

section 457 and section 380 of the Indian Penal Code : see *Queen v. Tonaokoch* (1), *Queen v. Sakrae* (2), *Jogeen v. Nobo* (3), *Mussahur Dusadh* (4) and *Queen v. Chytun Boura* (5), where their Lordships observed : " The point has been frequently ruled. A prisoner convicted of house-breaking followed immediately by theft would be punished under section 457 of the Indian Penal Code only."

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The result is that the sentence of three years' rigorous imprisonment passed under section 380 must be set aside. The sentence under section 457, Penal Code, will stand.

KULWANT SAHAY, J.—I agree.

## APPELLATE CIVIL.

*Before Ross and Kulwant Sahay, J.J.*

BENGAL AND NORTH-WESTERN RAILWAY  
COMPANY

v.

TUPAN DASS.\*

1926.

March, 10.

*Railways Act, 1890 (Act IX of 1890), section 75—contents of parcel, abstraction of—whether " deterioration " within the meaning of section 75—Railway Company, liability of.*

Under section 75 of the Railways Act, 1890, " when any articles mentioned in the Second Schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds Rs. 100, the railway administration shall not be responsible for the.....deterioration of the parcel or package.....".

Plaintiff consigned a parcel for transmission on the defendant's railway. When it was opened it was found that

\* Appeal from Appellate Decree no. 1299 of 1922, from a decision of Jadunandan Prasad, Esq., District Judge of Purnea, dated the 17th of July, 1922, modifying a decision of Maulavi Saiyid Mohammad Zarif, Munsif of Katihar, dated the 9th of September, 1921.

(1) (1865) 2 W. R. (Cr.) 63.

(3) (1866) 6 W. R. (Cr.) 49.

(2) (1867) 8 W. R. (Cr.) 31.

(4) (1866) 6 W. R. (Cr.) 92.

(5) (1866) 5 W. R. (Cr.) 49.

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some of the contents had been abstracted. These were articles of silk and other things falling within the Second Schedule to the Railways Act, 1890. Plaintiff brought the present suit for recovery of the value of these articles. The defence was that the company was protected by section 75. The finding of the courts below was that the contents were abstracted while the parcel was in the custody of the defendant company's servants.

*Held*, that there was "deterioration" of the parcel within the meaning of section 75, and that the defendant company was protected under that section irrespective of whether the articles were abstracted by the company's servants or not.

The facts of the case material to this report are stated in the judgment of Ross, J.

*Hasan Jan*, for the appellants.

*L. K. Jha*, for the respondent.

Ross, J.—This appeal must be allowed. The plaintiff respondent sent a parcel for transmission from Hyderabad, Sindh, to Katihar on the railway of the defendant company. The parcel arrived at Katihar; but when it was opened it was found that some of the contents had been abstracted. These were articles of silk and other things falling within the Second Schedule to the Indian Railways Act. The present action was brought for the recovery of the value of these articles. The defence was that the company was protected by section 75 of the Indian Railways Act inasmuch as the parcel sent by the plaintiff contained articles mentioned in the Second Schedule but no declaration of their value was made. The finding of the Munsif was that the articles in question were abstracted while the parcel was in the custody of the defendant company's servants. A decree has been passed in favour of the plaintiff by both the courts below and the defendant company has appealed.

The learned Advocate for the respondent contends that the case does not fall within the terms of section 75, because there has been neither loss, destruction nor

deterioration of the parcel; and, secondly, that inasmuch as the goods were lost by theft of the company's servants they are not entitled to the protection of this section. Now "deterioration" is not a word of art and it must be taken in its ordinary sense. In the Oxford Dictionary one of the meanings given to the word "deteriorate" is "to become lower or impaired in quality or value". The parcel was impaired in value by the abstraction of these articles and consequently there was deterioration of the parcel. I think, therefore, that the case falls within the language of section 75. As to the argument that section 75 does not protect the company because the articles were abstracted by the servants of the company, the learned Advocate was compelled to admit that he had no Indian authority for this proposition. He relied upon certain decisions of the English Courts, but these proceeded on the express provision of section 8 of 11 Geo. IV and 1 Will. IV, Chapter 68 (Carriers' Act, 1830), where a proviso is enacted exempting from the liability for loss of or injury to the articles therein referred to imposed by the first section of that Act. The proviso is that

"Nothing in this Act shall be deemed to protect any mail contractor.....stage coach proprietor or other common carrier for hire from liability to answer for loss or injury to any goods or articles whatsoever arising from felonious acts of any coachman, guard, book-keeper, porter or other servant in his or their employ, etc."

There is no such proviso in the Indian Act and, therefore, the English decisions have no application. It was also pointed out by the learned Advocate for the appellant company that there is no evidence that the theft was committed by any of the company's servants and this argument was not met by the learned Advocate for the respondent.

In my opinion, therefore, this case is covered by section 75 of the Indian Railways Act and the appeal must be decreed with costs and the suit dismissed with costs throughout. The cross objection is dismissed.

KULWANT SAHAY, J.—I agree.

*Appeal decreed.*

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