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point, and I refrain from expressing any definite opinion thereon.

TATA
IRON AND
STEEL
COMPANY,
LIMITED,
In re.

I concur in the order as to costs.

Answer accordingly.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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March 2.

VISHVANATH GANESH JAVDEKAR (ORIGINAL PLAINTIFF), APPELLANT
v. GREAT INDIAN PENINSULA RAILWAY COMPANY (ORIGINAL
DEFENDANT), RESPONDENT*.

Indian Railways' Act (IX of 1890), sections 41 and 42—Railway administration—Powers—Compartment reserved for the use of Europeans and Anglo-Indians only—Civil Court—Jurisdiction.

Under section 41 of the Indian Railways Act, 1890, a civil Court has no jurisdiction to try the question whether a railway administration can reserve accommodation for Europeans and Anglo-Indians on a railway train.

Section 42 of the Act deals not only with goods traffic but also with passenger traffic.

Opinions expressed in *Emperor v. Brijbasi Lal*⁽¹⁾, dissented from.

SECOND appeal from the decision of D. D. Cooper, Assistant Judge of Khandesh, confirming the decree passed by K. G. Palkar, Subordinate Judge at Dhulia.

Suit for damages and perpetual injunction.

The plaintiff purchased a third class ticket at Dhulia which entitled him to travel from Dhulia to Bhusaval by the defendant's railway. He took his seat in a compartment which had a board "Reserved for Europeans and Anglo-Indians". The station authorities at Dhulia compelled him to leave the compartment, which he reluctantly did. He travelled in another compartment of the same train.

* Second Appeal No. 235 of 1920.

(1) (1920) 42 All. 327.

The present suit was instituted to recover Rs. 5 as damages and for an injunction restraining the defendant company from preventing the plaintiff travelling in a compartment reserved for Europeans and Anglo-Indians by the defendant's railway trains.

The Subordinate Judge was of opinion that under section 41 of the Indian Railways Act a civil Court had no jurisdiction to try the question whether a railway administration had the right to reserve a separate compartment for Europeans and Anglo-Indians. The suit was dismissed.

On appeal, this decree was confirmed by the Assistant Judge.

The plaintiff appealed to the High Court.

P. V. Kane, for the appellant:—Under section 47 of the Indian Railways Act, railway companies have power to make rules for various purposes. No rules have been made and published in the manner required by sub-section 3 of section 47 as to the reservation of compartments for Europeans and Anglo-Indians. Therefore the question has to be decided with reference to the sections of the Act itself. I rely upon section 67 of the Indian Railways Act. Under that section I am entitled to travel by any third class compartment that is either vacant or not occupied by the prescribed number of passengers. Section 109 impliedly confers a power of reservation, but that power exists only in the case of passengers, i.e., in the case of persons who either take out a ticket by paying the fare or who enter into a contract with the company. Section 109 cannot authorise reservation in favour of persons who are not at the moment of reservation passengers or reservation of a compartment on the chance of its being occupied by a particular class of passengers later on. Section 41 cannot bar the jurisdiction of civil Courts in this case, as

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section 42 has no application to the facts of this case. Section 42 deals with traffic facilities. Its first sub-section enjoins upon the railway administration the duty of affording reasonable facilities for traffic and the second sub-section only forbids explicitly what follows from the positive command contained in the first sub-section. The word "traffic" as defined in section 3 (11) would no doubt include passengers, except where the subject or context otherwise requires as laid down in the section itself. The words "receiving", "forwarding", and "delivering" in section 42 (1) are appropriate only to the carriage of animals and goods and not to that of "human beings". Hence sub-section 2 also, which deals with the same topic as sub-section 1, has no application to passenger traffic. In *Emperor v. Brijbasi Lal*⁽¹⁾, the Allahabad High Court was of opinion that section 42 had nothing to do with passenger traffic. So far as the actual decision in that case is concerned, the facts there were different; there the compartment reserved for Europeans was full, while in the present case it was quite empty. Section 68 uses the words "person" and "passenger" and thereby shows that a passenger is one who actually pays down the fare or enters into a contract with the company. The lower Court relied upon *Mathradas v. The Secretary of State for India*⁽²⁾; but, I submit that the case was wrongly decided.

