APPELLATE CIVIL.

Before Mr. Justice Broadway and Mr. Justice Fforde.

NARSINGH DAS-BALDEO DAS (PLAINTIFFS) Appellants

versus

GREAT INDIAN PENINSULA RAILWAY Co. (DEFENDANT) Respondent.

1926

Feb. 16.

Civil Appeal No. 2781 of 1923.

Railways—Carriage of goods—Risk Notes B and H. proviso—effect of—Railway not liable for loss by fire even if caused by wilful neglect.

Goods were consigned by rail, some under Risk Note B and others under Risk Note H, the terms of which were similar, one being used for single transactions and the other for transactions extending over a specified period. Under these Risk Notes the Railway Company was indemnified against " any loss ' ..... except ..... ' of a complete consignment or of one or more complete packages ..... due to the wilful neglect of its servants," etc., with the *proviso* that the term ' wilful neglect ' should not be held to include: " fire—or any unforeseen event or accident." It was contended that in order to avoid liability for the loss of complete packages by fire it was necessary for the defendant-Company to prove that the fire was accidental.

Held, that the loss of the packages having been due to fire, the proviso protected the Railway Company whether the fire was caused accidentally or through the wilful neglect of the Railway Company's servants.

Gopal Rai-Phul Chand v. *G. I. P. Railway Co.* (1), and *The Bombay, Baroda and Central India Railway* v. *Ranchhod Lal-Chota Lal* (2), referred to.

Per Fforde J.—The word " loss " appears to have a wider meaning attached to it in this country than is the case in the English authorities.

Smith, Limited v. *Great Western Railway Company* (3), per Banks L. J., referred to.

(1) (1924) I. L. R. 46 All. 837. (2) (1919) I. L. R. 43 Bom. 769.
(3) (1921) L. R. 2 K. B. D. 237.

1926

NARSINGH DAS-BALDEO DAS v. GREAT INDIAN PENINSULA RAILWAY CO.

Second appeal from the decree of Diwan *Som Nath, District Judge, Delhi, dated the 25th August 1923, reversing that of* Rai Sahib Pandit *Prabhu Dayal, Subordinate Judge, 2nd class, Delhi, dated the 31st March 1923, and dismissing the plaintiffs' suit.*

TEK CHAND, for Appellants.

CARDEN-NOAD, Government Advocate, for Respondent.

JUDGMENT.

BROADWAY J.

BROADWAY J.—In this judgment three appeals, namely, Nos. 2781, 2782 and 2783 of 1923, are disposed of. They relate to claims by different plaintiffs against the Great Indian Peninsula Railway Company, Limited, Bombay. The facts in each case are practically the same.

In Civil Appeal No. 2781 of 1923, 270 bags of *khopra* were despatched from a station in Madras to Delhi on the 25th March 1919. The consignor and the consignee was the same and the railway receipt was assigned for value to the firm of Narsingh Das-Baldeo Das. The goods were carried on Risk Note B. Out of this consignment only 204 bags were delivered to the assignees at Delhi: the remaining 66 bags had been destroyed in the burning of a wagon at Dilawara Station on the Great Indian Peninsula Railway. The assignees, the plaintiffs, claimed a sum of Rs. 2,178 on this account and were granted a decree for Rs. 1,589-13-9 by the trial Court.

In Civil Appeal No. 2782, 270 bags of *khopra* had been despatched from another station in Madras on the 4th April 1919 to Delhi. This consignment had been assigned to the firm of Jangli Mal-Damodar Das, to whom were delivered 133 bags, the remaining

137 having been burnt at Agra on the Great Indian Peninsula Railway. This consignment was carried on Risk Note H. Jangli Das-Damodar Das claimed a sum of Rs. 4,240-6-6 as damages on account of the said loss and were granted a decree for Rs. 3,280-4-3.

