APPELLATE CIVIL.

Before Justice Sir Cecil Brett and Mr. Justice Sharfuddin.

SARAT CHANDRA BOSE

v.

SECRETARY OF STATE FOR INDIA.*

1912

April 12.

"Shawls," meaning of—Railway administration, liability of—Loss of parcel—Railways Act (IX of 1890), s. 75, and Sch. II (m)—Value of contents of parcel if to be declared—Alwan—Damages, suit for—Costs.

The term "shawls" in Schedule II, cl. (*m*) of the Railways Act, refers to Indian shawls of special value, and cannot be taken to apply to articles of inferior value such as *alwans*.

SECOND APPEAL by the plaintiffs, Sarat Chandra Bose and others.

The plaintiffs, who carry on business as merchants at Gossain's Hât at Chikandi, in the district of Faridpur, booked a parcel in the name of their Calcutta agent containing country-made cloths and *alwans* at the Barabazar office of the Eastern Bengal State Railway in Calcutta for conveyance by them, the Rivers Steam Navigation Company, and the India General Navigation Company, Limited, to a place called Bejnishar, a steamer station on the river Padma. The goods were booked on the 13th of November 1906 for delivery to the plaintiff No. 1. They appeared to have been lost in transit. After some correspondence between the plaintiffs and the Railway and the Steamer authorities as to the loss of the goods, they (the plaintiffs) gave notice of suit through their pleader to the Collector of

* APPEAL from Appellate Decree, No. 244 of 1909, against the decree of M. M. Dutt, Subordinate Judge of Faridpur, dated Nov. 13, 1908, affirming the decree of Nani Gopal Mukherjee, Munsif of Chikandi, dated July 29, 1908.

1912

SARAT CHANDRA BOSE v. SECRETARY OF STATE FOR INDIA.

Faridpur and the Manager of the Eastern Bengal State Railway, claiming a certain sum of money as price of the goods lost and also as damages. The plaintiffs alleged that the Traffic Superintendent of the Railway Company thereupon offered terms of compromise, which not being favourable they brought the present suit.

The Manager of the Eastern Bengal State Railway and the Collector of Faridpur entered appearance and contested the suit. The Railway Company in their written statement admitted that the parcel had been booked and lost in transit over the railway. The defendants pleaded, *inter alia*, that the notice served on the Collector was not valid in law, and that under section 75 of the Indian Railways Act the Railway administration was not responsible for the loss of the goods.

The Court of first instance gave effect to the objections raised by the defendants, and dismissed the plaintiffs' suit. On appeal, the learned Subordinate Judge held that the goods booked by the plaintiffs came under the designation of "shawls," and as their value exceeded Rs. 100, the plaintiffs ought to have declared the contents of the parcel, and their value at the time of booking the parcel and they having failed to do so the defendants were not liable for the plaintiffs' claim; and he affirmed the decision of the first Court. Against this decision the plaintiffs appealed to the High Court.

Babu Jogesh Chandra Roy, for the appellant. The plaintiff was not bound to make the declaration as contemplated by section 75 of the Railways Act, inasmuch as the articles contained in the parcel were not "shawls" within the meaning of clause (*m*) of Schedule II of the Act. The packages contained

alwans, and they were not shawls within the meaning of the Act. Shawls include articles of special value, and do not include articles of inferior value: see *Lakhmidas Hira Chand* v. *The Great Indian Peninsula Railway Company*(1), and *Saminadha Mudali* v. *The South Indian Railway Company*(2).

Babu Ram Charan Mitra, for the respondents, Eastern Bengal State Railway. All articles which in common parlance are called shawls will include *alwans*. It nowhere appears that in the second schedule the word shawl includes articles of special value.

Babu Srish Chandra Chowdhury, for the India General Navigation Company. The Steamer Company was unnecessarily made a party, and as such should be discharged from all liability. The goods were lost in the transit over the railway, and did not come into the hands of the Steamer Company; that being so, the Steamer Company could not be held liable for any loss to the plaintiffs. Having regard to the provisions of the Carriers' Act (III of 1865), the Steamer Company is not liable for any loss during the transit: see *Narang Rai Agarwalla* v. *River Steam Navigation Company, Ld.*(3).

