

APPELLATE CIVIL.

Before Mr. Justice Brett.

NARANG RAI AGARWALLA

v.

RIVER STEAM NAVIGATION COMPANY, LD.*

1907

March 6.

Carriers—Contract to carry partly by river and partly by land—Liability of Carriers—Damages—Divisible Contract—Carriers' Act (III of 1865) ss. 3 to 5, 8—Railways Act (IX of 1890) s. 75—Excepted Articles—Misdescription of Goods.

In a suit for damages for loss of goods carried partly in steamers of one Company and partly by trains of another, the plaintiff failed to declare the value and description of the goods as required under the provisions of the Carriers' Act and the Railways Act:—

Held, that so far as the journey is by river, the Steamer Company is entitled, as regards the acts of its agents and servants, to the protection afforded by the provisions of the Carriers' Act, and so far as the journey is by rail, it is similarly entitled to claim the protection afforded by the Railways Act.

Le Conteur v. The London and South-Western Railway Company(1) and *Baxendale v. The Great Eastern Railway Company*(2) referred to.

SECOND APPEAL by Narang Rai Agarwalla and another, the plaintiffs.

The plaintiffs brought an action for damages against the River Steam Navigation Company, Limited, and the Secretary of State for India in Council on behalf of the Eastern Bengal State Railway, for loss of goods under the following circumstances.

The plaintiffs shipped a bale of *endi* silk (described as "endi cloth") from Gauhati (Assam) to be carried by the River Steam Navigation Company to Calcutta, the Eastern Bengal State Railway having to carry it from Goalundo. The bale was

* Appeal from Appellate Decree, No. 2303 of 1904, against the decree of F. E. Jackson, Subordinate Judge of Gauhati, dated Aug. 4, 1904, confirming the decree of Kedar Nath Sanyal, Extra Assistant Commissioner of Gauhati, dated April 30, 1900.

(1) (1865) L. R. 1 Q. B. 54. (2) (1865) 33 L. J. Q. B. 137.

1907
 NARANG RAI
 AGARWALLA
 v.
 RIVER STEAM
 NAVIGATION
 COMPANY,
 LD.

alleged to have been cut open in transit and most of the contents extracted; and the plaintiffs sued to recover the value of the lost goods.

The defendant Company repudiated their liability on the ground, that the plaintiffs did not declare the value and description of the property as required by s. 3 of the Carriers' Act, the goods being one of those "excepted articles" mentioned in the Schedule to the Act; and that the bale was not insured under the Company's Goods Tariff Rules.

The second defendant also contended that the suit was not maintainable for want of notice as required under s. 424 of the Code of Civil Procedure; and that the Railway Administration was absolved from liability under s. 75 of the Railways Act (IX of 1890) as the plaintiffs did not declare the value and contents of the package, and pay the insurance rate as required by s. 51 (a) of the Goods Tariff Rules of the Eastern Bengal State Railway.

On the 30th April 1900, the Court of first instance dismissed the suit with costs. On appeal preferred by the plaintiffs, the learned Subordinate Judge confirmed the decree of the first Court and dismissed the appeal.

The plaintiffs preferred a second appeal to the High Court, and the learned Judges dismissed the appeal as against the Secretary of State for India, the learned vakil for the appellants conceding that the Railway Administration was absolved from liability by s. 75 of the Railways Act. As regards the appeal against the River Steam Navigation Company, their Lordships remanded the case, on 6th May 1903, to the Court below for a finding as to whether the loss was occasioned by negligence or criminal act on the part of the Company or their agents and servants, the onus of proof being on the Company under s. 9 of the Act.

On the 30th April 1904, the Subordinate Judge of Kamrup found, on remand, that the Railway Administration admitted that they had received the parcel in good condition from the Steamer Company, and held that there was no negligence or criminal act on the part of the Steamer Company; and he accordingly dismissed the appeal with costs.

The plaintiffs, thereupon, again appealed to the High Court.

Babu Nilmadhab Bose and *Babu Jadu Nath Kanjilul*, for the appellants.

Mr. Casperss and *Babu Manmatha Nath Mookerjee*, for the respondent.

1907

NABANG RAI
AGARWALLA

v.
RIVER STEAM
NAVIGATION
COMPANY,
LD.

BRETT J. The plaintiff appellant brought an action in the Court of the Munsif of Kamrup to recover damages from the River Steam Navigation Company Limited, and the Secretary of State for India on behalf of the Eastern Bengal State Railway, for the loss of a portion of a bundle of *endi* silk. The goods were made over to the agent of the Steam Navigation Company at Gauhati on the 14th November 1897 for transmission to Calcutta, *via* Goalundo. It was known by both parties when the goods were handed over and received that they would be carried by a steamer of the River Steam Navigation Company as far as Goalundo by river, and thence to Calcutta by the Eastern Bengal Railway Company by land. On delivery of the bundle being taken at the Armenian Ghat Station, Calcutta, it was found that 23 out of the 26 pieces of *endi* silk, of which the bundle was made up, were missing. The suit was brought against the two defendants for damages for failure properly to discharge their duties as common carriers under Act III of 1865.

