

CRIMINAL APPELLATE.

Before Sir Basil Scott, Knight, Chief Justice, and Mr. Justice Shah.

EMPEROR v. RAMCHANDRA HARI.*

1913.

June 27.

Indian Railways Act (IX of 1890), section 101,—General Rules 99 (c), 100†—Breach of the rules—Endangering the safety of persons—Disregard of the rules by the station-master—Fouling the line for which line clear is given—Driver of the approaching train disregarding danger signals and rushing into the derailed waggon on the line—Liability of the station master.

The accused, a station master, received an up goods train on the third line in his station yard. He then ordered the driver of the goods train to detach his engine and shunt 9 waggons which were standing on the loop line to a dead end siding in order to make room for the down mail. At that time the next station on the other side asked the accused for line clear in order to pass an up passenger train, which the accused gave at once. The 9 waggons were shunted from the loop to the main line, and while they were being taken from the main line to the dead end siding, one of the waggons got derailed at the points where the siding joined the main line. At this time the distant and home danger signals were up against the up passenger train. Still the driver of that train disregarded both signals and dashed into the derailed waggon, causing some injury to two of the passengers and the guard. The station master was tried under section 101 of the Indian Railways Act (IX of 1890) for breach of Rules 99 (c) and 100 of the General Rules. The trying Magistrate acquitted

* Criminal Appeal No. 99 of 1913.

† The material portions of the rules are as follows:—

99. The line shall not be considered clear, and permission to approach shall not be given, unless—

(c) The line on which it is intended to receive the in-coming train is clear up to the starting signal.

100. When permission to approach has been given, no obstruction shall be permitted outside the home signals, or, on the line on which it is intended to admit the train, up to the starting signal which controls the train.

1913.

EMPEROR
v.
RAMCHANDRA
HARI.

the accused on the ground that it was the act of the driver of the up passenger that was immediately responsible for the collision. The Government having appealed :—

Held, setting aside the order of acquittal, that the disregard by the accused of Rule 100 enhanced the danger to passengers; and it was the risk thus entailed which rendered the rule-breaker liable to punishment.

Held, also, that as regards the punishment, the gravity of the offence should be estimated not by the actual ultimate consequences but by the risk involved, for the rule-breaker might be punished even though no accident occurred.

THIS was an appeal by the Government of Bombay from an order of acquittal passed by A. K. Nulkar, Magistrate, First Class, of Sholapur City.

The accused was station master at Kadabgaon station. On the 9th August 1912, he received 174 up goods train on the third line, known as the chord line, in his station yard. Shortly afterwards, two trains from two opposite directions were expected to arrive at the station. One of them, the 43 down mail, was intended to be received on the second line, that is, the loop line; and the other, the 16 up passenger train, was meant for the main line. There were standing at that time 9 waggons on the loop line for loading purposes. The station master ordered the driver of the 174 up goods to detach his engine and shunt the nine waggons from the loop line to a dead end siding which was on the other side of the main line. The waggons were accordingly taken from the loop to the main line, and whilst they were being shunted from the main line to the dead end siding, one of the waggons got derailed at the points where the siding joined the main line. In the meantime, the accused, on being asked for line clear from the next station ahead for the 16 up passenger train, gave it immediately. At that time both distant and home signals were up at danger against the approaching train. The 43 down mail was by then drawn up on the line beyond the distant signal on the opposite

side. The station master prepared a caution message to be sent to the driver of the mail train owing to the derailment. While he was doing so the 16, up passenger train reached the station. The driver of the train disregarded the danger signals and rushed on the main line into the derailed waggon. As a result of the collision two of the passengers and the guard were injured.

The station master was on these facts tried for the offence of endangering the safety of persons under section 101 of the Indian Railways Act (IX. of 1890) by breach of the General Rules 99 (c) and 100. The trying Magistrate acquitted him on the ground that the person immediately responsible for the accident was the driver of the 16 up passenger train; and that the accident would never have happened but for the disregard of the danger signals by the driver.

The Government of Bombay appealed against the order of acquittal.

S. S. Patkar, Government Pleader, for the Crown.

Kemp, with *B. V. Desai*, for the respondent.

