

1863.  
February 7.  
Crim. P. No 101  
of 1862. Being thus unable to uphold the conviction of the prisoner, we set aside the sentence passed upon him, and direct that he be released.

We are constrained to observe that in the severe cross-examination which the prisoner has undergone before the Sessions Court, the proper limits for holding an examination of him have been greatly exceeded. The discretion given by the law for the questioning a prisoner, has not been allowed for the purpose of driving him to make statements criminal of himself. This discretion can, we think, only be properly used for ascertaining from a prisoner how he may be able to meet facts in evidence appearing against him, so that these facts should not stand against him unexplained. It is declaredly within the competency of the accused to decline answering any question, while of course the Court is at liberty to weigh his answers whether they tell for him or against him.

*Conviction quashed.*

ORIGINAL JURISDICTION.

*Original Suit No. 73 of 1862.*

*WINTER against WAX.*

A sued B for goods said in Madras and delivered to B personally outside the local limits of the High Court's original jurisdiction. B dwelt outside those limits. The goods were sent to him at his request, sometimes by sea, sometimes through the Post-Office, but always at A's risk during the journey:—*Held*, that the suit must be dismissed for want of jurisdiction.

So long as goods, though delivered to a common carrier appointed by the consignee, remain at the risk of the consignor, they are not delivered to the consignee.

*Dhollet v. Russell* observed upon.

The Indian Government, like the Post Master General, is not responsible for loss or damage occurring to anything entrusted to the Post-Office for conveyance.

1863.  
February 2, 9.  
O. S. No. 73  
of 1862. **T**HE plaintiff sued for rupees 346-9-2 and interest for goods sold and delivered.

The summons were served upon the defendant at Secunderabad where he had dwelt at and for some time previously to the filing of the plaint.

He did not appear in obedience to the summons, and the case was heard *ex parte* in chambers.

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of 1862.

No counsel appeared for the plaintiff.

The plaintiff proved the sale to the defendant at different times of various articles, all of which were delivered to him at places beyond the local limits of the High Court's original jurisdiction. The goods were forwarded to the defendant at his request, sometimes by sea, sometimes by banghy parcel through the Post-Office; but however sent they were always at the risk of the plaintiff during the journey.

On February 9, the following judgment was delivered by

BITTLESTON, J. :—This is a plaint for goods sold and delivered, and as the defendant does not dwell within the local limits of this Court's original jurisdiction, it must be shown that the cause of action, the sale and delivery of the goods, took place within those limits. But it appears that in point of fact the delivery of all these goods took place at up-country stations; and the only question is whether the ordinary rule that the delivery of goods to a common carrier is a delivery to the consignee applies to this case. I was told that there had been a recent decision on the point by Mr. Justice Wells at Calcutta; and I allowed this case to stand over that I might refer to that decision. I have since seen a very imperfect newspaper report of the case of *Dhollett v. Russell*—from which I gather that in that case the party to whom the goods were delivered in Calcutta had been expressly made the agent of the defendant to receive delivery. The learned Judge took occasion to refer to the cases of *Dawes v. Peck* (a), *Dutton v. Solomonson* (b) and *Brown v. Hodgson* (c) as establishing the general rule that ordinarily a delivery to a common carrier is a delivery to the consignee. But that this is not necessarily so is established by the later case of *Dunlop v. Lambert* (d) where all the previous cases were considered; and where it was held that it was a question for the Jury in such cases whether the goods were delivered to the carrier at the risk of the consignor or of the consignee; or “at whose risk were the

(a) 8 T. R. 330.

(b) 3 Bos. & P. 582.

(c) 2 Campb. 36.

(d) 6 Cl. & Fin. 600.

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goods carried," as was said by Parke B. in *Freeman v. Birch(a)*. Manifestly so long as the goods remain at the risk of the consignor they cannot have been delivered to the consignee; and in this case the plaintiff himself expressly states that they remained at his risk throughout the journey, and until actually received by the defendant. It seems to me therefore in this case impossible to hold that this Court has jurisdiction. I would add also with respect to the mode of conveyance by banghy parcel—that there is a great difference between that and conveyance by a common carrier. A common carrier is by the law of England responsible for all losses, unless occasioned by the act of God or the Queen's enemies; but the Post Master General is under no such responsibility. The Indian Post Office Act XVII of 1854, Section 49 expressly provides that the Government shall not be responsible for any loss or danger which may occur in respect to anything entrusted to the Post Office for conveyance ;" and in England it has long been settled that the Post Master General is similarly exempt, notwithstanding the opinion of Lord Chief Justice Holt to the contrary. The present suit must be dismissed for want of jurisdiction.

*Suit dismissed*

(a) 3 Q. B. Rep. 492.

ORIGINAL JURISDICTION.

*Original Suit No. 36 of 1862.*

WINTER *against* ROUND.

Where the payee sued the maker of a note which was dated "Madras 27th September 1860" and delivered to the plaintiff at Madras:—*Held*, that the High Court had jurisdiction to entertain the suit though the defendant had signed the note as Secunderabad, whence he had sent it by post to the plaintiff.

The making of a promissory note is altogether the act of the maker, and delivery to the promisee is required to render it complete.

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of 1862.

PLAINT for rupees 513-8-0 on a promissory note, dated "Madras, 27th September 1860."

The summons was served upon the defendant at Secunderabad, where he had dwelt at and for sometime previously to the filing of the plaint. He did not appear in obedience to the summons, and the case was heard *ex parte* in chambers.