

Privy Council Appeal No. 53 of 1923.

The India General Navigation and Railway Company, Limited - *Appellants*

v.

The Dekhari Tea Company, Limited, and others - - - *Respondents*

Same - - - - - *Appellants*

v.

The Itakhooli Tea Company, Limited - - - - - *Respondents*

Same - - - - - *Appellants*

v.

Albert Congdon and others - - - - - *Respondents*

Same - - - - - *Appellants*

v.

The Tara Tea Company, Limited - - - - - *Respondents*

Same - - - - - *Appellants*

v.

The Limbuguri Tea Company, Limited - - - - - *Respondents*

Same - - - - - *Appellants*

v.

The Rangajami Tea Company, Limited - - - - - *Respondents*

Same - - - - - *Appellants*

v.

The Doom Dooma Tea Company, Limited - - - - - *Respondents*

(Consolidated Appeals).

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 23RD NOVEMBER, 1923.

Present at the Hearing :

LORD ATKINSON.

LORD SHAW.

LORD WRENBURY.

LORD CARSON.

SIR ROBERT YOUNGER.

[*Delivered by* LORD SHAW.]

These are consolidated appeals against decrees dated the 30th November, 1921, pronounced by the High Court of Judicature at Fort William in Bengal. These decrees affirmed seven decrees of Mr. Justice Rankin dated the 19th January, 1921.

The action was directed by the respondents against the Assam-Bengal Railway Company as well as the present appellants, the India General Navigation and Railway Company. It was dismissed by consent against the former, called the Railway Company, and it proceeded against the latter, called the Shipping Company.

The plaintiffs' claim is for damages for the loss of certain tea, part of a consignment of their goods which in November, 1915, was delivered by the respondents to the Railway Company for the purpose of transport from Assam to Chittagong for shipment to England. Consignments are in ordinary course thus taken and carried over all the Railway Company's own line without recourse to any other system of transport.

A section of the line, however, south of Lumding, in June, 1915, broke down. It had broken down two years previously and arrangements had then been made for taking the goods by ships or flats from Gauhati on the Brahmaputra river down to Chandpur on the Meghna river. At the latter point the goods could again be put on rail and so reach Chittagong. This river service was performed both in 1913 and 1915 by the present appellants. The only bargain on the subject of the goods in the present case was contained in a single letter dated the 11th June, 1915, from the Traffic Manager of the Railway Company to the Agents of the Shipping Company and was to the effect that

"All tea from Upper Assam stations for Chittagong will be diverted via Chandpur and Gauhati. The division of the freight between the Steamer Company and this Railway following the precedent of 1913."

No conditions of any kind, other than that, were either produced or proved.

What happened to the goods was that they were conveyed from Bordubi Road (Assam) by rail to Gauhati. The railway having broken down the goods were there put on board the Steamship Company's flat "Cauvery" for carriage by river to Chandpur.

On the 21st December, 1915, while the vessel was still lying at Gauhati, a fire broke out and certain of the tea was destroyed.

There were two questions in the case. First, whether the Steamship Company were liable to the respondents, the owners of the goods, in damages as a common carrier; and second, whether if not so liable, they were liable at common law, by reason of the fire having been caused through their negligence. Their Lordships have not thought it necessary to deal with this second legal head of claim, the materials for which are in the evidence, because they are of opinion that the judgments

pronounced by both the Courts below on the first point are clearly right, viz., that the Shipping Company in the circumstances described were under the law of India common carriers and answerable to the owner in damages as per the decrees.

It was quite clearly established, to use the language of their own witness, Parrot, one of their staff: "We are undoubtedly common carriers so far as the river portion of the journey is concerned." The case for the appellants, however, was that by reason of the special nature of the contract of carriage entered into in this case the denomination of common carriers could not apply to them nor the liability of common carriers attach.

There was considerable reference made to the law of England. Whether the result under that law would have been in any wise different from that arrived at is doubtful enough; but the reference was unnecessary, because the point to be decided arises under the law of India. The true question in the appeal simply is whether under the Carriers Act, No. 3, which received the assent of the Governor-General in Council on the 14th February, 1865, the definition of common carrier there mentioned covers the appellants *quoad* the present transaction. That definition is to the following effect:—

"In this Act, unless there be something repugnant in the subject or context—"Common carrier" denotes a person, other than the Government, engaged in the business of transporting for hire property from place to place, by land or inland navigation, for all persons indiscriminately."