Patkar :—To constitute liability under section 101 of the Indian Railways Act, 1890, two constituents are necessary to be proved : (1) disobedience of the General Rule; and (2) endangering public safety. These two elements have been proved against the present accused and his liability to be punished under section 101 is complete.

Kemp :—The accused no doubt committed a breach of a General Rule; but it was not his breach which immediately led to the accident. It was due mainly to the driver's negligence in driving in spite of the danger signals. It was difficult for the accused to have foreseen that the driver would disregard the signals.

1913.

 EMPEROR
 v.
 RAMCHANDRA
 HARI.

1913.

EMPEROR
v.
RAMCHANDRA
HARI.

SCOTT, C. J. :—The accused was charged in the Court of the First Class Magistrate, Sholapur, as follows :—

That he on or about the 9th day of August 1912 being on duty at Kadabgaon station between 19 o'clock and 22 o'clock endangered the safety of passengers travelling in 16 up from Borati by disobeying General Rules No. 99 (c) and No. 100 of the General Rules for all open lines of Railways sanctioned under section 47 of the Indian Railways Act of 1890 and published under Notification No. 183, dated the 8th September 1906, by the Governor General in Council, by giving permission to approach to 16 up at Borati and subsequently fouling the main line by carrying on shunting on the main line and on to the siding; and thereby committed an offence punishable under section 104 of the Indian Railways Act, 1890.

The facts briefly are that the accused who was station master at Kadabgaon at about 7-45 on the night of the 9th of August 1912 gave orders to the driver of goods train No. 174 which was drawn up on the third line in the Station Yard to detach his engine and shunt nine waggons which were standing on the loop line to a dead end siding in order to make room for No. 43 down mail. This shunting operation involved taking the trucks on to the main line from the loop line and then passing them some little distance along the main line to the dead end siding. In the course of the shunting one of the waggons got derailed at the points where the siding joins the main line. The derailment was caused by one Tatyia Paddoo working the point badly. The station master of Borati, the next station to Kadabgaon on the east, after the orders for the shunting had been given by the accused, asked Kadabgaon for line clear in order to pass on the 16 up passenger train and Kadabgaon gave line clear at once. The accused says line clear to the 16 up passenger and No. 43 down mail were to be given when he had two lines clear on which to receive them, because the loop line was clear and the main line would have been cleared within two minutes if there had been no derailment; line clear was given in anticipation of the line being

cleared. He thought there was ample time to do the shunting, and if he had not done the shunting, No. 43 down mail would have been seriously detained.

At this time the distant and home danger signals were up against the advancing 16 up from Borati and while the siding key was in the points it was impossible to take out from the key-box the key of the levers working the signals against the 16 up. The stations are protected by home and outer signals against advancing trains. Under these conditions the 16 up passenger left Borati and though running to Kadabgaon on a marked incline where steam has to be shut off for the last three miles and the train would be under such control that it could be pulled up at the first danger signal the driver disregarded both danger signals and dashed into the derailed waggon, causing some injury to two of the passengers and the guard. Upon these facts the Magistrate held that the accused had broken Rule 100 which is as follows:—"When permission to approach has been given, no obstruction shall be permitted outside the home signals, or, on the line on which it is intended to admit the train, up to the starting signal which controls the train;" but had not by so doing endangered the safety of any person within the meaning of section 101 of the Indian Railways Act (IX of 1890).

The accused was therefore acquitted.

Against the order of acquittal this appeal has been preferred by Government.

There can be no doubt that the two chief causes of the collision were the disregard by the driver of 16 up passenger train of the danger signals and the existence on the main line of the derailed waggon.

The derailment may have been caused by the negligent working of the points by Tatyá Paddoo. But the

1913.

EMPEROR

v.

RAMCHANDRA
HARI.

1913.

EMPEROR
 v.
 RAMCHANDRA
 HARJ.

waggon would not have been on the line at all but for the disregard by the station master of Rule 100. The object of the rule is to lessen the risk of accidents through shunting on a through line after line clear has been given. The disregard of the rule enhances the danger to passengers. It is the risk thus entailed which renders the rule-breaker liable to punishment; see *Snell v. The Queen*⁽¹⁾. We therefore convict the accused of an offence under the section.

