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contention for the respondent based upon the same words of the same rule that because it was payable in advance and accrued on April 1, therefore April 1 must be taken to be April 1 preceding the date when the tax first became due. Neither construction, in my opinion, is correct. The proper construction is that adopted by the lower appellate Court. In this case the tax became due from June 1.

The third contention is as regards the portions of the buildings outside the circle. The definition of "buildings" is not very relevant. I am of opinion, particularly in view of rule 6, clause (b), and the mode of assessment on the value of the property that not merely the actual physical buildings within 75 feet of a water-pipe or 500 feet of a stand-pipe, as the case may be, are liable for assessment, but if any appreciable portion of a mill building falls within these radii, the whole building of the mills becomes liable. I refer to the case quoted above, *The Queen v. The Official Principal of the Consistory Court*.⁽¹⁾ The buildings of the mill are sufficiently wide to include all the buildings within the compound which have been assessed. The lower Courts were, therefore, right in rejecting this contention.

The appeal, therefore, fails and is dismissed with costs.

Decree Confirmed.

J. G. R.

⁽¹⁾ (1862) 81 L. J. Q. B. 106.

CIVIL REVISION.

Before Sir Norman Kemp, Kt., Acting Chief Justice, and Mr. Justice Murphy.

1929
 July 9.

THE BOMBAY BARODA AND CENTRAL INDIA RAILWAY COMPANY, LIMITED (ORIGINAL DEFENDANT No. 1), APPLICANTS v. THE ARYODAYA SPINNING, WEAVING AND MANUFACTURING COMPANY, LIMITED (ORIGINAL PLAINTIFFS), OPPONENTS.*

Railway—Risk-note form B—Consignment note and railway receipt—Difference in dates—Dates not essential part of risk-note.

*Civil Revision Application No. 285 of 1928.

A statement in the risk-note in form B that the goods consignment note and the railway receipt are of the same date as the risk-note is immaterial for the purpose of affecting the restricted liability of the railway company. A difference in these dates does not by itself invalidate the risk-note.

Tamboli v. Great Indian Peninsular Ry. Co.,⁽¹⁾ followed.

APPLICATION for setting aside the decree passed by J. N. Bhatt, Judge of the Court of Small Causes at Ahmedabad, in Suit No. 2745 of 1927.

Suit for damages.

A consignment of seventy bales of cloth was despatched by the plaintiffs from Asarwa (a station on the B. B. & C. I. Railway) to Sealdah (a station on the East Indian Railway). The consignment was made under risk-note form B which bore the date August 27, 1926. The goods consignment note also bore the same date. The railway receipt for the consignment, however, bore the date August 28, 1926. The said bales were carried in a through East Indian Railway Waggon from the Asarwa station to the Sealdah station. On the consignment being unloaded at Sealdah 12 bales were found to be wet.

The plaintiffs, the consignor of the goods, filed the suit to recover Rs. 916-9-0 as compensation for damage to the 12 bales.

The applicant railway Company and the three other Railway Companies who were joined as defendants contested the suit *inter alia* on the strength of the risk-note in form B.

The Small Causes Court Judge dismissed the suit against the other three railway Companies as the plaintiff was not able to show that the damage to the bales occurred while the consignment was on the line of any of those Companies. He, however, decreed the claim against defendant No. 1 railway Company on the ground that the said company was not exonerated

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by the risk-note form B, inasmuch as the consignment note, the risk-note form B and the railway receipt were not of one and the same date.

The defendant company applied to the High Court.

H. C. Coyajee, with *J. G. Mody*, instructed by Messrs. *Crawford Bayley & Co.*, for the applicants.

G. N. Thakor, with *V. N. Chhatrapati*, for the opponents.

KEMP, Ag. C. J. :—This is a civil revisional application by the applicants, who were the defendants in a suit by the plaintiffs against them and three other railway companies, in respect of a consignment of 70 bales of cloth consigned on August 28, 1926, from Asarwa in the Ahmedabad District for transit to Sealdah, on the Eastern Bengal Railway. The station at which the goods were consigned is on the applicants' railway. It is alleged that out of the consignment some 12 bales were found, on the arrival of the consignment at Sealdah on September 15, 1926, damaged by rain-water. The plaintiffs accordingly claimed Rs. 916-9-0 damages and notice charges.

The learned trial Judge dismissed the suit against the other three railway companies and decreed the amount of the claim against the present applicants.

The consignment was despatched under the terms of a risk-note in form B, i.e., at owner's risk. The terms of this risk-note are material, and the learned Judge has decided the case on issue No. 3, which was in these terms :—

"Whether the defendants are exonerated under the risk-note form B?"

His answer to that issue was in the negative. His reason for so holding was that there was a difference in the dates of the goods consignment note and the risk-note on the one hand and the date on the railway receipt on the other and he therefore held the risk-note was not

in the statutory form required by section 72 (2) (b) of the Indian Railways Act. The risk-note and the goods consignment note originally bore the date August 28, 1926. This date has been struck out at some time subsequently and the date 27th has been substituted. The railway receipt bears the date 28th. The risk-note is in these terms :—

"Whereas the consignment of _____ tendered by me/us, as per Forwarding Order No. _____ of this date, for despatch by the _____ Railway Administration to _____ station, and for which I/we have received railway receipt No. _____ of same date, is charged at a special reduced rate instead of at the ordinary tariff rate chargeable for such consignment, I/we, the undersigned, do, in consideration of such lower charge, agree and undertake to hold the said railway administration harmless and free from all responsibility for any loss, destruction or deterioration of, or damage to, the said consignment from any cause whatever *except upon proof that such loss, destruction, deterioration or damage arose from the misconduct of the railway administration's servants* : provided that in the following cases :—

(a) Non-delivery of the whole of the said consignment or of the whole of one or more packages forming part of the said consignment packed in accordance with the instructions laid down in the Tariff or, where there are no such instructions, protected otherwise than by paper or other packing readily removable by hand and fully addressed, where such non-delivery is not due to accidents to train or to fire,

(b) Pilferage from a package or packages forming part of the said consignment properly packed as in (a), when such pilferage is pointed out to the servants of the railway administration on or before delivery,

the railway administration shall be bound to disclose to the consignor how the consignment was dealt with throughout the time it was in its possession or control and, if necessary, to give evidence thereof before the consignor is called upon to prove misconduct, but, if misconduct on the part of the railway administration or its servants cannot be fairly inferred from such evidence, the burden of proving such misconduct shall lie upon the consignor.

