

Public Works (1897) Department.

G.O., No. 758 R

DATED 1. October 1897

[Despatch Abstract.]

Power of Railways to recover under Charges: End.
from the Govt of India forwarding copy of
their letter on the subject of the — after
goods have been delivered. Com to the
Agents, memos, S. 3 and Nilgiri Railways

CURRENT No. 9614

Bf

From Govt of India

Order No. 75-8-R dated 1/10/97

No. 679 R.T.

Communicated to
the Agents Messrs. Smith,
Ludlow & Milgrew Railways
for information.

Dated 2nd September 1897

Received }
Registered } 27-9-97

Enclosures /

Spare copies

SUBJECT.

Recovery of under charges after
the delivery of the goods and pay-

The Com of Eng & Dis, 2nd 200/17 ment of the freight demanded.

Agent Man, Madras 7/16 Forwarding for information

— Agent S. I. Ry 7/10; copy of its reply to the Gov^t of Bombay

7/10/57

BACK PAPERS.

FURTHER PAPERS.

[Enclosures to Government of India Memorandum No. 679 R. T., dated the 3rd September 1897.]

No. 553, dated 24th February 1897.

From—The Secretary to the Government of Bombay, Public Works Department, Railway Branch,

To—The Secretary to the Government of India, Public Works Department.

With reference to Government of India Circular No. 9-Railway, dated 14th May 1895, communicating, for information and guidance certain revised forms of goods consignment notes, etc., I am directed to forward, for the consideration and orders of the Government of India, a copy of a letter No. 1618-T, dated 15th February 1897, and enclosures, from the Agent, Bombay, Baroda and Central India Railway Company, on the subject.

2. The Agent applies for sanction to the insertion of the following amended clause in the Standard State Railway consignment note and Railway receipt forms which are now in use on the Bombay, Baroda and Central India Railway.

"That the Railway Company have the right to remeasurement, reweighment, reclassification, recalculation of rates, terminals or other charges and of collecting, whether before or after the goods are delivered, any amount that may have been omitted or undercharged."

No. 1618-T., dated 15th February 1897.

From—The Agent, Bombay, Baroda and Central India Railway Company.

To—The Consulting Engineer for Railways, Bombay.

I have the honour to forward, herewith, a copy of letter No. 250-G., dated 7th January 1897, from the General Traffic Manager of this line together with printed correspondence on the subject of the power of Railway Administrations to recover under-charges under section 55 of the Railways Act and to request the favor of your obtaining the sanction of the Government of India to the insertion of the following amended clause in the standard State Railway consignment notes and railway receipt forms in use on this Railway—see Bombay Government Resolution No. 1347 of 1895, so as to safeguard this Company in future from loss similar to that referred to in the correspondence enclosed.

"That the Railway Company have the right to remeasurement, reweighment, reclassification, recalculation of rates, terminals or other charges, and of collecting, whether before or after the goods are delivered, any amount that may have been omitted or undercharged."

No. 250-G., dated 7th January 1897.

From—The General Traffic Manager, Bombay, Baroda and Central India Rail-
way,

To—The Agent, Bombay, Baroda and Central India Railway.

Power of Railway Administration to recover under-charges under Section 55 of the Railway Act.

In continuation of my endorsement No. 16926-G., dated the 2nd instant, under cover of which I forwarded you a printed copy of a letter with enclosures which I had addressed to the Heads of the Traffic Departments of all Railways in India, with a view to ascertaining their opinions, as to the desirability of an appeal being made to the High Court, against the decision of the District Judge of Ahmedabad in the case of the Bombay, Baroda and Central India Railway, *versus* Meheta Gopal Sankal Chand in which we sought to recover certain under-charges due to us, I have the honour to report that after a full consideration of the replies received, and acting on the advice of our Solicitors, and on the opinion of Mr. Macpherson, Barrister-at-Law, I have decided that it would not be advisable to send the case up to the High Court. A full text of the Judgment of the Subordinate Judge as well as of the District Judge, Ahmedabad, together with a précis of the case drawn up by our Solicitors and Counsel's opinion thereon, will be found in the enclosures to the printed letter addressed to all Railways referred to above.

