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been in fact such a contract, then the contract whatever it is, if it is proved, should be recorded as the adjustment of the decree. The case should be disposed of by the learned Subordinate Judge as soon as he can possibly do so.

COURTNEY,
 TERRELL,
 C.J.

I would allow the appeal with costs.

SAUNDERS, J.—I agree.

Appeal allowed.

LETTERS PATENT.

Before Wort and Rowland, JJ.

SORABJI DADABHAI

v.

BENGAL NAGPUR RAILWAY COMPANY.*

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 December,
 20.
 January, 3,
 7.

Railways Act, 1890 (Act IX of 1890), sections 58, 75 and 78—declaration of value of valuable articles—plaintiff, whether can recover damages for loss according to true value and go behind the declaration—declaration found to be false—Estoppel.

The plaintiff sued the Railway Company for damages for loss of a certain quantity of Ganja in transit out of a package which was part of a consignment and had made a declaration as regards the value of the entire consignment at the time of delivering the goods for despatch. The plaintiff valued the claim at a price in excess of the proportionate value according to the declaration.

Held, (i) the words "shall not exceed the value so declared" in section 75(2) must be read subject to the context, viz. "the compensation recoverable in respect of such loss, destruction and deterioration and therefore the contention of

* Letters Patent Appeal no. 63 of 1935, from a decision of the Hon'ble Mr. Justice Fazl Ali, dated the 26th of March, 1935, in second appeal no. 96 of 1932 (Cuttack Circuit), modifying the decree of Babu Ramesh Chandra Mitra, Subordinate Judge of Sambalpur, dated the 7th of June, 1932, in turn confirming the decision of Babu Sailendra Bhusan Sen Gupta, Munsif of Sambalpur, dated the 8th of October, 1931.

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the plaintiff that he was entitled to go behind the declaration as to value and prove that the real value for the whole or a portion was in excess of the declared value was not tenable.

(ii) When parties have agreed to act upon an assumed state of facts their rights between themselves are justly to depend on the conventional state of facts and not on the truth. *M'Canee v. The London and North-Western Railway Company*(1), followed.

(iii) It was upon the basis of the declaration that the parties contracted, and it was upon that basis that the Railway Company fixed the rate of carriage and therefore the plaintiff was estopped from alleging that the declared value was not the true value of the goods.

Per ROWLAND, J.

Held, (i) that the section strictly interpreted contemplates a declaration regarding the contents, and their value, of each package.

(ii) Section 75, clause (2), must be read in connection with sections 58 and 78 of the Act. Section 58 requires the consignor if so required by an authorised railway servant to deliver "an account in writing" containing "such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge". If the account is materially false the provisions of section 78 of the Act will become applicable.

(iii) That the "declaration" is not a separate thing from the "account" and "description" referred to in section 58; the provisions in section 58 are of general application but that in the special circumstances described in section 75 the account and description to be given under section 58 must include a declaration as to value.

(iv) That the value of the consignment as given in the declaration being false, the plaintiff was debarred from recovering more than the value calculated in accordance with the description and valuation of the consignment as contained in the declaration.

Appeal by the plaintiff.

The facts of the case material to this report are set out in the judgment of Wort, J.

(1) (1864) 3 H. and C. 348; 159 Eng. Rep. 563.

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COMPANY.*Yasin Yunus*, for the appellant.*S. N. Bose* and *N. C. Ghosh*, for the respondent.

WORT, J.—This is an appeal from a decision of my learned brother Fazl Ali sitting in appeal from an appellate decree arising out of an action in which the plaintiff claimed damages or compensation for the loss of certain goods which were in transit on the defendant railway.