BRETT AND SHARFUDDIN JJ. The present appeal arises out of a suit brought by the plaintiffs appellants for recovery of damages for the loss of a packet containing clothes, *alwans*, and other articles which were despatched from Calcutta for conveyance by the Eastern Bengal State Railway, the Rivers Steam Navigation Company, and the India General Navigation Company, Limited, to a place called Bejnishar, a steamer station on the river Padma. The goods were

(1) (1867) 4 Bom. H. C. O. C. 129. (2) (1883) I. L. R. 6 Mad 420.
(3) (1907) I. L. R. 34 Calc. 419.

1912

SARAT CHANDRA BOSE v. SECRETARY OF STATE FOR INDIA.

booked on the 13th November 1906 by the plaintiffs in the name of their Calcutta agent, B. K. Sen, for delivery to the plaintiff No. 1. From the written statement filed on behalf of the defendant, Eastern Bengal State Railway, it appears that they admitted that the parcel had been booked and had been lost in transit over that railway. The defence set up in their behalf was, however, that the railway was not liable, because the plaintiffs had failed in compliance with the provisions of section 75 of the Railways Act to declare the contents of the parcel and their value, at the time of booking the parcel for carriage by the railway. The other defendants, the two Navigation Companies, put in a written settlement in which they disclaimed all liability for the loss of the parcel on the ground that the parcel never reached their hands, and that this fact was known to the plaintiffs. Certainly, from the admission made on behalf of the Eastern Bengal State Railway, it appears that no liability could attach to the two Steamer Companies, as the Railway Company distinctly admitted that the parcel was lost while in transit over the railway.

Certain preliminary points were taken against the admissibility of the suit, but all these have been found in favour of the plaintiffs. The only substantial point which has been decided by the lower Appellate Court against the plaintiff is that raised in the second issue. That point is whether the plaintiffs are entitled to recover in this suit the value of the goods contained in the parcel by reason of their failure to comply with the provisions of section 75 of the Railways Act (IX of 1890). That section provides that "when any articles mentioned in the second schedule are contained in any parcel or package delivered to a Railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one

hundred rupees, the Railway administration shall not be responsible for the loss, destruction, or deterioration of the parcel or package, unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared, or declared them at the time of the delivery of the parcel or package for carriage by railway, etc." In Schedule II attached to the Act, item (*m*) is "shawls," and the case for the defendant Railway Company was that some of the articles in the parcel consigned by the plaintiffs, being *alwans*, came under the term "shawls," and, as admittedly the plaintiffs had not declared their value under the provisions of section 75 of the Railways Act, that Company disclaimed all liability to pay the amount claimed in the suit. Both the lower Courts have accepted this contention on behalf of the Railway Company and have dismissed the suit.

The plaintiffs have appealed to this Court, and the main argument before us has been with regard to the question whether the term "shawls" as used in item (*m*) of Schedule II of the Railways Act covers goods such as those contained in the parcel assigned by the plaintiffs. The learned pleader for the appellants has described to us the contents of the parcel. Amongst them we find two pairs of *alwans* at Rs. 22-4 per pair, the total being Rs. 44-8, and certain *thans* of other materials and five pairs of *alwans* at Rs. 12-6 per pair. The question is whether articles of these descriptions are such as are covered by the term "shawls" in the second schedule attached to the Railways Act. The learned Subordinate Judge, in dealing with the question as to what is the meaning of "shawl", as used in the schedule, has referred to the definition of the word "shawl" as given in Webster's Dictionary. He considers that, as the term "shawl" is used in a

1912

SARAT CHANDRA BOSE v. SECRETARY OF STATE FOR INDIA.

