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that under the law prevailing the occasion was absolutely privileged, or that the accused was at liberty to make any defamatory statement he chose with regard to the opponents who were before the Court. The conviction, therefore, was right and there is no reason to interfere in revision. The application is, therefore, rejected.

Application rejected.

R. R.

APPELLATE CIVIL.

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

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THE EAST INDIAN RAILWAY COMPANY (ORIGINAL DEFENDANTS), APPELLANTS *v.* DAYABHAI VANMALIDAS SHA (ORIGINAL PLAINTIFF), RESPONDENT*.

Indian Railways Act (IX of 1890), sections 72 and 75, Schedule II, clause (m) —"*Shawls*"—*Interpretation.*

Having regard to the reason of the rule in section 75 of the Indian Railways Act, and in view of the fact that the word "Shawl" appearing in the Second Schedule to the Act is a word of Indian origin and of extensive use in India as an Indian word, the Court is entitled to draw the inference that the word is there used in the restricted sense in which it is understood in India as an article of special value and not in the more comprehensive sense generally given to it in the English language.

Held, therefore, that articles of cheap manufacture known as *Malidas* are not "Shawls" within the meaning of the said Schedule.

Sarat Chandra Bose v. *Secretary of State for India* (1), followed.

Sudarshan Maharaj Nandram v. *East Indian Railway Company* (2), not followed.

SECOND appeal from the decision of T. R. Kotwal, Assistant Judge of Ahmedabad, confirming the decree passed by M. N. Choksi, First Class Subordinate Judge at Ahmedabad.

* Second Appeal No. 329 of 1921.

(1) (1912) 39 Cal. 1029. (2) (1919) 42 All. 76.

Suit to recover damages.

The plaintiff's agent consigned two bales of cloth from Howrah (a station on the East Indian Railway) to Ahmedabad. The bales contained 270 pieces of cloth known as Malidas, which were cheap cotton stuff each valued at Rs. 5-5-0. One of the bales containing 170 Malidas was lost in transit. The plaintiff sued to recover the value of the missing bale from the defendant Railway Company. It was contended in defence that the bale in question contained shawls, which were not declared, and that the Company was, therefore, exempted from liability under section 75 of the Indian Railways Act.

The lower Courts held following *Sarat Chandra Bose* v. *Secretary of State for India* [1] that Malidas were not "Shawls" within the meaning of the term as used in Schedule II, clause (*m*) of the Indian Railways Act, and that the defendant Company was liable in damages.

The defendant Company appealed to the High Court.

Campbell, with *Crawford Bayley and Company*, for the appellant.

G. N. Thakor, for the respondent.

MACLEOD, C. J. :—This is an appeal from the decree of the Assistant Judge of Ahmedabad confirming the decree passed against the original first defendant by the First Class Subordinate Judge.

The plaintiff sued the East Indian Railway Company and the Bombay Baroda and Central India Railway Company to recover Rs. 877-11-7 the value of a bale of goods known as Malidas of German make which was consigned in October 1915 by the plaintiff's agent from Howrah to Ahmedabad, and lost in transit. The first

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defendant Company, relying on the fact that the plaintiff in his letter of the 23rd December 1915 described the goods in the bale as 170 pieces Shawls, contended that they came within the excepted articles referred to in section 75 of Act IX of 1890 and, as the consignor had failed to describe the nature of the goods and pay the proper rate for them, the Company was not liable.

The evidence shows that the goods were described as Malidas in the plaintiff's account books, and that each piece was worth Rs. 5-5-0. The Subordinate Judge, relying on the decision in *Sarat Chandra Bose* v. *Secretary of State for India*[1], held that the term "Shawls" in the Second Schedule to the Railways Act did not apply to these cheap goods which were not even manufactured when the Act of 1854 was passed, and so section 75 did not apply. The term "Shawls" in the Schedule was meant to apply to valuable Shawls from Kashmir and other places. Accordingly the suit was decreed against the first defendant Company and dismissed as against the second defendant Company but without costs. In appeal the Assistant Judge said :

"The accounts of plaintiff and his agent show that the goods consigned were Malidas and not Shawls. The goods do not fall under section 75, Schedule II. There is ample other evidence to support the same conclusion. The construction of the law is not favourable to defendant according to decided cases considering the price and the quality of goods."