Sir Thomas Strangman, Advocate General, instructed by *Little & Co.*, for the respondent:—Section 67 cannot affect the general power of the railway company as carriers. Section 109 impliedly gives a power of reservation. No one will dispute that the Railway Company can reserve carriages for passengers frequenting a fair held at some distant place, though at the time of starting from Bombay the carriages may not all be

(1) (1920) 42 All. 327.

(2) (1913) 6 Sind L.R. 42.

occupied. Plaintiff's real grievance, if properly interpreted, comes to this, that the Railway Company showed undue preference to Europeans and Anglo-Indians. But, if that is so, then that matter can be investigated only by a special tribunal as laid down in section 41. If there is no undue preference then there is no grievance. Section 42 applies to passenger traffic also. The subject or context of section 42 is not repugnant to the inclusion of passenger traffic. The case of *Mathradas v. The Secretary of State for India*⁽¹⁾ supports the company's plea.

Kane, in reply.

MACLEOD, C. J.:—The plaintiff in this case is a pleader residing at Dhulia. On the 2nd March 1917 he took a third class ticket for Bhusawal at the Dhulia Station. He took his seat naturally, so the plaintiff says, in the third class compartment reserved for Europeans and Anglo-Indians of the railway train which was to start from Dhulia on the same evening. The Station Master thereafter illegally asked the plaintiff to quit the carriage on the ground that the said compartment was reserved by the Railway Company for Europeans and Anglo-Indians. The plaintiff, thereupon, in order to avoid disturbance, reluctantly got out of the carriage and took his seat in another compartment. He then filed this suit to recover from the defendant Railway Company Rs. 5 as damages and for a perpetual injunction restraining the Railway Company from preventing the plaintiff entering a compartment of a railway carriage reserved for Europeans and Anglo-Indians.

The defendant company by its written statement contended that the suit was not maintainable and that the Court had no jurisdiction to entertain it. The company admitted the contents of the first clause of para. 1 to the plaint to be substantially correct, but

⁽¹⁾ (1913) 6 Sindh L. R. 42.

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alleged that the plaintiff was in the compartment with two other companions and denied the plaintiff's allegation that he took his seat naturally in the compartment. The company further alleged that the plaintiff intentionally entered the compartment well knowing that he had no right to go there and with the desire that the railway officials should remove him so as to enable him to bring the suit.

The first issue was, whether the question of the defendant Railway Company's right to reserve a separate compartment for Europeans and Anglo-Indians could be tried by the Court. The second issue was, whether the jurisdiction of the Court was barred under section 41 of the Indian Railways Act, 1890. The learned trial Judge found the first issue in the negative, the second issue, in the affirmative, and dismissed the suit. In appeal the decree of the lower Court was confirmed.

It would be seen that the only issue in the lower Appellate Court was the issue of jurisdiction. The defendant contended that section 41 of the Act did apply. That section says:—

“Except as provided in this Act, no suit shall be instituted or proceeding taken for anything done or any omission made by a railway administration in violation or contravention of any provision of this Chapter or of any order made thereunder by the Commissioners or by a High Court.”

The following sections in Chapter V are headed “Traffic Facilities” :—

Under section 42 (1) :

“Every railway administration shall, according to its powers, afford all reasonable facilities for the receiving, forwarding and delivering of traffic upon and from the several railways belonging to or worked by it and for the return of rolling-stock.”

Under section 42 (2) :

“A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway

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administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever".

The defendant company contended that if the plaintiff had any grievance at all it was on account of undue or unreasonable preference or advantage being given to a particular class of persons and in that case the plaintiff's only remedy was to apply to the Governor-General-in-Council to refer the case to the Commissioners appointed by the Act under section 36. It would certainly seem clear that the Railway Company by reserving a compartment for the use of any European or Anglo-Indian who might wish to travel by that train would be giving a preference or advantage to such persons, and if that advantage or preference could be considered undue or unreasonable, then it would be contrary to the powers given to the railway administration. Then the provisions of section 41 come into operation and the jurisdiction of the Court to try that question is barred.

The appellant's pleader endeavoured to get out of that difficulty by arguing that section 42 (1) has nothing whatever to do with passenger traffic. It only deals with the traffic consisting of the carriage of animals and goods because the words "receiving, forwarding, and delivering of traffic" are not words which can or ought to be applied to human beings.