It would appear from a perusal of the Judgment delivered by the District Judge, Ahmedabad, that had our receipt and consignment note forms contained a distinct clause reserving powers to Railway Administrations to recover undercharges both at the time of, and subsequent to the delivery of goods, it is possible that the decision of the Court would have been in our favour and it therefore becomes a question of consideration whether we ought not to take steps to provide for the inclusion of a clause of this nature in the conditions of carriage printed on the back of both these forms.

The consignment and Receipt Notes used in connection with the consignments which gave rise to the suit referred to, were the old Rajputana-Malwa State Railway forms, but we have since adopted, on the suggestion of Government, the new standard forms recently introduced on State Railways, *vide* Bombay Government Resolution No. 1347, dated 26th June 1895. These forms contain the following clause relating to the recovery of undercharges.

- (6) "That the Railway Company have the right of remeasurement, reweighment, and recalculation of charges at the place of destination, and of collecting before the goods are delivered, any amount that may have been omitted or undercharged."

This clause, it will be observed, contains no provision for the recovery of undercharges due to error in classification or of those which may have been overlooked at the time the goods are delivered, and which the Railway Administration may seek to recover subsequently as in the case recently decided in the Ahmedabad court. My own opinion is that the District Judge, Ahmedabad, seemed to think otherwise. I have been in communication with our Solicitors on the subject, and they have after consultation with Mr. Macpherson, suggested the following modification of the present clause in the standard form now in use on this Railway. I attach a copy of their letter together with a copy of Mr. Macpherson's opinion.

- "That the Railway Company have the right to remeasurement, reweighment, reclassification, and recalculation of rates, terminals or other charges and of collecting, whether before or after the goods are delivered, any amount that may have been omitted or undercharged."

The question is one of the utmost importance to Railway Administrations as well as to Government in the interest of their own lines, and as the previous sanction of the Governor General in Council to the insertion of the proposed clause in the consignment note and railway receipt forms would appear to be necessary, I have the honour to request that the case be submitted to the Government of India for consideration and orders.

Dated 14th December 1896.

From—Messrs. Crawford, Burder, Bayley and Dunlop, Solicitors, Bombay,
To—The General Traffic Manager, Bombay, Baroda and Central India Railway,
Bombay.

Revision of form of Railway Receipt.

On the receipt of your No. 17252-G. of the 8th instant, we submitted the following form of clause 6 for the approval of Mr. Macpherson, *viz*:—

- "6" That the Railway Company have the right to remeasurement, reweighment, reclassification, and recalculation of rates, terminals or other charges, and of collecting whether before or after the goods are delivered any amount that may have been omitted or undercharged."

We have today received Mr. Macpherson's opinion on the clause a copy of which we enclose herewith. We do not agree with Mr. Macpherson's supposition that the word "terminal" is used as an adjective to "charges". In section 3 (14) "terminals" is a substantive, in section 55 (1) "terminal" may appear to be an adjective at first sight, but from the marginal note it will be seen that it is a substantive, then again in section 61 (1) (b) the word is terminals, and clauses (c) and (d) show what the term "other charges" may, *inter alia*, include. In the table of contents of the Act published in the Government Gazette the following words appear:—

"55 Lien for rates, terminals and other charges."

For the above reasons we think the words rates, "terminals or other charges" are correct. The clause will of course be inserted in both the consignment note and the railway receipt and will require the previous sanction of the Governor General under section 72 (2) in the manner provided by Section 139 of the Act.

Opinion.

I think that the clause, as drafted, answers the desired purpose. I understand "terminal" to be used as an adjective to "charges". If so, the clause should run, "terminal" not "terminals."

I think section 54 (1) of the Act, warrants the clause subject to the control which practically must mean "approval," of the Governor General in Council.