A number of questions arose in the Courts below, but the only matter which comes up for determination in this Court is the proper construction to be placed on section 75 of the Railways Act. The goods which were carried on the defendant railway were six packages of ganja the weight of which, according to the declaration, was six maunds but ultimately the packages proved to weigh eight maunds and twenty-four seers. No question arises now with regard to the matter, and, as my learned brother Fazl Ali has pointed out, the defendant company admitted their liability to the extent of Rs. 85-5-0. During transit one of the packages was pilfered and some 11 seers 9 chitaks of ganja was extracted, and for that loss the plaintiff's claim was preferred for Rs. 541 which according to the plaintiff was the value of the goods lost. In pursuance of section 75(1) of the Railways Act, the goods being in value more than Rs. 100, the plaintiff made a declaration that the value was Rs. 1,800. The Rs. 541 claimed in the action did not represent a proportionate value of Rs. 1,800 but a proportion of what they now state to be the true value: in other words, the plaintiff claimed to go behind that declaration of valuation and claimed to be entitled to prove the true value of the goods. In support of the claim for Rs. 541 reliance was placed upon the words of sub-section (2) of the section which are:—

“When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared”.

The appellant's case is in substance that the declared value merely limits the total amount of the claim, and that amount may be claimed either for the total amount of the consignment or a part, and therefore, he is at liberty to go behind the declaration as to value and to prove the real value for the whole or a portion, so long as the value for the whole or a portion, is not in excess of the declared value. In my judgment there is no foundation for that argument. It is an argument which in my opinion ignores the grammatical meaning of the words "shall not exceed the value so declared" and at the same time entirely ignores the context of the section. The words "shall not exceed the value so declared" in my judgment implies that a claim may be less than the value declared. Again, when construing the words "shall not exceed the value so declared", the context is to be taken into consideration, the words of the context being—"compensation recoverable in respect of such loss, destruction or deterioration". It is impossible in my view to say that in the case of deterioration of a package or packages the whole amount so declared should be recovered as damages. On a plain construction of the section it seems to me that the argument of the plaintiff fails.

But assuming for the moment that the construction of the appellant represented here by Mr. Yunus is to be taken as one of alternative constructions of the section, and to that extent the section is ambiguous, that construction must be placed upon the section which is at once not unreasonable and is in conformity with wellknown legal principles. Now the first principle which we should apply in those circumstances would be this that the law of damages entitles a plaintiff, whether attempting to recover in contract or in tort, such damages as he has incurred and that only. Now, Mr. Yunus at first admitted that had the Rs. 1,800 been the true value declared he would have been limited to the amount as damages which has been awarded to him. Seeing where that

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admission led him to be withdrew it, but the withdrawal does not assist him for the principle of the admission is so clear as to be almost unnecessary to state: in other words, it is impossible to contend that the plaintiff could (assuming the declared value to be the true value) recover the whole of the declared value in respect of a portion of the goods only. Once that principle is recognized, it is obvious that the only question which arises (the determination of which determines the question in issue) is whether the plaintiff is entitled to go behind the declaration he has made. One fact is clear and that is that it was on the basis of this declaration that the parties contracted, and the Railway Company relying upon that declaration determined the rate at which the goods should be carried. In the case of valuable goods the Company may fix a rate which to some extent compensates them and insures them for any loss for which they might ultimately be held to be liable.

Now, once having stated that principle, it seems to me that the matter is determined by reason of a certain decision which in my judgment is equally applicable in this regard to India as to England. It must be remembered in this connection that I am determining the matter on the assumption that there are two possible constructions to be placed on the section. In the case of *M'Cance v. The London and North-Western Railway Company*⁽¹⁾ Williams, J. made this observation "When parties have agreed to act upon an assumed state of facts their rights between themselves are justly made to depend on the conventional state of facts and not on the truth. Applying that rule to the present case, we think that both parties are bound by the conventional state of facts agreed upon between them". The conventional state of facts there referred to was the valuation placed upon certain goods carried by the defendant Railway Company. But even apart from

(1) (1864) 3 H. and C. 343; 159 E. R. 563.

any application of any authority in England on the question, the matter seems to be conclusively determined on the principle of section 115 of the Evidence Act which provides:

“When one person has, by his declaration, act or omission intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative, to deny the truth of that thing.”