The suit was dismissed with costs by the Court of first instance, and this decision was confirmed by the Court of first appeal.

The property lost was over Rs. 100 in value, and both the lower Courts held that as silk was an "excepted article" as included in the Schedule of the Act, and as the plaintiff had failed to properly describe it and to declare its value to the defendant No. 1, the River Steam Navigation Company was protected from liability for the loss by section 3 of Act III of 1865, and that the Railway Company was similarly protected by section 75 of the Railways Act, IX of 1890.

The plaintiff appealed, and on the appeal coming before a Divisional Bench of this Court, of which I was a member, we

1907
 NARANG RAI
 AGARWALLA
 v.
 RIVER STEAM
 NAVIGATION
 COMPANY,
 LD.

held that the lower Courts were right in finding that the Railway Company was protected from liability by section 75 of the Railway Act, but that the lower Courts had erred in dismissing the case against the River Steam Navigation Company, proceeding simply on the provision of sections 3 and 4 of the Act, without taking into consideration the provisions of section 8 of the same Act. The case was accordingly remanded in order that the lower Court might come to a finding whether the loss was occasioned by negligence or criminal act on the part of the River Steam Navigation Company or their agents and servants, and then to dispose of the appeal.

The Subordinate Judge has since come to the finding that there was no negligence or criminal act on the part of the Company or its agents or servants, basing his conclusion on the fact that, though under the provisions of section 9 of the Carriers' Act the onus lay on the Company to prove absence of negligence, they had discharged that onus by proving that the Railway Company had admitted that the goods were received from the steamer of the River Steam Navigation Company in good order at Goalundo. He, therefore, dismissed the suit. The plaintiff has again appealed to this Court.

The main ground, which has been taken before me in support of the appeal, is, that the Subordinate Judge has erred in the view which he has taken of the meaning of the word "agents" as applied to the facts of the present case, that he should have held that the Railway Company were agents of the River Steam Navigation Company, and that the onus lay on the Steamer Company, in order to save itself from liability, to prove that the loss was not caused by any negligence or criminal act on the part of the servants of the Railway Company. It has been argued that the contract for the conveyance of the goods by the Steamer Company to Calcutta made with the plaintiff was one and indivisible, and that under that contract the Steamer Company was responsible for the custody of the goods up to the time of their delivery at the Armenian Ghat Station in Calcutta.

It is admitted that the Railway Company is protected from liability by the provisions of section 75 of the Railways Act, and that the Steamer Company is unable to exercise any supervision.

or control over the servants of the Railway Company, or over the custody of the goods, while they are in the charge of the servants of the Railway Company. But it is suggested that the Steamer Company was bound to ascertain what was the nature of the goods made over to it for transmission to Calcutta, and to have made the declaration or fulfilled the other conditions required by section 75 of the Railways Act, so as to fix the responsibility for the loss on the Railway Company. At the same time it is proved that the plaintiff failed to declare to the Steamer Company the true nature of the goods, which he handed over to them, and described them as *endi cloth* only. It is not suggested that it is the duty of the Steamer Company to open out all parcels in order to satisfy itself of their contents, and the argument advanced amounts to this, that the River Steam Navigation Company must be held to be responsible for a loss occasioned by the failure of the plaintiff, the consignor, to correctly describe the nature of the goods handed over. That view cannot in my opinion be supported by principle or by authority.

In the first place, if the Railway Company can be taken to be the agents of the Steamer Company and the contract be held to be indivisible, I am of opinion that the River Company is entitled to claim protection from liability to the plaintiff on the ground that he had himself failed to comply with the provisions of the Carriers' Act or of the Railways Act, and had wilfully concealed from them information which would have enabled them to comply with the provisions of the Railways Act, when using the Railway Company for the transmission of the goods from Goalundo to Calcutta.

It seems, however, open to doubt whether the Railway Company can be treated as agents of the River Navigation Company within the meaning of section 9 of the Carriers' Act so as to fix on the River Company a liability from which the Railway Company is specially protected by section 75 of the Railways Act. In this case the contract was for the carriage of goods, partly by river, and partly by land. It was well known to both parties that the river journey would be performed in the steamer of the River Company, and the land journey in the trains of the Eastern Bengal Railway Company; also it was equally well known, and is clear

1907

NABANG RAI
AGARWALLA
v.
RIVER STEAM
NAVIGATION
COMPANY,
LD.

07
 NARANG RAI
 AGARWALLA
 v
 RIVER STEAM
 NAVIGATION
 COMPANY,
 LD.

from the evidence in this case, that the charges for transmission might be paid either at the place of departure, or at the station of destination. In this case the charges were to be paid at the latter place. It is also clear beyond doubt that the charges for transmission of the goods were made according to the rates laid down by the River Company for the journey by river and the Railway Company for the journey by land, and that the money was received to be so appropriated between the two Companies. In a case of this sort, where through-booking first by steamer and then by rail, or *vice versa*, is made for the convenience of the public, and when the journey is performed partly in steamers of one Company and partly in trains of the other and the charges creditable to each are subsequently adjusted, it seems as reasonable to treat the Company, which receives the goods as the agents of the other Company as to treat the other Company as its agents.