BOMBAY, BARODA AND CENTRAL INDIA RAILWAY,

INCLUDING

RAJPUTANA-MALWA RAILWAY.

(Includes the Rajputana State Railway, the Holkar State Railway, the Sindia-Neemuch State Railway, the Rewari-Ferozepore State Railway, the Cawnpore-Achnera State Railway and the Godhra-Rutlam State Railway.)

GENERAL TRAFFIC MANAGER'S OFFICE,

Bombay, 12th January 1897.

To

THE

Railway,

DEAR SIR,

Power of Railway Administrations to recover undercharges under Section 55 of the Railway Act.

In thanking you for your letter No. _____, dated _____, I now beg to advise you that after having fully considered all the replies received from the various Railways, and acting under the advice of our Solicitors, we have finally decided not to move the High Court for a revision of the judgment of the District Court of Ahmedabad in the case referred to in my printed letter of the 20th October 1896.

It will probably have occurred to you on a perusal of the judgment of the Ahmedabad Court that had our Receipt and Consignment Note forms contained a distinct clause reserving power to the Railway Administration to recover undercharges both at the time of, and subsequent to the delivery of goods, it is possible that the decision of the Court might have been in our favor, and it consequently becomes a question for consideration whether Railway Administrations ought not to take steps to provide for the inclusion of a Clause of this nature in the conditions of Carriage printed on the backs of both these forms.

The Consignment and Receipt Notes used in the case before the Ahmedabad Court, were the old State Railway forms, which have since been superseded by the revised Standard (State Railway) forms recently adopted by us at the request of Government. These latter forms contained the following Clause relating to the recovery of undercharges:—

"That the Railway Company have the right of remeasurement, reweighment and recalculation of charges at the place of destination, and of collecting before the goods are delivered, any amount that may have been omitted or undercharged."

You will observe that the above clause contains no provision for the recovery of undercharges due to error in classification, or of those which may have been overlooked at the time the goods were delivered, and which the

Railway Administration may seek to recover subsequently, as in the case recently decided in the Ahmedabad Court. I have been in communication with our Solicitors in regard to this point, and after consulting Counsel they have suggested that we should move Government to sanction the following modification of the present Clause in the Standard State Railway forms now in use on this Railway. I attach for your information a copy of their letter on the subject, with a copy of Counsel's opinion:—

"That the Railway Company have the right to remeasurement, re-classification and re-calculation of rates, terminals or other charges, and of collecting whether before or after the goods are delivered, any amount that may have been omitted or undercharged."

I have accordingly addressed our Agent in the matter, and have suggested that the question, which is one of great importance to Railway Administrations as well as to Government in the interests of their own State lines, be submitted to the Government of India for consideration and orders.

Yours faithfully,
I. O'CALLAGHAN,
General Traffic Manager.

Copy of letter dated 14th December 1896, from Messrs. Crawford, Burder, Bayley and Dunlop, Solicitors, Bombay, to the General Traffic Manager, B. B. & C. I. Railway, Bombay.

Revision of Form of Railway Receipt.

On the receipt of your No. G/17252 of the 8th instant we submitted the following form of Clause 6 for the approval of Mr. Macpherson, viz. :—

6. "That the Railway Company have the right to re-measurement, re-weighment, re-classification and re-calculation of rates, terminals or other charges, and of collecting, whether before or after the goods are delivered, any amount that may have been omitted or undercharged."

We have to-day received Mr. Macpherson's opinion on the Clause, a copy of which we enclose herewith.

We do not agree with Mr. Macpherson's supposition that the word "terminal" is used as an adjective to "charges." In Section 3 (14) "terminals" is a substantive, in Section 55 (1) "terminal" may appear to be an adjective at first sight but from the marginal note it will be seen that it is a substantive, then again in Section 61 (1) (b) the word is "terminals" and clauses (c) and (d) show what the term "other charges" may, inter alia, include. In the table of contents of the Act published in the Government Gazette the following words appear:—

"55. Lien for rates, terminals and other charges."