This well-known principle of estoppel seems to me to apply in terms to the facts of this case. It is upon the basis of the declaration that the parties contracted, and it was upon that basis that the Railway Company fixed the rate of carriage, and, that being so, the plaintiff is now estopped from alleging that the declared value is not the true value of the goods. That disposes of the one question on which the matter depends, namely, whether the plaintiff could go behind his declaration; he having admitted and declared the true value, he could recover only that portion which represented the loss which he has sustained.

There was another aspect of the case suggested by the Bench in the course of the argument which was merely a comment upon the argument advanced and arises under the first sub-section of section 75 of the Railways Act. The words used in the sub-section are—

“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 one hundred rupees”.

In such a case the consignor or the customer must declare the value of parcel or package. It may very well be that the word “parcel” is used in the technical sense of covering the whole consignment, but it is, I think, sufficiently clear from the section that the Railway Company could have called upon the plaintiff to value each of these packages. In any event, taking his declared value at Rs. 1,800, there

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being six packages of approximately the same weight, it is obvious that each of these packages would be approximately Rs. 300 in value according to the declaration of the value of the total. That means this that the argument which we are asked to accept involves the proposition that the plaintiff could recover with regard to part of one of these packages more than the value of the whole. Whichever way one looks at the matter, it seems to me that the argument of the appellant cannot be supported either in the matter of what is the true construction to be placed upon the section, or, in the event of there being any ambiguity, the principles which should be applied in construing the section.

In my judgment the decision of the learned Judge in the Court below is right. The appeal, therefore, fails and must be dismissed with costs.

ROWLAND, J.—The only question for decision in this appeal is to what amount of damages the plaintiff is entitled for loss of 11 seers 6 chhataks of ganja in transit over the defendant railway line. This ganja was contained in a package weighing 1 maund 17 seers being item no. 5 in a consignment of six packages of ganja each containing about 1 maund of ganja and the weight of each package including the packing being 1 maund 17 or 18 seers. The contents of the packages were declared to be ganja and the value of the consignment was declared at Rs. 1,800. The plaintiff claimed compensation at Rs. 46-14-0 per seer based on the cost Rs. 6-14-0 and duty Rs. 40 per seer and was allowed compensation at this rate by the Munsif and the Subordinate Judge, the decree being for a sum of Rs. 533-3-3.

In second appeal a single Judge of this Court accepted the contention of the railway company that the value of the entire consignment having been stated as Rs. 1,800 for six maunds the plaintiff was entitled only to so much compensation as was proportionate to the quantity of the ganja lost as

compared with the quantity consigned. He therefore modified the decree and awarded the plaintiff compensation at Rs. 7-8-0 per seer corresponding to Rs. 300 per maund or Rs. 1,800 for six maunds and passed a decree for Rs. 85-5-0. The contention of the plaintiff in Letters Patent appeal is that the view taken by the Munsif and the Subordinate Judge was correct and the decree passed by them should be restored.

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We have not been shown any authority bearing directly on the point for decision and I propose to consider and apply the statutory provisions of the Indian Railways Act. Section 72 is the section defining in general terms the responsibility of a railway administration for loss, destruction or deterioration of animals or goods delivered to the administration for transport. The responsibility is said to be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872. Sections 151 and 152 are the sections requiring of the bailee the exercise of ordinary prudence and care and section 161 states the rights of parties on failure of the bailee to fulfill his duties. It runs thus:—

“ If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction, or deterioration of the goods from that time.”

The courts of fact have held that the Bengal Nagpur Railway Company were negligent during the transit of the packages in question. We have to consider how far the provisions of section 161 of the Contract Act read with section 72 of the Railway Act which may appear *prima facie* to impose on the railway company liability to make good the entire loss sustained are modified by what we find in other relevant sections. Section 75, clause (1), runs as follows:—

“ 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

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parcel or package exceeds one hundred rupees, the railway administration shall not be responsible for the loss, destruction or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared or declared them at the time of the delivery of the parcel or package for carriage by railway, and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk."

