarded from the letting point of view.

The defendants alleged that ventilation was given to the room by 3 square sky-lights placed over the doors. It is obvious from the photographs and plans that no such sky-lights ever existed. From the evidence of Nathu Lal (page 84) it is clear that the cotton, once it was stored in the room, was left to itself and all that happened was that a servant on the 2nd or 4th day would go and see it. By going to see it the witness explained that he went to the locked doors without the key and looked through to see if it was all right. It was only when a customer wanted to see bales that the room was opened and there was evidence showing that cotton had slumped so badly that

there were no buyers. No evidence was given to show that the room was ever opened during the tremendous heat of April, May and June, or the rains of July. At page 130 of his judgement the learned Subordinate Judge assumed, because it had been raining, that therefore it could not be a case of spontaneous combustion. A great deal of argument in this Court was addressed to us on the negligence in leaving cotton on the ground floor of a residential house unwatched for months and in an unventilated room. The cotton must have become bone-dry by the end of June and in a condition in which it would eagerly absorb moisture during the rains and the pressure of one damp bale upon another is exactly the very circumstance which gives rise to spontaneous combustion and which has to be guarded against by adequate ventilation, the moving to and fro of the bales, temperature tests and daily watchfulness.

The plaintiffs were so set upon running the case of incendiarism that they overlooked the importance of getting expert evidence on the liability of cotton to self-ignition, but we are at liberty to, and do, disagree with the Judge that the fact of wet weather precludes the theory of spontaneous combustion. On the other hand, it indicates the likelihood of it.

We think that the judgement, unsatisfactory as it is on the issues propounded, may yet be supported by his finding at page 132, lines 30 to 40.

We confirm his decision on the ground that the fire which undoubtedly occurred would not have happened had the defendants exercised proper watchfulness and control over the cotton. They had the exclusive control and custody of the cotton and must be presumed to know the degree of care required

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by persons who store cotton in India in bulk in unventilated rooms during the months of April, May, June and July.

The principle of liability is set out in the cases of *Scott* v. *London Dock Co.* (1), *Byrne* v. *Boadle* (2) and the Indian case of *The Rivers Steam Navigation Co.* v. *Choutmull Doogar* (3).

Now as regards the damages. The learned Subordinate Judge was, as we have said, unable to accept the evidence of Janki Prasad—the plaintiff gave the court no help. Mr. Prag Narain, who expounded theories on the way cotton burns when an incendiary has been at work, also gave expert evidence as to the price houses fetch in the locality, based upon a rental calculation. We are of opinion that if the plaintiff had disclosed his books and given the court a straightforward calculation of the total of the cost of the house at the date of the fire and also produced two or three reliable quantity surveyors and builders he might have shown a greater loss than Rs. 12,800. However, he failed to do so, and we propose to leave the damages at the amount awarded by the learned Subordinate Judge.

In view of the manner in which this case was conducted in the lower court we deprive the plaintiff of his costs in that court and, whilst dismissing this appeal, do so also without awarding any costs to the plaintiff respondent.

Appeal dismissed.

(1) (1865) 34 L. J. (Ex.), 220. (2) (1863) 33 L. J. (Ex.), 13.
(3) (1898) I.L.R., 26 Calc., 398.