For the above reasons we think the words "rates, terminals or other charges" are correct.

The clause will of course be inserted in both the Consignment Note and the Railway Receipt and will require the previous sanction of the Governor-General under Section 72 (2) in the manner provided by Section 139 of the Act.

OPINION.

I think that the clause, as drafted, answers the desired purpose. I understand "terminal" to be used as an adjective to "charges." If so the clause should run, "terminal" not "terminals."

I think Section 54 (1) of the Act warrants the clause subject to the control, which practically must mean "approval," of the Governor-General in Council.

(Sd.) J. MACPHERSON,

13-12-96.

Confidential.

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BOMBAY, BARODA AND CENTRAL INDIA RAILWAY,

INCLUDING

RAJPUTANA-MALWA RAILWAY.

(Includes the Rajputana State Railway, the Holkar State Railway, the Sindia-Neemuch State Railway, the Rewari-Ferozepore State Railway, the Cawnpore-Achnera State Railway, and the Godhra-Rutlam State Railway.)

GENERAL TRAFFIC MANAGER'S OFFICE,

BOMBAY, 20th October 1896.

To

THE

Railway,

DEAR SIR,

Power of Railway Administrations to recover under-charges under Section 55 of the Railway Act.

I beg to forward herewith, for your perusal and consideration, the following documents relating to a case recently decided against this Railway by the District Court of Ahmedabad in connection with certain under-charges which we sought to recover from a consignee after delivery of the goods had been effected:—

- (1) Copy of judgment of Viramgam Subordinate Judge's Court.
- (2) Copy of judgment of Lower Appellate Court (District Judge, Ahmedabad).
- (3) Copy of case submitted by Messrs. Crawford, Burder & Co., Solicitors, for opinion of Counsel, and Mr. Macpherson, Barrister-at-Law's opinion thereon.

The question at issue is such an important one that I considered it desirable, before moving the High Court for a revision of the judgment of the Lower Appellate Court, to obtain the opinion of one of the leading Counsels in Bombay on the case. It will be seen that Mr. Macpherson, to whom the case was referred by our Solicitors, considers that the judgment of the Lower Appellate Court is right and that an appeal to the High Court would in his opinion fail.

In the face of this opinion, according to which it would not be possible to recover under-charges due to wrong classification at booking station even before delivery of goods, I have hesitated moving the High Court with a view to obtaining a definite ruling on the subject, especially as, under the existing conditions prevailing on all Railways and in view of the present generally accepted interpretation of section 55 of the Railway Act, there has hitherto been little or no difficulty in prevailing upon consignors or consignees to make good any under-charges that may be due to a Railway, whereas if we were to go to

the High Court and meet with a reverse there, and if the decision got to be generally known, as it is almost certain to be, our present position would be materially prejudiced.

The question is one in which all Railways are equally interested, and it is only right, before deciding what further action this Railway should take individually in the matter, that other Railways should be afforded an opportunity of stating their views on the question. I have accordingly to request that you will kindly, after considering the matter and, if necessary, conferring with your legal advisers, favor me with your opinion as to what is the best course which you consider it desirable for this Railway to take.

As the period within which we can file the appeal in the High Court expires on the 5th November proximo, I should be much obliged if you could arrange for your reply to reach me three or four days previous to that date.

Yours faithfully,

I. O'CALLAGHAN,

General Traffic Manager.

IN THE COURT OF THE JOINT SECOND CLASS SUB-JUDGE AT AHMEDABAD.

Civil Suit No. 79 of 1895.

<p>Pleaders. Mr. Dayabhai Ijatram.</p>	{	<p>The B. B. & C. I. Railway Company by its Kul Mukhtyar, Mr. W. G. Bourne, Traffic Superintendent of the Ahmedabad District.</p>	<p>Plaintiff</p>
<p>against</p>			
<p>Mr. Harilal Mancharam.</p>		<p>Meheta Gopal Sankalchund</p>	<p>... Defendant.</p>

CLAIM—Rs. 601-9-0.