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On this sub-section a question may arise as to whether the consignor can be said to have made any declaration regarding the contents and value of the package item no. 5 of the consignment from which package 11 seers 6 chhataks of ganja were missing. The declaration made was in respect of the entire consignment of six packages. It seems to me that the section strictly interpreted, contemplates a declaration regarding the contents, and their value, of each package. In the circumstances of this case it appears to have been understood between the consignor and the railway that each package contains one maund of ganja and the whole of the proceedings have gone on the assumption that all the ganja in all the packages was of the same quality and value. It seems to me that if there was any declaration regarding the package item no. 5 at all it was an implied declaration that the value of each package, and therefore of this package, was Rs. 300. As a result of this the plaintiff if he succeeded in his main contention would not be entitled at the utmost to more compensation than Rs. 300. The only alternative to this view would be to hold that there was no declaration as to the value of the contents of any particular package of the consignment and if that view was taken, the plaintiff would be entitled to no compensation at all having regard to sub-section (2) of section 75. This sub-section enacts:—

"When any parcel or package of which the value has been declared under sub-section (1) has been lost or destroyed or has deteriorated, the compensation recoverable in respect of such loss, destruction or deterioration shall not exceed the value so declared and the burden of proving the value so declared to have been the true value shall, notwithstanding anything in the declaration, lie on the person claiming the compensation."

This sub-section has been understood by the Munsif and the Subordinate Judge as merely limiting the total compensation recoverable for loss of the goods or any part of them; and if the section stood alone there might be much to be said for the view that compensation is not to be limited further than it is expressly limited by statute. My learned brother has discussed the general principle of law applicable upon which he finds such a view not to be tenable. I would like to add that section 75, clause (2), must be read in connection with certain other provisions of the Act to which I shall now refer. Section 58 requires the consignor if so requested by an authorised railway servant to deliver "an account in writing" containing

"such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge."

If the account is materially false the provisions of section 78 of the Act will become applicable. Therefore we have to consider whether a "declaration" made for the purposes of section 75 is to be regarded as part of the account and description referred to in section 58. The language used in the two sections is not identical but speaking for myself in my opinion the "declaration" is not a separate thing from the "account" and "description" referred to in section 58; it appears to me that these provisions in section 58 are of general application but that in the special circumstances described in section 75 the account and description to be given under section 58 must include a declaration as to value. In taking this view I observe that section 75, clause (1), contemplates payment of or engagement to pay a percentage on the value declared by way of compensation for increased risk; while section 58 speaks of such a description of the goods as may be sufficient to determine the rate which the railway administration is entitled to charge. It is clear that had the full value been declared the railway would have been entitled to charge more. Section 78 though not divided into sub-sections

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contains two distinct provisions relating to responsibility for the loss, destruction or deterioration of goods with respect to the description of which an account materially false has been delivered under section 58. First, it is enacted that if the loss, destruction or deterioration is in any way brought about by the false account the railway administration shall not be responsible at all. This covers cases where the nature of dangerous goods has been fraudulently concealed and damage has resulted. Secondly, that in any case the administration shall not be responsible

“for an amount exceeding the value of the goods if such value were calculated in accordance with the description contained in the false account.”

On the facts as found the declaration given for the purposes of section 75 in the case before us was false in so far as it represented the value of the consignment to be Rs. 1,800 only; and in so far as that representation was the basis of the calculation of percentage payable by way of compensation for increased risk, this was a material part of the declaration, account and description of the goods. I am of opinion, therefore, that the second part of section 78 applies and that the plaintiff is barred from recovering more than the value of 11 seers six chhataks calculated in accordance with the description and valuation of the consignment contained in the declaration. On this view I agree that the appeal should be dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL.

Before Dhole and Agarwala, JJ.

GOPALJI JHA

v.

GAJENDRA NARAYAN SINGH.*

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22, 23.

January. 8.

Injunction—Estates Partition Act, 1897 (Beng. Act V of 1897), section 25—suit for declaration and injunction

* Appeal from Original Order no. 33 of 1935, from an order of Babu Ram Bilas Singh, Subordinate Judge of Darbhanga, dated the 11th December, 1934.