

from the case in so far as Bhatkeshwar Dutt was concerned, nor are we concerned in this case with the conduct of the pleader. We cannot, therefore, make any pronouncement upon the question of whether he had any justification for taking the course attributed to him.

1929
 THE CROWN
 v.
 SUKH DEV.
 SHADI LAL C.J.

For the foregoing reasons I have no hesitation in holding that the Court has no power to assign counsel to a prisoner without his consent. I would, therefore, dismiss the application.

BROADWAY J.—I concur.

BROADWAY J.

N. F. E.

Petition dismissed.

APPELLATE CIVIL.

Before Shadi Lal C. J. and Tapp J.

SURAJ MAL-CHANDAN MAL (DEFENDANTS)

1929

Appellants

Oct. 17.

versus

FATEH CHAND-JAIMAL RAI (PLAINTIFFS)

Respondents.

Civil Appeal No. 631 of 1925.

Indian Contract Act, IX of 1872, section 212—Agent—negligence of—destruction of goods—measure of damages—Principal and Agent—liability of agent for negligence.

Held, that an agent, who is guilty of negligence, must make compensation to his principal in respect of the direct consequence of his neglect.

Held also, that where, as in this case, the property in the goods sold and despatched (by rail) and subsequently partially destroyed *en route* had passed to the consignee, he was not entitled to refuse to take delivery and to claim the refund of the price thereof; the measure of damages being the difference between the price of the goods in their undamaged condition and the market value at the time of their arrival at the destination.

1929

SURAJ MAL-
CHANDAN MAL
v.
FATEH CHAND-
JAIMAL RAI.

Second appeal from the decree of D. Johnstone, Esquire, District Judge, Delhi, dated the 9th of December, 1924, affirming that of Lala Parshotam Lal, Subordinate Judge, 2nd class, Delhi, dated the 5th of April 1924, directing that the defendants do pay to the plaintiffs the sum of Rs. 1,800.

JAGAN NATH BHANDARI, for Appellants.

DIN DAYAL KHANNA, for Respondents.

SHADI LAL C.J.

SHADI LAL C. J.—The plaintiffs, a mercantile firm, doing business at Jalalabad, in the Ferozepore District, instructed the defendants, their commission agents at Delhi, to buy 17 bales of gunny bags and one bale of *sutli*, and to despatch them to Jalalabad. The plaintiffs also remitted Rs. 1,800 to the defendants for the purchase of the goods.

The defendants purchased the goods and despatched them in an open truck at owners' risk under a risk-note in form C. Most of the goods were destroyed or burnt by fire in transit, and the plaintiffs consequently brought the present action for the recovery of Rs. 1,800 and interest.

The learned District Judge finds that the commission agents were not justified in sending the goods in an open truck at the owners' risk, and that they were guilty of negligence. This finding is not impeached in second appeal, and there can be no doubt that an agent who is guilty of negligence must make compensation to his principal in respect of the direct consequences of his neglect.

It is to be observed that the property in the goods passed to the plaintiffs, and they are not therefore entitled to ask for a refund of the price thereof. The measure of damages is the difference between the price of the goods in their undamaged condition and their

market value at the time when they reached Jalalabad. The plaintiffs were entirely in the wrong in refusing to take delivery of the goods, and they have not produced any evidence to prove their market value at the time of their arrival at Jalalabad. The record, however, shows that the total price of the 18 bales was Rs. 2,245, of which Rs. 100 represented the price of one bale of *sutli*. The Station Master of Jalalabad has deposed that 11 bales out of 17 bales of gunny bags were totally destroyed, and that the remaining bales were partially damaged. On the record it is not possible to determine the amount of compensation to be awarded to the plaintiffs in respect of the partial destruction of 6 bales of gunny bags and one bale of *sutli*, but there can be little doubt that they are entitled to recover from the defendants Rs. 1,380, which represents the price of 11 bales which were wholly destroyed.

I would therefore allow the appeal and reduce the amount awarded to the plaintiffs to Rs. 1,380. I would leave the parties to bear their own costs throughout the litigation.

TAPP J.—I agree.

N. F. E.

TAPP J.

Appeal accepted in part.

1929
 SURAJ MAL-
 CHANDAN MAL
 v.
 FATEH CHAND-
 JAIMAL RAY.
 SHADI LAL C.J.