APPELLATE CIVIL.

Before Das and Adami, J.J.

EAST INDIAN RAILWAY COMPANY

1921

July, 30.

v.

BHAGWAN DAS.*

Railway Act, 1890 (*Act IX of* 1890), *section* 57—*Loss of railway receipt—offer of consignee to execute indemnity bond—enquiry into* bona fides *of consignee's claim—demurrage whether payable pending the enquiry.*

Goods which had been made over to a Railway Company to be consigned to Giridih, reached there on the 3rd October, and the consignee on receipt of information of the arrival of the goods on the 5th applied for delivery of them and offered to execute an indemnity in favour of the Company as the railway receipt had been lost. The Station Master refused to deliver the goods until the Railway Administration had satisfied itself that the plaintiff's claim was *bonâ fide*. The goods were subsequently delivered to the consignee on the 19th. *Held*, that the Company was not entitled to charge demurrage for the period during which the investigation into the consignee's claim was being made.

B. B. C. I. Railway Company v. *Jacob Elias Sassoon*(1), followed.

The facts of the case material to this report were as follows:—

On the 26th September, 1918, Sadaram Kishun Dayal made over a consignment of 450 bags of salt to the East Indian Railway Company at Sulkea for carriage to Giridih. The Railway Receipt No. 79164, was made out in the name of the consignor, who sold the goods to the plaintiffs, Bhagwan Das and others, and

* Appeal from Appellate Decree No. 1206 of 1920, from a decision of A. Tuckey, Esq., Judicial Commissioner of Chota Nagpur, dated the 23th September, 1920, affirming a decision of Babu Radha Krishna Prashad, Munsiff of Giridih, dated the 6th November, 1919

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made over the Railway Receipt to them. The goods reached Giridih on the 3rd October, 1918. The plaintiffs received information of their arrival on the 5th October and applied for delivery. As the Railway Receipt had been lost they offered to execute an indemnity bond in favour of the Company. The Station Master, however, refused to deliver the goods to the plaintiffs until their claim had been enquired into by the Railway Administration. On the 19th October, 1918, the Railway Administration, being satisfied as to the plaintiffs' claim, made over the goods to the plaintiffs on payment by the latter of Rs. 513 as demurrage.

The plaintiffs sued for recovery of the Rs. 513 paid as demurrage, plus damages at 25 *per cent.* The trial court decreed the suit for Rs. 513 and damages at 12 *per cent.* The Company appealed to the District Judge and the decision of the trial court was affirmed.

The defendant Company appealed to the High Court.

Susil Madhab Mullick and *Sivanarain Bose*, for the appellant.

Siveswar Dayal and *Brij Kishore Prasad*, for the respondents.

DAS, J.—This appeal arises out of a suit instituted by the respondents for recovery of a sum of Rs. 513 from the defendants. The claim has been allowed by both the Courts below.

The facts of the case are these. On the 26th of September, 1918, Sadaram Kishun Dayal, a firm carrying on business in Calcutta, made over a consignment of 450 bags of salt at Sulkea to the defendant Company for carriage of the same to Giridih. The Railway Receipt No. 79164 was made out in the name of Kishun Dayal. It appears that Sadar Ram Kishun Dayal sold the goods to the plaintiffs and made over the Railway Receipt to the plaintiffs; but it also appears that the Railway Receipt was lost. The goods actually arrived in Giridih on the 3rd October,

1918. The plaintiffs, on getting information of the arrival of the goods on the 5th October, 1918, applied for delivery of the goods to them and offered to execute a bond of indemnity in favour of the Railway Company. The Station Master of Giridih, however, refused to deliver the goods to the plaintiffs pending an enquiry by the Railway Administration as to the claim of the plaintiffs. The Railway Administration was subsequently satisfied as to the *bonâ fides* of the claim of the plaintiffs, and on the 19th October, 1918, made over the goods to the plaintiffs on payment of Rs. 513 by the plaintiffs as demurrage. The plaintiffs say that the Railway Company was not entitled to charge the demurrage from them. The Courts below, agreeing with the contention put forward on behalf of the plaintiffs, have allowed the claim in full as against the Railway Company.