The plaintiff sues to recover Rs. 601-9-0, principal, from the defendant under the following allegations:—

That the defendant's agent, Jethmal Ramchandra, consigned to the defendant 308 bales of *kupas* from the Jawali station and 273 bales from the Auwa station in the months of April and May 1894.

That, according to the Company's Tariff rates, the *kupas* is charged at second class rate, and accordingly the defendant was bound to pay in all Rs. 1,901-7-0. However he paid only Rs. 1,299-14-0 according to first-class rate. The plaintiff therefore claims to recover the difference of Rs. 601-9-0, which was under-charged.

The defendant, in exhibit 7, urges that he paid the charge as much as was stated in the Receipts given to him, and as much as was asked for. That he made enquiries as to the charges first, and then, in view of the information supplied to him, he engaged in trade of bringing *kupas* from the above said stations to Sanand. That the plaintiff has no right to bring the suit, and the charge claimed for is not just.

Issues.

1. What was the proper charge? how much the defendant has paid? and how much the plaintiff is entitled to recover?
2. Has the defendant paid less knowingly and intentionally?

No more sought.

Findings.

1. I find that the proper charge was Rs. 1,878-5-10. The defendant has paid Rs. 1,299-14-0, and the plaintiff is entitled to recover the difference of Rs. 578-7-10.
2. I find on the second issue for the defendant.

Reasons.

The facts of the case are very simple and undisputed. The defendant's agent consigned from Jawali and Auwa stations on the Rajputana-Malwa Railway to Sanand station of the B. B. & C. I. Railway proper, certain bales of *kupas*. As regards the number of bales consigned and their weight there is no dispute. The bales were duly received at the Sanand station and delivered to the defendant, the consignee. The defendant in fact paid as much charge as was stated in the several Receipts, because, without recovering the charge, no delivery could be made.

Some days after, the Audit Department found that such goods ought to have been charged at second class rate, and, as it was charged at first class rate, orders were issued to the Station Master at Sanand to recover the difference. The defendant refused to pay, and hence this suit.

From the Company's Tariff Book of Rates and Classifications of Goods (*vide* Exhibit 23), it appears that the *kupas* on the Broad Gauge line of the B. & C. I. Railway is charged at first class rate, and on the Metre Gauge Section at the second class rate—see at pages 66 and 69. The Jawali and Auwa stations are on the Metre Gauge Section, and Sanand on the Broad Gauge line. It appears that in the Receipts given by the station authorities at the consigning stations, first class rate was charged, and the defendant paid the full sum stated in the receipts at the delivery station. The defendant is not at all at fault, but the station authorities at the consigning stations are guilty of negligence. It is their fault that they under-charged.

However, the defendant cannot take benefit of their mistake; he is bound to pay the difference under the provisions of the Railway Act, as well as under the common law and equity.

He urges that, had he not been so misled by the station authorities at Jawali and Auwa, he would not have brought the goods. May it be the case, but that circumstance does not affect the Company's rights to recover the under-charge. If he has suffered any loss owing to the misinformation given by the said station authority, he is at liberty to proceed against them if he be so advised.

The Company claims second class charge throughout the whole line from Jawali and Auwa to Sanand, but they are wrong. According to the rate given in Exhibit 23 at pages 66 and 69 on Metre Gauge—that is, from Jawali and Auwa to Sabarmati Junction—they can claim at second class, but on the Broad Gauge Line—that is, from Sabarmati to Sanand—at first class rate, and according to this rate the plaintiff is entitled to recover Rs. 578-7-10 only—see statements Exhibits 46 and 47.

I award Rs. 578-7-10 only, and reject the rest of the claim. As the under-charge was made on account of the negligence of the Company's servants at Jawali and Auwa, I direct each party to bear his own costs.

25th June 1895.

(Sd.) ATMARAM J. KAZI,
Joint Sub-Judge.