We have had before us a specimen of the goods contained in the missing bale. It is obviously a Shawl within the ordinary meaning of the word as used in the English language.

It was argued that both the Courts had found as a question of fact that the goods were not Shawls and that being so no second appeal lay.

Exactly the same question arose in *Sarat Chandra Bose* v. *Secretary of State for India* [1] which was a

[1] (1912) 39 Cal. 1029.

second appeal and the Court considered that the real question at issue was whether the word "Shawls" in the Second Schedule of the Indian Railways Act was meant to apply to all Shawls, or only Shawls of a particular material and value, and not whether "Alwans" were or were not Shawls. The term "Shawls" would appear at first sight to be used generally as applicable to all Shawls, but it was a question of law whether in its particular context it was not used in a restricted sense.

Now the object of section 75 was to protect the Railway Companies from claims made in respect of loss or damage to articles of a special value, unless the nature of such articles had been previously declared and a special rate paid for the carriage thereof. The words "special value" are misleading as many of the articles detailed in the Second Schedule have no special value and protection was really necessary on account of their special nature, so that the Railway Companies might be put on notice to take precautions to ensure their safe transit. Some of the articles enumerated can be of great value within a small compass, others though large can be easily damaged. There is no general principle applicable to all except that they require special care by the Railway Company when performing the contract of carriage. An half anna postage stamp, a double bass, a diamond, a watch must all be declared provided the value of such articles in the package is over 100 rupees, so that the intrinsic value of each article is no test. The plaintiff, therefore, must rest his case on the contention that the word "Shawls" in the Second Schedule must mean Shawls of a particular kind. It was suggested that when the word was used in the first Indian Railways Act of 1854, only Indian Shawls could have been referred to and that the only Indian Shawls known in those days were valuable Kashmir or Persian Shawls. That is no doubt correct as Shawls are not

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mentioned among the articles of special value in the corresponding section of the Carriers Act of 1830.

It was unfortunate when the Indian Railways Act of 1890 was passed that it was not recognised, that all kinds of imported Shawls, whether valuable or of a cheaper quality, might be given to the Railway Companies for carriage, so that the retainer of the general term "Shawls" in the Second Schedule might lead to a demand by the Railway Companies that such Shawls should be declared. Though at one time I was of opinion that a great deal could be said to justify that demand, and that the obvious way to remove the difficulties which arise in cases like the present one was to amend the Second Schedule so as to make it clear that only valuable Indian Shawls were intended to be included therein, I am not prepared to differ from the view taken by my brother Shah which is in accordance with the decision in *Sarat Chandra Bose's case*[1], and opposed to the view of Stuart J. in *Sudarshan Maharaj Nandram* v. *East Indian Railway Company*[2]. It cannot be denied that this case of cheap imported Shawls is much like any other case of woollen goods, and it would not naturally occur to the consignor that it would have to be declared in order that if lost its value might be recovered. It would be certainly desirable that the term "Shawls" in the Second Schedule should now be amended so as to make it clear what Shawls of special value are intended to require to be declared. I should think it would then be difficult for the Railway Companies to make out any good grounds for including Malidas in the Schedule.

I think both appeals should be dismissed with costs.

SHAH, J. :—The only question in this second appeal is whether the piece-goods contained in the missing

(1) (1912) 39 Cal. 1029. (2) (1919) 42 All. 76.

parcel were "Shawls" within the meaning of Schedule II of the Indian Railways Act, IX of 1890.

The importance of the question is that if the parcel contained "Shawls" the Railway Company would not be liable for the loss, as the declaration required by section 75 of the Indian Railways Act was not made by the consignor. On the other hand if the goods were not Shawls, the Company would be liable for the loss of the goods delivered for carriage under section 72 of the Indian Railways Act.

The lower Courts have held that the articles contained in the parcel, of which a sample has been produced in the case, were not "Shawls."

