

sioner who is an infant at the date of the alienation, or who is born subsequently, is entitled to the benefit of sec. 7 of the Limitation Act, for it is only reasonable to hold that the right of any reversioner to sue for a declaration cannot accrue before he is born. This view is in accord with that taken in the case of *Gobinda Pillai v. Thayammal* (1).

1904  
AUG. 2, 8.  
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APPELLATE  
CIVIL.  
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32 C. 32=3  
C. W. N. 25.

The result therefore is that this appeal must be allowed, the decree of the Court below reversed and the case remitted to the [72] Subordinate Judge in order that he may try it on the merits and determine the validity of the alienations which are sought to be impeached. The parties will be at liberty to adduce evidence in support of their respective cases, and the burden of establishing that the alienations were *prima facie* for a legitimate purpose must, upon the authority of the decision of the Judicial Committee in the case of *Rao Kurun Singh v. Nawab Mahomed Fuz Ali* (2) and *Rajlukhee v. Gokool Chander* (3), lie on the purchaser defendants.

We are of opinion that the plaintiffs are entitled to the costs of this appeal. It was suggested by the learned vakil for the respondents that his clients ought not to be held responsible for the course which the trial took in the court below and that there is nothing to show that they insisted upon the dismissal of the suit on the preliminary ground. But it is clear from the written statement, that this preliminary objection was placed in the forefront and if the defendants succeeded in securing the dismissal of the suit upon a ground which has now proved to be untenable they cannot justly evade the liability to indemnify the appellants by payment of costs which they have incurred.

As the suit was dismissed by the Court below upon a preliminary ground, we direct under section 13 of the Court Fees Act that the institution fee paid upon the memorandum of appeal presented to this Court, be refunded to the appellants.

*Appeal allowed.*

32 C. 73 (=8 C. W. N. 648=1 Cr. L. J. 634).

[73] CRIMINAL REVISION.

*Before Mr. Justice Pratt and Mr. Justice Handley.*

SHANKAR BALKRISHNA v. KING EMPEROR.\*

[13th and 25th May, 1904.]

*Railway collision—Endangering safety of persons—Death by rash or negligent act—Contributory Negligence—Indian Penal Code (Act XLV of 1860), s. 304A—Indian Railways Act (IX of 1890), s. 101.*

The Bengal-Nagpur Railway is worked on the "line clear and caution message" system, no train being allowed to leave a station without a "line clear" certificate in a prescribed form, to the effect that the line is clear up to the next station. The petitioner, the assistant station-master of Gombarria station who was on duty and busy issuing tickets to passengers wrote out in the prescribed form book the following conditional line clear message, although

\* Criminal Revision No. 424 of 1904, against the order of A. C. Sen, Additional Sessions Judge of Chota Nagpore, dated March 23, 1904, affirming the order of J. C. Twidell, Deputy Commissioner of Singhbhoom, dated March 21, 1904.

(1) (1904) 14 Mad. L. J. 209.

(3) (1869) 13 Moo. I. A. 209.

(2) (1871) 14 Moo. I. A. 187.

1904  
MAY 18, 25.

CRIMINAL  
REVISION.

32 C. 73=3  
C. W. N. 645  
=1 Cr. L. J.  
634.

he had received no message from Sini station: "on arrival of 15 down passenger at Gomharria, line will be cleared for No. 80 up goods train from Gomharria to Sini." All the particulars required by the rule were not filled in, no number was entered on it, nor was the time of arrival of the train filled in. The form-book was left in the station-master's room.

The guard of No. 80 up goods train which was waiting at Gomharria entered the station-master's room in his absence, took the imperfect certificate out of the book and without reading it appended his signature, passed it on to the driver and gave the signal for the train to start,—all without the knowledge of the petitioner. The result was a collision between the 15 down passenger train and the 80 up goods train, causing the death of several persons.

The petitioner was convicted under s. 304-A of the Penal Code, and s. 101 of the Indian Railways Act of 1890, and sentenced to rigorous imprisonment:—

*Held*, that the act of the petitioner did not in itself endanger the safety of other persons and that the effect was too remote to be attributable to such a cause.

*Sant Das v. The Empress* (1) followed.

[Ref. 9 Cr. L. J. 348; 9 Cr. L. J. 352=4 L. B. R. 350; 13 Cr. L. J. 145=18 I. C. 833=1912 M. W. N. 136=11 M. L. T. 127=22 M. L. J. 383; Dist. 4 L. B. R. 353.]

RULE granted to the petitioner, Shankar Balkrishna.

THIS was a rule calling upon the Deputy Commissioner of Singbhoom to show cause why the conviction of the petitioner [74] dated the 21st March 1904 for offences under s. 304 (A) of the Indian Penal Code, and s. 101 of Act IX of 1890 should not be set aside on the ground that the conviction was not warranted by the facts found.