In Civil Appeal No. 2783 of 1923, another lot of 270 bags of *khopra* had been despatched on the 27th March 1919 from yet another station in Madras to Delhi. This consignment had been assigned to the firm of Gorakh Ram-Kishore Chand. One hundred and fifty-six bags of *khopra* were delivered, the remaining 114 having been burnt at the station of Dilawara referred to above. In this connection the firm Gorakh Ram-Kishore Chand claimed a sum of Rs. 3,500 and were granted a decree for Rs. 2,792-12-0 by the trial Court. This consignment was carried under Risk Note B.

The Great Indian Peninsula Railway preferred appeals against all these three decrees to the District Court at Delhi. The learned District Judge found that notwithstanding the trial Court's finding that the defendant company were guilty of wilful neglect the railway company were protected from liability by the terms of the two Risk Notes. All three suits were, therefore, dismissed with costs, and second appeals have been preferred in each of them by the plaintiffs concerned through Mr. Tek Chand.

Risk Notes B and H are similar in terms, the former being used for single transactions and the latter for transactions extending over a certain specified period. The relevant portions of the Risk Notes run as follows: "* * * * * * * * I * * * * * do hereby agree and undertake to hold * * * * * * *

1926

NARSINGH DAS-BALDEO DAS v. GREAT INDIAN PENINSULA RAILWAY CO.

BROADWAY J.

harmless and free from all responsibility for any loss, destruction or deterioration or damage to all or any of such consignments *from any cause whatever* except for the loss of a complete consignment or of one or more complete packages forming part of a consignment due either to the *wilful neglect* of the Railway Administration, or to theft by or to the wilful neglect of its servants, transport agents or carriers employed by them * * * * * * * * * *provided* the term ' wilful neglect ' be not held to include fire, robbery from a running train or any other unforeseen event or accident. ''

The learned District Judge has held that the respondent company in these cases is protected from liability under the proviso cited above. Mr. Tek Chand on behalf of the appellants has urged that inasmuch as it has been found that the wagons in each case caught fire through the wilful neglect of the company's servants this proviso did not afford the company any protection. It was urged that in order to avoid liability to pay compensation for loss occasioned by fire it was necessary for the company to prove that the fire was accidental and not due to any wilful neglect on the part of the company's servants. Admittedly this question has not formed the subject of any reported decision hitherto. An examination of the Risk Notes, however, appears to me to show without any reasonable doubt that in drafting this proviso it was intended that a railway company should be protected from liability in the case of loss by fire in any circumstances. Both these Risk Notes B and H hold the railway company free from responsibility for any loss or destruction of or damage to the goods " from any cause whatever ". When, however, a complete consignment or a complete package forming part of a

consignment is lost the railway company can be held liable, if the loss is due to :—

(*a*) Wilful neglect on the part of the railway administration ;

(*b*) Theft by the railway company's employees; or

(*c*) Wilful neglect on the part of the company's servants.

To this exception, however, has been added the proviso under consideration which lays down that ' wilful neglect ' is not to be held to include fire, etc. As I read these Risk Notes the intention is clearly to protect the railway company from loss of any kind arising out of fire, whether that fire is caused accidentally or through the ' wilful neglect ' of the railway company's servants. Although there is no direct authority on this point, I am supported in my view by *Gopal Rai-Phul Chand* v. *G. I. P. Railway Co.* (1). In that case the loss had been occasioned by theft. The guard of the train knew that theft was being committed but did not apparently take any step to prevent it. The Company was held not to be liable as the theft was committed from a running train. It was held that if a plaintiff in a suit against a railway company for damages for loss of goods depends for his cause of action on ' wilful neglect ' on the part of either the railway administration or any of its servants he cannot succeed if it is shown that the loss of the goods was due to theft from a running train. A similar view was expressed in *The Bombay, Baroda and Central India Railway* v. *Ranchhod Lal-Chhota Lal* (2).

(1) (1924) I. L. R. 46 All. 837. (2) (1919) I. L. R. 43 Bom. 769.