Section 57 of Act IX of 1890 appears to be the relevant section. That section provides, (omitting all immaterial matters)

> Where receipt given for the goods is not forthcoming the Railway Administration may withhold delivery of the goods until the person entitled in his opinion to receive them has given an indemnity to the satisfaction of the Railway Administration against the claims of any other person with respect to the goods.

Now Railway Administration has been defined to mean the Railway Company. Mr. *Sushil Madhab Mullick's* argument is, that the Station Master was incompetent to accept the indemnity offered by the plaintiffs and that he was bound to refer the matter to the Railway Administration, in other words to the Railway Company, which, in this particular case, under the rules framed under the Act, would be the Divisional Traffic Manager. There is no doubt that under the various rules that have been framed under this Act the Station Master was incompetent to make over the goods to the plaintiff, inasmuch as they did not produce the Railway Receipt to the Station Master, and it may be that the time taken by the Railway Administration in holding the enquiry into the claim of the plaintiffs was a perfectly reasonable one in the circumstances of the

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case. The question still remains whether the Railway Administration was entitled to charge demurrage from the plaintiffs for the time occupied by it in making a proper enquiry into the plaintiff's claim.

Under the Rules framed by the Governor-General *in Council under the provisions of the Act* a wharfage charge may be levied in respect of all goods not removed from Railway premises before closing time of the day following that on which they are made available for delivery; and demurrage at a particular rate may be charged on all loaded vehicles requiring to be discharged by owners which are not discharged after the expiry of nine hours of day light from the time of being placed in position for unloading.

The question which we have to determine in this case is when were the goods made available for delivery, and whether the owners were required to discharge the goods at any time prior to the 19th October, 1918. In my opinion the goods were not available for delivery until the 19th October, 1918. The proper person had applied for delivery of the goods so far back as the 5th October, 1918. It is quite true that that proper person did not produce the Railway Receipt and that the Railway Administration was entitled to make an enquiry into the *bonâ fides* of the claim made by the plaintiffs. But the result of that enquiry was entirely satisfactory to the claim of the plaintiffs. It must follow, therefore, that the proper person had applied for delivery of the goods on the 5th October, 1918, and that the Railway Administration refused to deliver the goods to that person pending the result of the enquiry made by it: in other words, according to the view taken by the Railway Administration itself, the goods were not available for delivery until they were satisfied as to the *bonâ fides* of the claim put forward on behalf of the plaintiffs.

On the question of demurrage they were not required to discharge the goods until the Railway Administration was satisfied that they were the owners and

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ought to discharge the goods. In my opinion the view taken by the Courts below is entirely correct.

The case referred to by the Court of first instance, the case of the *B. B. C. I. Ry. Co.* v. *Jacob Elias Sassoon* (1), entirely supports the case of the plaintiffs. Mr. *Sushil Madhab Mullick* argues before us that that case was wrongly decided. Well, we are not prepared to dissent from the view taken by Mr. Justice Parsons in that case. We must accordingly dismiss this appeal with costs.

A question was raised by Mr. *Sushil Madhab Mullick* as to whether the Railway Company are entitled to reasonable warehouse rent for the time the goods remained with them. This claim has never been put forward on behalf of the Railway Administration and we cannot adjudicate on it in this Court in second appeal when the facts are not before us. If they are entitled to any reasonable warehouse rent they are entitled to enforce that claim in a properly constituted suit against the plaintiffs. We cannot entertain the claim in this appeal.

ADAMI, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Jwala Prasad, A. C. J. and Ross, J.

JAMUNA RAI

v.

RAMTAHAL RAUT.*

1921.

August, 1.

Court-Fee—suit on mortgage dismissed—on appeal suit decreed together with interest between date of suit and date of appellate decree—whether Court-fee payable on interest.

Where a suit on a mortgage was dismissed by the first court, and the plaintiffs appealed, paying on the memorandum

* Second Appeal No. 707 of 1920, from a decision of Ashutosh Chatterji, Esq., District Judge of Darbhanga, dated the 1st April, 1920, reversing a decision of Maulavi Saiyid Abul Fath, Munsif of Darbhanga, dated the 16th August, 1919.

(1) (1894) I. L. R. 18 Bom. 231.