However, if we turn to section 3, the term "traffic" includes rolling-stock of every description—passengers, as well as animals and goods. Therefore section 42 clearly deals with the carriage of passengers. It would appear from the decision in *Emperor v. Brijbasi Lal* ⁽¹⁾ that the learned Judges were of opinion

⁽¹⁾ (1920) 42 All. 327 at p. 330.

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that sections 42 and 43 of the Act have no application to the case of the reservation of a particular carriage for the use of any particular class of the travelling public. That, however, was a criminal case in which the accused was charged with having wilfully entered a third class compartment which was reserved by the railway authorities for Europeans and Anglo-Indians only. The accused was convicted under section 109 of the Indian Railways Act. There the question which is now before us did not arise although in the argument a point was taken that such a reservation was a "preference" forbidden by sections 42 and 43 of the Act. Mr. Justice Walsh in his judgment says: "In our view this contention is hardly worthy of notice. The sections referred to belong to a chapter of the Act which deals with goods traffic and rates charged upon traders, and a special tribunal is appointed for the decision of the questions thereunder." Piggott J. at page 333 says:—"As regards the argument addressed to us based upon the wording of section 42 (2) of the same Act, I think it is to be noted that this section occurs in a chapter specially devoted to the question of the duties imposed upon railway companies and the nature of the control to be exercised over such companies by the Government of the country."

As I have pointed out, with all due respect, it does seem that section 42 deals not only with goods traffic and the rates charged to traders but also with the traffic by the carriage of human beings. I may also point out that the word "rate" which is used in section 42 is defined in section 3 as including any fare charged or payment made for any passenger, animals or goods. The argument, therefore, that section 42 does not apply to the reservation by the railway authorities of a compartment for a particular class of passengers must fail.

This question was directly in point in *Mathradas v. Secretary of State for India* ^(a). The facts were exactly similar except that in that case the plaintiff had to be removed from the carriage. At page 45 appears the following passage :—

“We have no doubt the learned Judge was perfectly right in holding section 41 to be a bar to any consideration by him of the question whether the reservation of the second class carriage for Europeans was or was not undue or unreasonable preference under section 42 of the Railways Act, IX of 1890. The Railway Company as carriers of passengers would no doubt have been at liberty to set apart whatever accommodation they might choose for the carriage of the various classes of their passengers apart from limitation imposed by Statute.....It is clearly.....not open to this Court either in its jurisdiction as a District or a High Court in view of the above provisions contained in sections 26 to 41 of the chapter to consider or express any opinion whatever on the question whether there has been any undue or unreasonable preference within the meaning of section 42 of Chapter V of the Railways Act, IX of 1890.”

The only other point argued for the appellant is that this reservation of a compartment by the Railway Company could not be considered as an act of undue or unreasonable preference, because it was not reserved for any particular passengers but only reserved for the benefit of any European or Anglo-Indian who might happen to be travelling or might want to travel by that train from some intermediate station. A reference has been made to sections 64, 67 and 69. Undoubtedly under section 64 the company is given express power to reserve in every train carrying passengers one compartment at least for the exclusive use of females. But further the company has power to reserve accommodation for the use of particular passengers. Because under section 109, a passenger having entered a compartment which is so reserved may be punished with a fine, then it must follow that the company have the power to reserve accommodation for a particular

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(a) (1913) 6 Sindh L. R. 42 at p. 45.

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class of passengers who may want to travel on the line. The only question would be whether such reservation was an undue or unreasonable preference or advantage in favour of a particular class. It seems to me, therefore, perfectly clear that the decisions of the lower Courts on the issue with regard to jurisdiction were correct and that the plaintiff's suit must fail.

The appeal is dismissed with costs.

SHAH, J. :—I desire to state briefly the grounds upon which, I think, the jurisdiction of the civil Courts is ousted in this case. The plaintiff filed this suit to recover Rs. 5 as damages and for an injunction against the Railway Company on the ground that he was illegally asked by the Railway Company to leave the compartment, which was reserved for Europeans and Anglo-Indians, and which, he alleged, he had lawfully entered. His main complaint in the suit was that the Railway Company had no legal right to reserve the compartment in the manner in which it had been reserved on that particular occasion.

