CIVIL RULE.

Before Mr. Justice Mookerjee and Mr. Justice Carnduff.

EAST INDIAN RAILWAY COMPANY

v.

SISPAL LAL.*

1911

Sept. 5.

Carriers—Railway Company—Delivery of goods—"Clear receipt" by consignee—Loss of goods—Liability of Company for the loss.

Certain bales of cloth tendered to the East Indian Railway Company for transit were in due course delivered to the consignee, who granted "clear receipt" for them. Subsequently, the consignee discovered that some pieces of cloth out of the bales were missing, the same having been lost while in the custody of the Railway Company. In a suit brought by the consignee for compensation :

Held, that the grant of "clear receipt" and acceptance of delivery do not affect the right to compensation for loss or damage proved to have been caused to the goods while in the custody of the carriers.

Per MOOKERJEE, J. A receipt acknowledging a delivery of the goods in good condition is only *primâ facie* evidence of the fact and raises a presumption in favour of the carriers, which may be rebutted by the consignee.

Per CARNDUFF, J. A bailor who, in the absence of any agreement on the subject, has given the bailee a receipt for the goods bailed, is not, *ipso facto*, precluded from proving that the goods were in reality damaged or deficient in quantity when delivered to him.

RULE granted to the petitioners, the East Indian Railway Company.

A suit was instituted in the Court of Small Causes at Buxar against the East Indian Railway Company for the recovery of Rs. 100 as damages for the loss of certain pieces of cloth delivered to the said Company for transit from Delhi to Buxar.

* Civil Rule No. 3026 of 1911, against the decision of S. K. Rahman, Small Cause Court Judge, Buxar, dated April 10, 1911.

1911

EAST INDIAN RAILWAY COMPANY v. SISPAL LAL.

On the 7th October 1910, the East Indian Railway Company received from the consignor four bales of cloth at Delhi to be delivered to one Sispal at Buxar, and on the 15th October, 1910, the day after their arrival at Buxar, the consignee took delivery of the said four bales, apparently in good condition, and granted "clear receipt" for the same.

On the 5th December, 1910, the said Company again received another bale of cloth at Delhi to be delivered to Sispal at Buxar, and on the 14th December, 1910, the day after its arrival at Buxar, the consignee took delivery of the said bale, apparently also in good condition, and, as before, granted "clear receipt" for it.

Subsequently, the consignee complained of the loss of some pieces of cloth from the above two consignments while they were in the custody of the Railway Company, and put in his claim against the Company for damages. On the Company refusing to pay any compensation, the consignee instituted a suit, on the 7th March, 1911, in the Court of Small Causes at Buxar, for recovery of Rs. 100 as damages for the said loss. The Railway Company defended the suit, maintaining that they were not liable for any damages once the goods had left their custody and had been delivered to the consignee in good condition and under a "clear receipt," and no objection was made by the consignee at the time when delivery was taken.

On the 10th April 1911, the Small Cause Court Judge held that, though the articles were taken out of the bales while they were in the custody of the Company, the Company's liability ceased when delivery was taken and a "clear receipt" granted by the consignee, but in order to safeguard the public interest, the Company was bound to take some steps to stop this sort of action, which no doubt frequently happened, and he accordingly decreed the

suit in the plaintiff's favour, granting him Rs. 50 as damages. The Railway Company, thereupon, moved the High Court to set aside that judgment and decree and obtained the present Rule.

Mr. G. B. McNair and *Babu Joy Gopal Ghosh*, for the petitioners, in support of the Rule.

Babu Birai Mohan Mazumdar, for the opposite party, showed cause.

MOOKERJEE J. This Rule raises an important question of law about the liability of a Railway Company to pay compensation for loss of goods or damage caused to them, while in their custody, though the claim is not put forward by the consignee till after he has taken delivery and granted "a clear receipt." The circumstances, under which the question requires consideration, may be briefly narrated as found by the Small Cause Court Judge. On the 7th October, 1910, the opposite party tendered to the East Indian Railway Company at Delhi four bales of cloth for despatch to Buxar. The goods arrived at Buxar on the 14th October; the consignee took delivery of the bales which were apparently in good condition, and granted a simple receipt. On the 5th December, 1910, another bale was delivered to the Company at Delhi for carriage to Buxar, and duly carried there in apparent good condition. The consignee took delivery on the 14th December, and granted receipt as before. He subsequently reported to the Company that some pieces of cloth were missing from the bales; the Company refused to entertain the claim, whereupon, on the 7th March, 1911, the consignee instituted this suit in the Court of Small Causes at Buxar for recovery of Rs. 100 as damages for the loss of the pieces of cloth. The Company resisted the claim substantially on two

1911

EAST INDIAN RAILWAY COMPANY v. SISPAL LAL.