1926

NARSINGH DAS-BALDEO DAS v. GREAT INDIAN PENINSULA RAILWAY CO.

BROADWAY J.

In each of the present cases the plaintiffs depend for their cause of action on 'wilful neglect' on the part of the railway company's servants. In each it has been shown that the loss of the goods was due to fire. The railway company is, therefore, protected from liability under the terms of the Risk Notes as held by the learned District Judge.

I, therefore, dismiss all the three appeals with costs.

FFORDE J.

FFORDE J.—The only question for decision in this appeal is whether the railway company is liable for the destruction of the appellants' goods by a fire which was caused by the wilful neglect of the company.

This question depends upon the true construction of the special contract entered into between the plaintiffs on the one hand and the railway company on the other.

This contract is contained in a document described as Risk Note Form B, the material parts of which are as follows:—

"We, the undersigned, do, in consideration of such lower charge, agree and undertake to hold the said Railway Administration, and all other Railway Administrations working in connection therewith * * * * * * * harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, all or any of such consignments from any cause whatever except for the loss of a complete consignment or of one or more complete packages forming part of a consignment, due either to the wilful neglect of the Railway Administration, or to theft by or to the wilful neglect of its servants, transport agents or carriers employed by them before, during

and after transit over the said Railway or other Railway lines working in connection therewith or by any other transport agency or agencies employed by them respectively for the carriage of the whole or any part of the said consignments, provided the term 'wilful neglect' be not held to include fire, robbery from a running train or any other unforeseen event or accident."

The effect of this contract is that, in consideration of the goods being carried at a rate lower than the usual charge, the consignors agree to hold the Railway Company exempt from all liability for any loss, destruction, deterioration or damage to the consignment, except where a complete consignment, or a complete package forming part of a consignment, is lost owing to the wilful neglect of the Railway Administration, its employees, agents, and so forth, or to theft by any servants, agents or carriers employed by them. But this reservation to the effect that the Railway Administration shall be liable for loss due to wilful neglect is qualified to this extent, that the term 'wilful neglect' is not to be held to include fire, robbery from a running train, or any other unforeseen event or accident. In other words, the Railway Administration is liable for wilful neglect; but if the loss of the goods is due to fire, even though this fire may be caused by the wilful neglect of the Railway Administration, its servants or agents, the Administration cannot be held liable for the loss in question. This meaning appears to be so clear as to hardly admit of argument. Mr. Tek Chand has contended that upon the true construction of the last clause in the agreement 'fire' must be read as 'accidental fire'. I am quite unable to agree in this view. It seems to me that the natural reading of the clause is that the

1926

NARSINGH DAS-BALDEO DAS v. GREAT INDIAN PENINSULA RAILWAY CO.

FFORDE J.

Railway shall not be responsible for loss due to wilful neglect, where the loss is the result of fire or robbery from a running train or to any other event or accident of an unforeseen nature. Mr. Tek Chand will have us hold that the word 'unforeseen' governs fire and robbery, and that, therefore, it is only in the case of a fire which the Railway authorities could not have foreseen that they will be exempt. In my opinion this is not a reasonable construction of that clause.

The Government Advocate, for the Railway Administration, has suggested that the clause imposing liability upon the Railway for fire caused by wilful neglect applies only to cases of loss of a consignment or a complete part of a consignment, and does not apply to cases of destruction or deterioration. Some observations of *Banks L. J.* in *Smith, Limited* v. *Great Western Railway Company* (1), in reference to the form of the contract in Curran's case give some colour to this view. The word 'loss', however, appears to have a wider meaning attached to it in this country than is the case in the English authorities; but as this point does not require determination in the present appeal I do not propose to deal with it.

I may add that I agree with the conclusion arrived at by my learned brother and with the reasons which he has given for that conclusion.

N. F. E.

Appeals dismissed.

(1) (1921) L. R. 2 K. B. D. 237.