It is common ground that there is no rule framed under section 47 of the Indian Railways Act, entitling the Railway Company to reserve the compartment in that manner. If there had been such a rule there would have been no question as to the legality of the act of the Railway Company in reserving the compartment. In the absence of any such rule, the question as to whether the Railway Company has any power to reserve a compartment for the advantage of any particular class of passengers would necessarily arise. It appears from the provisions of section 41 of the Indian Railways Act that the jurisdiction of the civil Courts is ousted where the act or omission of the railway administration in question is said to be in violation or contravention of any provision of Chapter V of the

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Act. In the chapter under the sub-heading "Traffic Facilities", by section 42 (2), it is provided that :

"A railway administration shall not make or give any undue or unreasonable preference or advantage to or in favour of any particular person or railway administration, or any particular description of traffic, in any respect whatsoever, or subject any particular person or railway administration or any particular description of traffic to any undue or unreasonable prejudice or disadvantage in any respect whatsoever."

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Under the definition of the word "traffic" "Passenger traffic" is included; and according to the grammatical and plain meaning of the words used, it seems to me that section 42 (2) clearly lays down a limitation upon the general powers of the railway administration, and requires the administration not to show any such unreasonable or undue preference as is referred to in that sub-section. The principal question in this suit in substance is whether in reserving the compartment in the manner in which it was reserved, the railway administration showed any undue or unreasonable preference or advantage to any particular description of passenger traffic. That is a question in respect of which, the provisions of this Chapter of the Indian Railways Act show that the proper remedy for the person aggrieved is to apply to the Governor-General-in-Council, who can refer the complaint to the Railway Commission as provided in that Chapter.

It has been argued on behalf of the plaintiff-appellant here in the hope of saving this suit that section 42 does not apply to passenger traffic. It seems to me that that argument cannot be allowed. Sub-section 2 of section 42 lays down, in my opinion, a limitation in the interests of the public at large upon the powers of the railway administration; and it would not be right to restrict the scope of that limitation unless it were clearly justified by the words of the section. In

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Emperor v. Brijbasi Lal⁽¹⁾, it is suggested that section 42 would not apply to such reservation for controlling the passenger traffic. But after a careful consideration of the arguments advanced in this case, and on a consideration of the provisions of the Act, I am unable to accept that view. It is not justified by the definition of the word "traffic" as used in the Act, and it may involve an undue restriction of the proper scope of the limitation contained in sub-section 2 upon the powers of the railway administration. In this case the question which the plaintiff seeks to raise is whether the railway administration had power to show any preference for a particular class of passengers. It is his case that the preference shown to Europeans and Anglo-Indians was either undue or unreasonable and that there was a corresponding prejudice or disadvantage to him and other passengers. That is a question, in respect of which the jurisdiction of the ordinary civil Courts is taken away by the Act, and I express no opinion whatever as to the merits of that question. If the plaintiff really thinks that in reserving the compartment for "Europeans and Anglo-Indians" an undue or unreasonable preference or advantage was given to a class of passengers, his proper remedy is, as I have stated, to apply to the Governor-General-in-Council in order that the complaint may be dealt with by the Commissioners under the Chapter.

The further question as to the power of the railway authorities to call upon the plaintiff to leave the compartment, which, according to him, he had lawfully entered, arises in the suit. This question really depends upon the other question whether the railway administration had power to reserve the compartment. If the reservation was legal, undoubtedly the order to leave the compartment was legal. If, on the other

(1) (1920) 42 All. 827.

hand, the railway administration had no legal power to reserve the compartment, the order by the railway authorities to the plaintiff to leave the compartment, would not be legal. As I have pointed out, the question as to the legality of the reservation is outside the scope of the jurisdiction of the civil Courts. It follows that the question whether the railway administration acted within its legal rights in asking the plaintiff to leave the compartment also must be taken to fall outside the jurisdiction of the civil Courts.

I may add that where any such conflict between any member of the travelling public and the railway administration arises, as in the present case, it is desirable for the railway administration, apart from the remedy which a particular individual may have under Chapter V, to have proper rules under section 47 with a view to put an end to the possibility of any difference arising between the administration and the public as to its legal powers.

I agree that the appeal should be dismissed with costs.

Appeal dismissed.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

ABDUL RAJACK VALAD ALLISHA MULANI AND ANOTHER (ORIGINAL PLAINTIFFS), APPELLANTS *v.* VAMAN GANESH PADALIKAR AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS*.

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March 3.

Mortgage—Redemption—Previous redemption decree—Right to redeem reserved—Second suit for redemption.

* Second Appeal No. 375 of 1919.

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