In the second place, if it be held that the Eastern Bengal State Railway Company are, for the purposes of the contract, the agents of the Steamer Company, I am of opinion that the Steamer Company are entitled, in respect of the land portion of the journey, to claim the protection of section 75 of the Railway Act.

The contract was for the carriage of goods partly by river and partly by land, and so far as the two portions of the journey are concerned, I hold that the contract is divisible, and that so far as the journey was by river the Steamer Company is entitled to claim as regards the acts of its agents and servants the protection afforded by the provisions of the Carriers' Act, and so far as the journey was by rail it is similarly entitled to claim the protection afforded by the Railways Act. In this view I am supported by high authority in the Courts in England. In the case of *Le Conteur v. The London and South-Western Railway Company*(1) which followed the case of *Pianciani v. The London and South-Western Railway Company*(2), Cockburn C. J. laid down the law as follows:—"Now, it cannot be disputed that the article in question was an article that came within the provisions of the Carriers' Act; but it was said that the provisions of the Act were

(1) (1865) L. R. 1 Q. B. 54.

(2) (1856) 18 C. B. 226.

not applicable to the case, because the contract was one to carry not only to the terminus of the railway by land, but also by water; and that such a contract being to carry both by land and by water, the contract was not divisible; and therefore, although the article was lost on land, that it was not within the terms of the Carriers' Act. I think that that argument fails both on principle and on authority; on authority, because the point was directly before the Court of Common Pleas in the case of *Pianciani v. The London and South-Western Railway Company*(1), in which the Court expressed the strongest opinion that the contract was divisible; and that so far as the carriage by land was concerned, the Carriers' Act would afford a protection and defence to the Company, in the event of the terms of that Act not being complied with; and I must say I entirely concur in the view so taken and expressed by the Court. It would be a matter of the most serious inconvenience, if companies, established for the purposes of conveying goods by land but having one of the termini of their railway connected with water communication, should be prevented (as they would practically be) from affording the public the great accommodation which arises from being able to send goods to the ultimate place of destination, the water carriage included, without the necessity of separate contracts with separate companies. If that accommodation were withdrawn from the public, as it might be, if, so far as the land carriage is concerned, companies were deprived of the protection the Act of Parliament affords, it would be a matter of very serious inconvenience and damage to the public; and I see no reason why that damage and inconvenience should be inflicted upon the public, at the same time that loss would accrue to the companies from not having the opportunity, which they at present possess, of making the entire contract. I see no reason why the contract should not be held to be divisible, and the carrier protected so far as the land carriage is concerned by the Act of Parliament."

The same view was taken in the case of *Bawendale v. The Great Eastern Railway Company*(2).

The learned pleader for the appellant has attempted to distinguish the present from those cases by the fact that in each of

(1) (1856) 18 C. B. 226.

(2) (1869) 38 L. J. Q. B. 137.

1907
 NARANG RAI
 AGARWALLA
 v.
 RIVER STEAM
 NAVIGATION
 COMPANY,
 LD.

1907
 NARANG RAI
 AGARWALLA
 v.
 RIVER STEAM
 NAVIGATION
 COMPANY,
 LD.

those cases the journeys were performed by sea and by land in steamers and trains, both of which belonged to the same Company, while in this case the proprietors of the Steamer Company and the Railway Company are different. The case for the appellant, however, is that the Eastern Bengal Railway Company are the agents of the Steamer Company, and on this basis it is contended that the Steamer Company as a principal to the contract is liable for the acts of their agents, that is to say, the servants of the Railway Company. This is, in fact, to place the Steamer Company in a position analogous to that which it would hold as proprietor of the Railway Company. I am of opinion, therefore, that the principle laid down by the learned Chief Justice of England in the case referred to is applicable to the present case, and, so far as the journey was by land, the Steamer Company is entitled to the protection afforded by the provisions of the Railways Act.

It appears that the Steamer Company issue a printed book of their rules, and in it the conditions are set out under which goods are booked by the Company through to stations on the Eastern Bengal Railway Company and connected lines. These support the conclusion that the part of the journey by river and the part of the journey by rail are to be treated as distinct, the total charge for the journey being the sum of the charges levied at rates fixed by the rules of the Steamer Company for the portion of the journey by river, and by the rules of the Railway Company for the portion of the journey by rail, and, therefore, that the contract is divisible.

I therefore hold, that, whether or not the Eastern Bengal Railway Company be regarded as agents of the Steamer Company, the Steamer Company is equally protected from liability for damages to the plaintiff for the loss of goods of the class of those in the present suit, when the plaintiff had failed to declare their value and description as required under the provisions of the Carriers' Act and the Railways Act.

For the above reasons, I dismiss the appeal with costs.

Appeal dismissed.

B. D. B.