MOOKERJEE J.

grounds; they denied, in the first place, that the goods had been lost, while the bales were in their custody; they contended, in the second place, that, as the consignee had accepted delivery and granted "a clear receipt," his right to compensation had been extinguished, even if it was proved that the loss had taken place while the goods were in the custody of the Company. The Small Cause Court Judge has found upon the evidence that the articles were taken out of the bales while they were in the custody of the Company; he has negatived the suggestion of the defence that the articles had been abstracted by the plaintiff or himself his men after delivery of the goods. It may be observed at this stage that the Small Cause Court Judge has recorded the evidence somewhat carelessly, and the notes of the depositions of the witnesses are not always intelligible. The Court is bound, however, to accept his finding upon the question of fact, namely, that a portion of the goods consigned was lost while the bales were in the custody of the Company. Upon this finding, the Small Cause Court Judge has stated that in his view of the law the plaintiff is not entitled to succeed, because he has taken delivery and granted a clear receipt; but the Small Cause Court Judge has held that, "in order to safeguard the public interest, the Company is bound to take some steps to stop this sort of action," and he has accordingly made a decree in favour of the plaintiff for Rs. 50. On behalf of the Company, we have been invited to set aside this decree on the ground that it is obviously erroneous and that the judgment itself is not self-consistent. In answer to the Rule, it has been argued on the other hand by the learned vakil for the plaintiff that the view of the law accepted by the Small Cause Court Judge is erroneous, and that if his decree is open to attack, it

is liable to be assailed on the ground that the plaintiff has not been awarded damages in full. The question, therefore, arises, whether the plaintiff has lost his right of action because he has taken delivery and granted a clear receipt.

In support of the Rule, it has been argued that the question ought to be answered in the affirmative, and reference has been made to Macnamara on Carriers, 1908, Section 214, where it is stated that, when goods are delivered by a Railway Company at the proper place and at the proper time, the consignee is bound to examine them and ascertain whether they are in good order, and, if he does not intimate objection, it will be presumed that they were delivered in good order. The learned author relies upon the case of *Stewart* v. *North British Railway Company* (1) as authority for this proposition. The principle in question is perfectly sound, but is of no assistance to the petitioners. The case of *Stewart* v. *North British Railway Company* (1) is not an authority for the proposition that, if a consignee takes delivery and grants a clear receipt, he loses his remedy, even if he is able to establish conclusively that the goods were damaged or partially lost while in transit. In fact, the contrary view was adopted in *Johnston & Sons* v. *Dove* (2), where it was ruled that, if a consignee of goods (which, as a matter of fact, have been damaged in transit, though such damage is not visible at first sight) grants a clear receipt, accepts delivery, and breaks bulk without judicial inspection or notice to the carrier, he does not lose his right to compensation; the fact that he has granted a receipt is an element in the proof of damages, but is no bar to the claim. A similar view was taken in *Pearcy*

(1) (1878) 5 Rettie 426. (2) (1875) 3 Rettie 202.

1911

EAST INDIAN RAILWAY COMPANY v. SISPAL LAL.

MOOKERJEE J.

v. *Player* (1), where Lord Craighill observed as follows: "The counsel for the defender has also argued that the neglect of the pursuer to examine the luggage after delivery, and the delay of 24 hours in reporting the loss to the defender, bars his right to recover. The former may affect the proof of the question, was the portmanteau delivered? But assuming non-delivery to be proved, it cannot operate as a bar, there not having been in the contract between the parties a provision or an implication that should the goods delivered be taken without challenge at the time, right to recover for any undelivered article should be forfeited." This is obviously good sense, and based on sound legal principles. The right to compensation has accrued as the result of the loss; the acceptance of the goods without protest may raise a strong presumption that the alleged loss has not taken place; but, if it is proved by reliable evidence that, as a matter of fact, there was loss or damage to the goods while they were in the custody of the Railway Company, it is difficult to appreciate how on principle the position can be maintained that the acceptance of delivery operates to extinguish the right to compensation. The question has been repeatedly raised in the Courts of the United States, and the view has been uniformly maintained as well founded on principle that grant of clear receipt and acceptance of delivery do not affect the right to compensation for loss or damage proved to have been caused to the goods while in the custody of the carriers. One of the earliest cases on the subject is *Oakey* v. *Russel* (2), where it was ruled that, although acceptance of the goods by the consignee without objection and with knowledge of their defective