The Bengal-Nagpur Railway is worked on the "line clear and caution message system," no train being allowed to leave a station without a "line clear" certificate to the effect that the line is clear up to the next station. Such certificate is entered in a prescribed form and is in terms of copy of a telegram from the station master of the station to which the train is to run, to the effect that the line is clear. On the early morning on the 27th December 1903 the petitioner, the assistant station master of Gomharria, a station on the Bengal-Nagpur Railway, who was on duty and had been busy issuing tickets to passengers wrote out in the prescribed form-book the following conditional line clear message although he had received no message from the station-master of Sini: "On arrival of No. 15 down passenger at Gomharria line will be cleared for No. 80 up goods from Gomharria to Sini." All the particulars required by rule were not filled in. There was no private number entered on it, and time had the not been filled in. The petitioner left the book containing the imperfect "line clear" message lying on the counter in his room. Palmer, the guard of the 80 up goods train which was waiting at Gomharria, entered the station master's room in his absence, tore the imperfect certificate out of the book and without reading it appended his signature and passed it on to the driver and gave the signal for the train to start, all without the knowledge of the petitioner. The train started and came into collision with the 15 down passenger train which had started from Sini in consequence of which a number of persons were killed and others wounded.

The petitioner and Palmer were convicted, on the 21st March 1904, by the Deputy Commissioner of Singbhoom under s. 304A of the Penal Code and s. 101 of the Indian Railways Act of 1890, and were each sentenced to three months' rigorous imprisonment. The petitioner appealed to the Sessions Judge of Chota Nagpore who, on the 23rd March 1904, rejected his appeal summarily.

(1) (1894) Ind. Ry. Cas. 723.

[75] *The Deputy Legal Remembrancer (Mr. Douglas White)*, for the Crown. Under the Railway rules the petitioner who was on duty should not have written the line clear message till he had actually received it on the instrument from Sini, and he should then have taken down the message word for word as he received it on the wire. The line clear message should not have been written out until required for use; these provisions are for the purpose of preventing the line clear message from getting into the hands of some person other than the station-master. It was the petitioner's duty to see the signals set and the points fixed and he should himself have started the train. He, however, did none of these things but kept his attention fixed on the booking of the passengers. He wrote out the line clear message before he actually received it from Sini and while the line was blocked, and left it on the table. The guard of the goods train entered the station-master's room and seeing the line clear message on the table concluded it was a proper message. He accordingly took possession of it, gave it to the driver and started the train before the passenger train had come in from Sini. The fact that what the station-master wrote out was a conditional line clear does not help him; he should not have written anything at all. He disobeyed the rules. Had he obeyed the rules he would have written out nothing and the guard would never have been able to start the train. The guard was misled by what the petitioner did. The petitioner paid more attention to the issuing of tickets to passengers than to the arrival or departure of the trains. Under the circumstances the conviction of the petitioner is, I submit, quite legal; see *Queen-Empress v. Nand Kishore* (1), *Charles Snell v. The Queen* (2), *Reg. v. Elliott* (3), *Reg. v. Instan*. (4).

Mr. C. R. Das (Babu Jyoti Prasad Sarbadhikary with him), for the petitioner. There are two messages to be considered in this case; the one is the line clear message and the other is what is called a conditional line clear. The first is a certificate to the guard to start the train, the second is of no value. The petitioner broke no rule. But assuming that he did [76] so, in writing out the conditional line clear message when he did, how can it be an offence? He merely wrote down, "line will be cleared on arrival of 15 down," that could not be construed into a bogus message. When he received the line clear he would have to write on that document that the line was clear. The conditional line clear purported to be a message from the station-master of Sini that the line would be clear for the departure of the 80 up for Sini on the arrival of the 15 down at Gomharria. How could the petitioner be said to have "endangered the safety" of any one? The document was merely waste paper so far as starting the train was concerned and would not be accepted by any driver or guard who knew his work. When the train came in he would have to write down line clear, enter the time of the arrival of the 15 down at Gomharria and the private number. Before these details were entered neither guard nor driver had any power to start the train. Had the act of the petitioner led to the collision he would no doubt be liable. But here the breach of rules by the guard has to be considered. The guard should have taken the line clear message from the petitioner's hand; he had no right to enter the office and tear it out of the book, nor had he any right to start the train. To make the petitioner, liable the collision must be the direct

1904  
MAY 13, 25.

CRIMINAL  
REVISION.

32 C. 73=8  
C. W. N. 645  
=1 Cr. L. J.  
634.

(1) (1884) I. L. R. 6 All. 248.  
(2) (1883) I. L. R. 6 Mad. 202.

(3) (1889) 16 Cox C. C. 710.  
(4) (1898) 17 Cox C. C. 602.

1904  
MAY 19, 25.

CRIMINAL  
REVISION.

32 C. 73=8  
C. W. N. 645  
=1 Cr. L. J.  
634.

consequence of his act. The case of *Sant Das v. Empress* (1) is directly in point and in my favour, the facts of that case being exactly the same as in this case; there the station-master was not held liable. The two cases cited from Cox's Reports are entirely in my favour showing that the petitioner could not be held criminally liable. In *Queen-Empress v. Nand Kishore* (2) the accused did not follow out the instructions given him and in consequence of his neglect the coolie was killed. He was directly responsible for the man's death. How in the present case can it be said that the collision was the natural consequence of anything the petitioner did? How was he to know that an inexperienced guard would be employed by the Company, who did not know his work or what a conditional line clear message was? The case of *Charles Snell v. The Queen* (3) [77] is not against me. The petitioner's act entailed no danger. Without the intervention of the guard no accident would have happened. The danger referred to in that decision, is the danger which would naturally follow any act done, and not a danger which could not be foreseen, and which followed upon the act of another which was contrary to all reason.