This agreement shall be deemed to be made separately with all railway administrations or transport agents or other persons who shall be carriers for any portion of the transit."

The learned Judge considered that as all these documents were not executed on one and the same date the statutory form approved of by the Governor General in Council being the statutory form B had not been complied with. Against that decision the present application has been preferred. It is only necessary to add that the trial proceeded before the learned Subordinate

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Judge on all the issues in the case. One of these issues, No. 4, was in these terms :--

" If yes (issue No. 3), whether the plaintiff proves misconduct or whether the misconduct on the part of the railway administration's servants can be presumed under the circumstances."

In consequence of his finding on issue No. 3 he came to the conclusion that it was not necessary to answer issue No. 4. Nevertheless, the point to note is that the parties had called all the evidence on all the issues which were raised in the case. This is material on the application which has been made to us if we reverse the finding of the learned Judge to remand the case for trial on this and other issues.

Now, the question is whether because the dates on these documents were different, it can be contended that the liability of the railway company has not been limited by the statutory form provided under section 72 (2) (b) of the Indian Railways Act. I take the view in this case that the words in the statutory form referring to the dates of these documents are merely recitals in the form B, the material portion of which refers to the restricted liability of the railway company. I also think that, so far as the form laid down is concerned, that form has been signed by the plaintiffs or their agents. Had the correct dates been filled in it might equally have been argued that the document was not in the statutory form. Whatever were the true dates on which these documents were executed, there is no doubt that the form approved of by the Governor General in Council has been executed.

Again, it may be that the intention of the form was to fix the date of the risk-note as the statutory date on which it must be assumed that the contract was made. The fact that the actual dates of the consignment note and the railway receipt are different would not, in my opinion, affect that intention. Obviously, if it were

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required, in order to comply with the terms of this statutory form, that these documents should actually all bear the same date it would mean that a false date would have, in most cases, to be written on the goods consignment note as the pressure of work at a railway-station up-country, especially where there is a shortage of wagons, is great and frequently a considerable time elapses before the completion of the necessary formalities relating to goods which are brought to the station for despatch by rail. The railway company will not accept them until the weight and other particulars are entered in the consignment note. I would say that it is rather the exception for the railway receipt to be ready for the consignor on the same day that the goods consignment note is filled in and dated. Frequently after being weighed the goods are kept in the railway yard, when they may be regarded as accepted by the railway company, and the consignor or his agent comes the next day for the railway receipt. It would, therefore, mean that, although the goods forwarding note would have the date on which the goods were taken to the station, it would have to be falsely dated as of the next day, when the railway receipt was passed. There is the authority in *Tamboli v. Great Indian Peninsular Ry. Co.*⁽¹⁾ for saying that not everything contained above the portion of the form directed to be filled in by the booking office must necessarily be filled in, e.g., in that case it was held that attestations in the body of the risk-note were not a material portion of the form. Similarly, I am of opinion that in the present case the statement in the risk-note that the goods consignment note and the railway receipt are of the same date as the risk-note is immaterial for the purpose of affecting the restricted liability of the railway company. Nor do I agree with Mr. Thakor's contention that the form

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necessarily connotes that the other two documents must be of the same date.

I would, therefore, set aside the decree of the learned Small Cause Court Judge.

Now, coming to the question whether the suit should be remanded for trial on the other issues in the case, I have already stated that the trial proceeded on all the issues. This is not a case in which the railway company have lost any of the goods, so it is unnecessary to consider what evidence, if any, must on the decided cases be furnished by the railway company in the first instance. This is a case of damage to goods which have been delivered, and it was for the plaintiffs to show that the case came within the exception relating to misconduct on the part of the railway company's servants. They have failed entirely to establish this and from the evidence on the record we are not in a position to come to a finding in their favour. I think that issue No. 4 should be decided in the negative.

Rule absolute with costs throughout.

MURPHY, J. :—I agree and have nothing to add. I think the facts of the case are covered by the ruling in *Tamboli v. Great Indian Peninsular Ry. Co.*⁽¹⁾

Rule made absolute.

J. G. R

⁽¹⁾ (1927) L. R. 55 I. A. 67 : 52 Bom. 169.

APPELLATE CIVIL

Before Mr. Justice Madhavkar.

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July 18.

SHIDDAPPA IRAPPA DUBALGUNDI, MINOR, EXECUTOR RAGHAVJI NATHURAM DECEASED AFTER THE ORIGINAL DECREE OBTAINED, BY ANOTHER EXECUTOR R. S. SHIVLINGRAO JAGDEVRAO DESHMUKH (ORIGINAL PLAINTIFF), APPELLANT v. REVAPPA SOMAPPA SAJJAN (ORIGINAL DEPENDANT), RESPONDENT.*

Civil Procedure Code (Act V of 1908), Order XXI, rule 7—Decree Appeal—Minor plaintiff—Death of next friend pending appeal—No new next friend

*Second Appeal No. 863 of 1927.