As regards the punishment, we have to bear in mind that the offence is the endangering of the passengers, not the contributing to an accident, for the rule-breaker may be punished even though no accident occurs. Taking this as the object of the section, the gravity of the offence should be estimated not by the actual ultimate consequences but by the risk involved. In this view the following matters appearing in evidence are relevant.

It is found that the accused some months before the accident (*viz.*, on the 19th April 1912) wrote to the District Traffic Superintendent, Sholapur, in reference to a memo regarding detention of waggons that there was no separate siding for loading and unloading purposes and this had to be carried out on the loop line which occupied double the time and they had to be hand-shunted in a siding before loading was completed to make the line clear to admit a train. On many occasions owing to the running of trains the loading of a waggon would not be completed for three days. The letter continues: "The labour engaged no doubt are bound to bring waggons in a position to load and unload only once and not often and often; so we have to wait for engine power. So time is lost and loading is not promptly completed. When you had been here

(1) (1883) 6 Mad. 201.

last time I explained the difficulties and requested you to provide one separate siding holding about ten waggons and a gang of hamals. The absence of the hamals and siding puts me into great difficulty about loading and unloading business ; so kindly arrange for a separate siding."

The District Traffic Superintendent deposes that there are A and B class stations, the distinction between the two classes being mainly with reference to fouling the line on which the in-coming train is to be received. Kadabgaon was an A-class station till the 1st November 1912 since when it has been of the B-class. The station master and merchants had before November 1912 complained that more siding accommodation and loading facilities were wanted at Kadabgaon and the station master complained on the ground that shunting had to be stopped in order to enable him to give permission to trains to approach according to the rules. This station master is apparently the successor of the accused.

The result of making Kadabgaon a B-class station is that shunting may continue between home and starting signals although line clear is given for an advancing train to approach..

In these circumstances the station master must keep the home and outer signals against the train.

The inference is that the risk of the driver disregarding the signals is now considered by the Railway administration so remote as not to warrant the prohibition of shunting after line clear has been given at Kadabgaon. The best evidence of the actual risk involved in such an operation as that undertaken by the accused on the night of the 9th of August is the conduct of the experts most capable of appreciating it. The offence of the accused in the light of these considerations cannot be regarded as deserving of serious

1913.

 EMPEROR
 v.
 RAMCHANDRA
 HARI.

1913.

EMPEROR
v.
RAMCHANDRA
HARI.

punishment on this appeal. He has already been degraded to the post of signal-man and reduced Rs. 15 per mensem in pay. We have ascertained that the driver Valentine whose default was the *causa proxima* of the collision has been punished under section 101 with a fine of Rs. 100. We sentence the accused to pay a fine of Rs. 25 or to undergo one week's simple imprisonment.

Appeal allowed.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Shah.

1913.
July 2.

VEDU SHIVLAL (ORIGINAL PLAINTIFF), APPELLANT, v. KALU UKHARDU
AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.*

Land Revenue Code (Bombay Act V of 1879, as amended by Bombay Act VI of 1901), section 56†—Mortgagor in possession—Failure to pay assessment—Forfeiture of land—Re-grant of land to mortgagor by Collector under new tenure—Previous incumbrances not to subsist on the land re-granted.

In 1895, the defendants Nos. 1 and 2 mortgaged their lands to the plaintiff, one of the conditions of the mortgage being that the mortgagors were to

* First Appeal No. 102 of 1912.

†56. Arrears of land-revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof, failure in payment of which shall make the occupancy or alienated holding, together with all rights of the occupant or holder over all trees, crops, buildings and things attached to the land or permanently fastened to anything attached to the land, liable to forfeiture, whereupon the Collector may levy all sums in arrear by sale of the occupancy or alienated holding,.....or may otherwise dispose of such occupancy or alienated holding under rules or orders made in this behalf under section 214 [and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or by restoration to the defaulter, or by transfer to another person or otherwise howsoever, shall, unless the Collector otherwise directs, be deemed to be freed from all tenures, rights, incumbrances and equities theretofore created in favour of any person other than Government in respect of such occupancy or holding].