It has been urged on behalf of the appellant-Company that the word "Shawls" is used in a general and wide sense, and that it includes oblong pieces of any material which can be used as "Shawls" though cheap and not satisfying the requirement of the word "Shawl" in a restricted sense as used and understood in India. The dictionary meaning of the word as understood in the English language is relied upon as indicating the sense in which the word is used in the Schedule. The appellant relies upon the observations in *Sudarshan Maharaj Nandram* v. *East Indian Railway Company*[1] and contends that the view taken in *Sarat Chandra Bose* v. *Secretary of State for India* [2] of the meaning of the word "Shawls" is erroneous.

On behalf of the respondent it is urged that it is really a question of fact and that the finding of the lower appellate Court based on the evidence in the case that the sample before the Court is not a "Shawl" within the meaning of the Schedule ought to be accepted in second appeal. It is further urged that in view of the scope and object of section 75, the restricted meaning of

[1] (1919) 42 All. 76. [2] (1912) 39 Cal. 1029.

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the word "Shawl" should be accepted. The respondent relies upon the decision in *Sarat Chandra Bose's case*.[1]

After a careful consideration of the arguments on both sides, I have come to the conclusion that the question set forth at the outset should be answered in the negative.

It is in a sense a question of fact whether the particular sample before the Court is a "Shawl" or not. But in the present case the answer depends upon the meaning of the word "Shawl." If the word is interpreted in a restricted sense the article in question would not be a "Shawl." If it be interpreted in the wider and more comprehensive sense, it would be a "Shawl." Under the circumstances it seems to me that it cannot be treated as a pure question of fact, and that it is necessary for us to consider in second appeal as to what is the proper meaning of the word "Shawl" as used in Schedule II.

The sample in question is an oblong piece worth Rs. 5-5-0 probably made of rough wool or of mixed material of wool and cotton. It appears to be an imitation of a real Shawl with a marked difference in the price as well as the material of which it is made. The word "Shawl" is the same as the Persian word "Shal" and it is commonly used in the same sense in almost all the Indian languages. It is used by the Indian Legislature in an Act applicable to British India. The language of the Act is English. The meaning of the word in Johnson's Persian Dictionary is given as follows :—

"A Shawl or mantle made of very fine wool of a species of goat common in Tibet. A coarse mantle of wool and goat's hair worn by dervishes."

The meaning of the word in English is thus stated in Webster's Dictionary :—

"A square or oblong cloth of wool, cotton, silk or other textile or netted fabric used specially by women as a loose covering for the neck and shoulders."

[1] (1912) 39 Cal. 1029.

"'Indian Shawl' is described as a kind of rich Shawl made in India from the wool of the Cashmere goat. It is woven in pieces, which are sewed together."

The word is more fully dealt with in Murray's Dictionary and I shall quote only the two meanings of the word as given there, which are material for the present purpose :—

(1) "An article of dress worn by Orientals (commonly as a scarf, turban, or girdle), consisting of an oblong piece of a material manufactured in Kashmir from the hair of the Tibetan 'Shawl-goat.'"

(2) "As the name of an article of clothing worn in Europe and the West, chiefly by women as a covering for the shoulders or, sometimes, for the head; originally applied to the imported 'Cashmere Shawl,' but in later use extended to denote an oblong or square piece of any textile or netted fabric, whether of wool, silk, cotton, or mixtures of these."

It would appear that in Persian as well as in the Indian languages the word has a limited and specific meaning which would exclude the sample such as we have in the present case from its scope. The Indian Legislature, however, has used the word in an Act in the English language. Though it is not improbable that it may have been used by the Legislature as an Indian word in the sense given to it in the Indian languages, we have to see what its meaning is in the English language. The first meaning as given in Murray's Dictionary in substance is the same as that in the Indian languages. The second meaning as given above is much wider and would include in its scope any oblong piece of cloth made of silk, wool, cotton or mixture thereof. When the word has two meanings, one of a restrictive nature and the other of a comprehensive character, and when we have to decide which of the two meanings would be appropriate, it seems to me that it is necessary to turn not only to the context in relation to which the word is used but also to the scope and object of section 75 and to the reason of the rule