(1) (1883) 10 Rettie 564; 20 S. L. R. 376.

(2) (1827) 6 Martin N. S. (La.) 58.

condition precludes recovery for damages thereto [*Munro* v. *Ship "Baltic"* (1), *Marcy* v. *Warner* (2)], yet acceptance will not operate as waiver of objection for damage not apparent. Again, in *Bowman* v. *Teall* (3), it was held that the receipt of the goods alone, with no stipulation that they are accepted in full performance of the contract, does not constitute a waiver of claim for damages for which the carrier may be liable: *Alden* v. *Pearson* (4), and *Lesinsky* v. *Great Western Despatch* (5). The question was elaborately discussed in the case of *The Elmira Shepherd* (6), where it was ruled that the claim for compensation was not lost, though the consignee had granted a clear receipt, accepted delivery, and sold the goods. Woodroffe J. observed that in cases of this description, the conduct of the consignee would be scrutinised carefully, and the Court would receive his evidence with caution; but if the evidence proved that the loss or damage occurred while the goods were in transit, compensation could be claimed notwithstanding delivery and acceptance. To put the matter briefly, a receipt acknowledging the delivery of the goods in good condition is only *primâ facie* evidence of the fact: *Porter* v. *Chicago Railway Company* (7), which must be taken to qualify the somewhat broad statement in *Skinner* v. *Chicago Railway Company* (8). As recent illustrations of this principle, reference may be made to the cases of *Mears* v. *New York Railway Company* (9), and *Southern Railway Company* v. *Ashford* (10). In

(1) (1810) 1 Martin O. S. (La.) 194.
(2) (1865) 17 La. Ann. 34.
(3) (1840) 23 Wendell N. Y. 306; 35 Am. Dec. 562.
(4) (1855) 69 Mass. 342.
(5) (1881) 10 Mo. App. 134.
(6) (1871) 8 Blatchford 341; 8 Fed. Cas. 579.
(7) (1865) 20 Iowa 73.
(8) (1861) 12 Iowa 191.
(9) (1902) 52 Atl. 610; 56 L. R. A. 884.
(10) (1900) 126 Alabama 591; 28 South. 732.

1911

EAST INDIAN RAILWAY COMPANY v. SISPAL LAL

MOOKERJEE J.

the former of these cases, a piano was delivered by the carrier to the consignee, who signed a clear receipt. When the package was taken home and opened, it was discovered that the piano had been spoiled by water. It was held that the consignee was entitled to damages, notwithstanding the grant of a "clear receipt" and acceptance of delivery. In the second case, the consignee removed his dog from the railway van; but when he took it home, he discovered that it had been injured. It was held that he was entitled to claim damages, and that the fact that he had granted a receipt for delivery in good condition was not a conclusive defence against recovery of compensation. The principle, therefore, that a receipt acknowledging a delivery of the goods in good condition is only *primâ facie* evidence of the fact, and raises a presumption in favour of the carrier which may be rebutted by the consignee, is firmly established; and it is manifestly consistent with rules of justice, equity and good conscience. The inference, therefore, follows that the decree made by the Small Cause Court Judge is correct, though his reasons are erroneous.

The result is that the Rule is discharged with costs.

CARNDUFF J. I agree. The short point of law raised by this Rule seems to be as to whether a bailor who, in the absence of any agreement on the subject, has given the bailee a receipt for the goods bailed, is, *ipso facto*, precluded from proving that the goods were in reality damaged or deficient in quantity when delivered to him. I have myself been unable to find any authority, either in England or here, for holding that he is; and my learned brother has shown that it has been held elsewhere, for reasons which seem to me to be most cogent and convincing, that he is not.

O. M. *Rule discharged.*