*Cur. adv. vult.*

PRATT AND HANDLEY, JJ. Sankar Balkrishna, Assistant Station-Master of Gomharria, on the Bengal-Nagpur Railway, and William Palmer, guard of a goods train, have been convicted of offences under Section 304A of the Indian Penal Code and Section 101 of the Indian Railway Act, 1890, and have been sentenced each to three months' rigorous imprisonment. They are held to have been criminally responsible for a collision between the 15 down passenger train from Sini and the 80 up goods train from Gomharria, which resulted in 15 people including the engine-driver of the goods train being killed and several others being wounded. The Bengal-Nagpur line is worked on the "line clear and caution message" system, no train being allowed to leave a station without a "line clear" certificate to the effect that the line is clear up to the next station. Such certificate is entered in a prescribed form and is in terms of a copy of a telegram received from the next station. The assistant station-master who was on duty during the small hours of the night and had been busy issuing tickets to passengers wrote out in the prescribed form book the following conditional line clear message, although he had received no message from Sini, "on arrival of 15 Down passenger at Gomharria, line will be cleared for No. 80 up goods from Gomharria to Sini." All the particulars required by rule were not filled in. There is no private number entered on it, and the time has not been filled in. Rule No. 18 of the prescribed rule lays down that no certificate shall be written out either in full, or in part, or signed, before it is required for use. The assistant station-master explains that he wrote the conditional line clear certificate in order to save time as he would require to insert only a few words when the line clear message was actually received.

[78] It would appear that guard Palmer entered the station-master's room in his absence, tore the imperfect certificate out of the book and without reading it appended his signature and passed it on to the driver and gave the signal for the train to start—all without the knowledge of Balkrishna. The train started and soon came into collision with the passenger train from Sini which had started on receipt there of the line clear message from Gomharria.

(1) (1894) Ind. Ry. Cas. 722.  
(2) (1884) I. L. R. 6 All. 248.

(3) (1885) I. L. R. 6 Mad. 201.

Now the guard had disobeyed several standing rules. In the first place he had no business to enter the station-master's room and without his permission take the certificate. He might only take it personally from his hands. In the next place, he might not use it or pass it on to the driver without first satisfying himself that it was a line clear message with the private mark. Then he had no right to start the train without the station-master's permission. Finally, the driver ought not to have started without examining the certificate and seeing that it was all in order. The guard has been rightly convicted and we have refused to interfere in his case, though we think it is greatly to be regretted that the railway authorities placed such a young and inexperienced man (18½ years of age) in so responsible a position and without having him thoroughly instructed in his duties.

The question we have to consider is whether the facts found can justify the conviction of Balkrishna either for causing death by doing a negligent act not amounting to culpable homicide, or for endangering the safety of others by disobeying rule 18 previously referred to. He never intended that the conditional certificate should be used in that state as a line clear message, nor could he have anticipated that the guard would remove it from the book in his absence and contrary to rule. Much less could he have anticipated that the guard would take such a manifestly imperfect certificate without even glancing his eye over its contents or that he would venture to start the train without his express permission. The driver has paid with his life the penalty of his neglect of rule. That he and the guard would act as they did could not have been reasonably anticipated by Balkrishna, and certainly he had no reason to suppose that the guard would depart from the usual practice and would possess himself of a conditional line clear [79] certificate which was not intended for him, and "which," as Mr. Eaglesome the Acting District Traffic Superintendent says, "no guard who knew anything about his work would accept as an authority to order the driver to proceed."

We think that the act of Balkrishna did not in itself endanger the safety of others, and that the effect was too remote to be attributable to such a cause. The disobedience of rule by Balkrishna merely facilitated, though in quite an unexpected way, a second disobedience by the guard which did endanger safety. If we were to hold that every act of contributory negligence, however remote, was criminal, one would hardly know, where to stop, and even the carelessness of the person who appointed Palmer as a guard might bring him within the pale of the Penal Code. As was observed by the learned Judges of the Punjab Chief Court in the case of *Sant Dass v. The Empress* (1), "It appears to us to have been, and to have properly been, the intention of the Legislature to make only those acts or omissions offences which themselves led to certain serious results and to leave all subsidiary acts or omissions to be dealt with departmentally." That case was an exact counterpart of the present one, and the learned Judges acquitted the station-master. On like grounds we set aside the conviction of Shankar Balkrishna, and direct that his sureties be discharged.

*Rule absolute.*

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(1), (1894), Ind. Ry. Cas. 722.

1904  
MAY 13, 25.  
—  
CRIMINAL  
REVISION.  
—  
32 C. 73=8  
C. W. N. 645  
=1 Cr. L. J.  
634.