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contained therein. I think it is open to the Court to consider these elements in deciding which of the two meanings is to be accepted as representing the true meaning of the word used in the Schedule. The section is enacted to lay down certain conditions as to articles of special value which must be fulfilled before any liability can be attached to a Railway Administration for the loss thereof. The general responsibility of the Railway Administration in respect of the goods delivered for carriage is defined by section 72 : and section 75 contains an exceptional rule applicable to certain articles of special value mentioned in the Second Schedule. It is clear to my mind that " Shawls " in the comprehensive sense given thereto in the English language would not necessarily be an article of special value. A Shawl in the restricted sense is clearly an article of special value. It makes no difference to my mind as to how or where the article is manufactured. But what does matter to my mind is the stuff of which it is made. The price of the article would not directly matter : but it would be relevant as indicating the real nature of the material used. The reason of the rule contained in section 75 can apply to " Shawls " in the restricted sense and not to Shawls in the comprehensive sense of the term. I, therefore, draw the inference, and I think it is an inference open to the Court to draw in view of the origin and use of the word as also its apparent ambiguity in relation to the context, that the word " Shawls " is used there in the restricted sense as indicated in Murray's Dictionary.

It is clear that the article in question does not satisfy that description, and that the conclusion reached by the lower Courts that the missing parcel did not contain " Shawls " is right.

It is not necessary to express any opinion as to whether " Alwans " and " Malidas " can be " Shawls "

in this restricted sense. In order to be able to decide this question, I should like to know more about the meanings attached to these words by the dealers in different markets than it is possible to know on the present record. Taking the dictionary meanings of these terms in Urdu "Alwans" and "Malidas" may be Shawls in the proper sense of the word. I do not think, and it is not contended, that the use of the word "Malidas" by the plaintiff in his accounts and of the word "Shawls" in the correspondence can affect the conclusion that the article in question is not a "Shawl."

I have considered the observations of Stuart J. in *Sudarshan Maharaj Nandram* v. *East Indian Railway Company* [1]. The actual decision in that case has no bearing upon the point arising in this case. It may not matter whether a particular Shawl is a machine-made or hand-made article. The learned Judge in that case had to decide whether the word "lace" as used in the Schedule included machine-made lace also. The observations of the learned Judge on the decision of the Calcutta High Court in *Sarat Chandra Bose* v. *Secretary of State for India* [2] as to the meaning of the word "Shawls" were not strictly speaking necessary for the decision in that case: and while I agree that the Court has to consider the meaning of the word used by the Legislature and not to look to the discussions and views of the legislative authorities, I do not think that the Court is absolved from the duty of determining which of the two meanings, which the word may bear, is to be accepted. The origin of the word "lace" is different. In my opinion different considerations arise in determining the true meaning of "Shawls" as used in the Schedule. There may or may not be any ambiguity about the meaning

[1] (1919) 42 All. 76. [2] (1912) 39 Cal. 1029.

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of the word " lace ", but it does not follow that there is no ambiguity about the meaning of the word "Shawls". Where the question is whether the word " Shawl "—a word of Indian origin and of extensive use in India as an Indian word—has one meaning or the other, the considerations to which I have referred naturally arise. On the whole I am satisfied that the conclusion reached in *Sarat Chandra Bose's case*[1] as to the meaning of the word " Shawls " is right.

I would, therefore, confirm the decree of the lower appellate Court and dismiss the appeal with costs.

Appeal dismissed.

R. R.

[1] (1912) 39 Cal. 1029.

APPELLATE CIVIL

1922.

March 23.

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

PURSHOTTAM VITHALDAS SHET (ORIGINAL PLAINTIFF), APPELLANT *v.* RAVJI HARI ATHAVALE (ORIGINAL DEFENDANT), RESPONDENT*.

Indian Limitation Act (IX of 1908), Article 23—Suit for malicious prosecution—Period of limitation—Commencement—Date of plaintiff's discharge—Subsequent application to revise the order of discharge does not suspend limitation.

Under Article 23 of the Indian Limitation Act the period of limitation for a suit for malicious prosecution commences to run from the date of discharge. Proceedings taken in revision to get the order of discharge set aside do not suspend the cause of action.

SECOND appeal from the decision of P. E. Percival, District Judge of Thana, confirming the decree passed by B. R. Mehendale, Subordinate Judge at Alibag.

Suit to recover damages for malicious prosecution.

The plaintiff was prosecuted by the defendant for offences under sections 467, 471 and 474 of the Indian

* Second Appeal No. 660 of 1921.