law enacted in the English language, it must be understood in the English sense, irrespective of its meaning in India. He, therefore, arrives at the conclusion that the word "shawls" as used in the second schedule of the Railways Act must be taken to be "a cloth of wool, cotton, silk or hair used specially by women as a loose covering for the neck and shoulders," and he thinks that garments such as *alwans* which are manufactured with cotton or wool must come under this definition. On the other side, it is contended that the word "shawl", as used in the Act, means valuable articles such as are produced by the looms of Kashmere and Amritsar, and it is argued that the goods contained in the parcel certainly must fall within that description, if the plea of the defendants is to succeed. We have given the question our best consideration, and we are of opinion that the view which the learned Subordinate Judge has taken as to the meaning of the word "shawl" cannot be accepted. It is clear from the other items included in the second schedule of the Railways Act, that that schedule was intended to cover articles of special value. The Act which was passed in 1890 took the place of other Railways Acts which were then repealed and were passed in 1879, 1883 and 1886. Schedule II appears in the previous Acts and also in the Acts previous to them which they repealed, and we think that in determining the meaning of the word "shawl" we have, *first*, to consider what was the probable meaning which the Legislature intended to apply to such a term at the time when the schedule was first drawn up, and, *secondly*, to consider how far its meaning can be determined by reference to the other items in the schedule. Applying those rules, we are of opinion that there can be little doubt that, at the time when the schedule was first drawn up, it was

intended to cover Indian shawls of valuable materials. The term "shawl" is originally a Persian term, and was applied to valuable and special articles, and certainly had no possible application to the articles to which the learned Judge of the lower Appellate Court has thought the word "shawl", as used at present in the English language, now applies. The term "shawl" as used at the time when the schedule was drawn up obviously referred to valuable Indian shawls, as then understood in India, and could not be taken to apply to articles of inferior value such as the articles contained in the parcel, the subject of the present suit. Of the items of articles contained in the parcel only one is of any special value, and that is the first item, the two pairs of *alwans* at Rs. 22-4 per pair. In our opinion, judging both from the meaning of the word 'shawl" as accepted in India at the time when the Act was passed, and also from the fact that all the other items contained in the schedule are articles of special value, and also from the fact that article (*s*) in the schedule provides for the addition by the Governor-General in Council of other articles of special value to the schedule, the articles for the loss of which damages are claimed in the present suit cannot be regarded as falling within the description of "shawls" as contained in Schedule II of the Railways Act. We are of opinion, therefore, that the judgment and decree of the lower Appellate Court must be set aside.

The lower Appellate Court has not decided what is the price of the contents of the parcel which was lost, nor has it considered the evidence which seems to have been offered on that point. It has also not determined what compensation or interest the plaintiffs are entitled to recover. The appeal must, therefore, be sent back to the lower Appellate Court, in order that that Court may, after due consideration of the evidence, determine

1912

SARAT CHANDRA BOSE v. SECRETARY OF STATE FOR INDIA.

what is the amount which the plaintiffs are entitled to recover in the present suit.

On behalf of the Steamer Companies, the learned pleader has asked that we should come to some decision as to their liability to the present claims, and on this point we can only observe that, after the admission made by the defendant Railway Company that the parcel was lost in transit over the railway, no liability can possibly attach to the Steamer Companies. The result, therefore, is that, so far as the two Steamer Companies are concerned, the suit must stand dismissed, and, so far as the Railway Company is concerned, the case must go back to the lower Appellate Court in order that that Court may determine what compensation the plaintiffs are entitled to recover from them for the loss of the parcel.

The learned pleader for the Steamer Companies asks for their costs in this case; but we are not prepared to pass any order in their favour for costs against the plaintiffs, because the plaintiffs were not in a position when they instituted the suit to know whether the parcel was lost in transit over the railway or when carried by the Steamer Companies. So far as the Steamer Companies are concerned, the suit will stand dismissed, but without costs. The plaintiffs are, however, entitled to recover their costs of this appeal from the Railway Company. The costs in the lower Courts as between the plaintiffs and the Railway Company will follow the final result of the trial of the suit.

S. C. G. *Appeal allowed; case remanded.*