It is not denied that the appellants were *de facto* "engaged in the business of transporting for hire property from place to place by inland navigation." The challenge, however, is that this was not done "for all persons indiscriminately." There is no question raised as to the goods being beyond the appellants' carrying capacity; they in fact, receiving a large consignment, supplied the ships or flats to carry it. So far as the words "for all persons indiscriminately" are concerned these simply mean that persons so engaged in and catering for business satisfy the demands or applications of customers as they come and are not at liberty to refuse business. This arises from the public employment in which they are engaged. Apart from danger arising, say, from the nature of the goods received, the carrier is by his office bound to transport the goods as clearly as if there had been a special contract which purported so to bind him, and he is answerable to the owner for safe and sound delivery.

In the present case all of these propositions are admitted; but it is said that there was here a contract of a special nature. The specialities in it were two, first that the Shipping Company did in fact assign particular flats for the considerable block of business coming to them at Gauhati by reason of the railway breakdown; and secondly, that these flats were destined from Gauhati to Chandpur without calling at the ordinary intermediate ports.

On the first of these points their Lordships would observe that there is no written proof in the case apart from the letter already referred to, which was simply to the effect that the rate for carriage would be the same as that charged in 1913. And as to special flats being employed there is no trace in the evidence that if there had been other customers' goods awaiting shipment for Chandpur and consigned to Chittagong, these could not and would not have been sent along with the cargo taken over from the Railway Company. In short, the idea of this portion of the river carriage being a temporary and exclusive monopoly for one single customer on special terms entirely disappears.

On the second point, viz., that this was a through route, their Lordships fail to see how that circumstance decategorises the appellants from being common carriers under the statute, or relieves them from their legal obligations as such. In order to effect such a result the particular contract would require to come up to this, that *quoad* that transaction, another and different type of business had been entered on.

When, for a particular contract, special terms are desired which involve a different category of liability, there is nothing to prevent that being secured; Section 6 of the Indian Carriers Act can then be taken advantage of. The language of Section 6 is as follows:—

“The liability of any common carrier for the loss of or damage to any property delivered to him to be carried, not being of the description contained in the Schedule to this Act, shall not be deemed to be limited or affected by any public notice; but any such carrier.....may, by special contract, signed by the owner of such property so delivered as last aforesaid or by some person duly authorised in that behalf by such owner, limit his liability in respect of the same.”

The goods were accepted for delivery by the appellants without any such special signed contract for limitation of liability.

What is required in the case of a person who answers the definition under the Indian Carriers Act, viz., of transporting for hire goods from place to place for all persons indiscriminately, is that the nature of the contract entered into must either have the limitation of the liability under the Indian Carriers Act made expressly and in writing or the facts must be such that for the contract in question the contractor was departing from his usual business and engaging in a different type of business from that of common carrier. The Judges in both Courts appear to have not only correctly looked at the case from this point of view, but to have been entirely right in their conclusion. The learned Rankin, J., puts the matter thus:—

“The only question is whether, because it was doing this particular set of journeys for the Railway Company by a special flotilla which was devoted for the time to this purpose only and which was making a through run to Chandpur, it was departing from its usual business and engaging in a different type of business, viz., the business of a sub-contractor for the Railway in such special sense as to take it *quoad* these journeys out of the avocation of a common carrier. On the whole I think it was not.”

Their Lordships agree that the question is correctly thus put in law and the proper answer given in fact.

The learned Sanderson, C.J., quotes the passage just given and agrees with it. as do their Lordships; and the learned Richardson, J., puts the matter simply, thus :—

“A common carrier cannot divest himself of his responsibilities as such without satisfying the Court that in the particular transaction he acted in some other capacity, and in this case, in my opinion, the appellant Company have not discharged the burden which lay upon them.”

The above also appears correct.

As already mentioned all other points in the case have disappeared.

Their Lordships will humbly advise His Majesty that the appeals should be dismissed with costs.

In the Privy Council.

THE INDIA GENERAL NAVIGATION AND
RAILWAY COMPANY, LIMITED,

0.

THE DEKHARI TEA COMPANY, LIMITED, AND
OTHERS.

DELIVERED BY LORD SHAW.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C.2.
1923.