IN THE DISTRICT COURT OF AHMEDABAD.

At AHMEDABAD.

APPEAL No. 266 of 1895.

(Civil Suit No. 79 of 1895 of the Court of the Joint Sub-Judge of Ahmedabad.)

<p><i>Pledgers</i> Mr. Harilal Mancharam and Mr. Varag- rai S.</p>	}	Meheta Gopal Sankalchund ...	{	Appellant (original Defendant)
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against

<p>Messrs. Dayabhai Ijatram and Pranshanker Narotam- das.</p>	{	The B. B. & C. I. Railway Com- pany by its Kul Mukhtyar, Mr. W. G. Bourne, Traffic Superin- tendent of the Ahmedabad District.	}	Respondent (original Plaintiff).
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CLAIM—Rs. 578-7-10.

This action was instituted by the respondent Company to recover the sum of Rs. 601-9-0 from the defendant under the following circumstances:—

The defendant's agent in the months of April and May 1894 consigned to the defendant considerable quantities* of *kupas* (cotton with seed). The *kupas* was sent by the plaintiff's Railway and the amount of freight paid by the defendant on taking delivery of the *kupas* was Rs. 1,299-14-0. The plaintiff's case is that the total freight due was Rs. 1,901-7-0, and this suit was instituted for the recovery of the balance of Rs. 601-9-0.

The defendant replied, that he had made inquiries as to the freight due from the plaintiff's servants, and had paid the rates which were communicated to him, and which appeared on the Railway receipts handed to him by these servants. He further stated, that it was after enquiring as to the rates that he embarked in the business in the course of which the *kupas* was consigned to him. The Lower Court found that the correct freight due † on the consignments was Rs. 1,878-5-10, and awarded the plaintiff Company Rs. 578-7-10, the amount by which the defendant's payment fell short of the freight found due.

The defendant appeals on the grounds on which he based his defence in the Lower Court. He does not press his plea that the rates paid by him are correct, and the facts of the case being thus undisputed, the following is the only issue raised, *viz.*:—

Is the plaintiff Company entitled to recover from the defendant the amount by which the latter's payments fall short of the freight chargeable on his consignments? My finding is in the negative for the following

REASONS.

The plaintiff's case is, that the defendant is bound to pay the charges set forth in the Tariff book, Exhibit 23, and that ‡ the Company, by a rule printed on each receipt (Exhibits 34 to 42), expressly reserves to itself the right of recalculation of charges at the place of destination.

I proceed to deal with these points in turn.

On page 39 of Exhibit 23 occurs the following rule (No. 66).—"Station Masters at the several goods stations are authorized to demand and receive freight for the conveyance of any article or thing by goods train and also charges incidental thereto." The next rule but one runs as follows:—"Any further information as to rates, rules, &c., which may be desired can be ascertained on application to any Station Master." I take it that the words "by letter" in this rule are not meant to apply to Station Masters.*

* Vide page 5.

The intending consignor is thus referred to the Station Master as the authority from whom to enquire the charges to be levied on the proposed consignment. He binds himself to nothing by the enquiry, and, should the charges appear to him excessive, he may, in his discretion, abandon his proposed transaction. In the present case, the consignor (defendant's agent) determined to send his goods, and he received at different times, nine Receipts (Exhibits 34 to 42 inclusive). Each of the receipts contains a column headed "To pay." The total of the amounts shown in this column in the nine Receipts produced is Rs. 1,299-14-0. My view of the transaction so evidenced is, that the plaintiff Company undertook for a consideration of Rs. 1,299-14-0†, to convey the consignor's goods between the stations specified in the receipt, and that, when the money was paid and the goods delivered, the contract was at an end. In taking this view, I assume that the goods are of the weight, measurement, and class given by the consignor. The contract between the parties is evidenced by the receipts, and this view was followed by the plaintiff Company itself in the case of *Mohan Mohi vs. The B. B. & C. I. Railway Company* (P. J., 1882, p. 70). In that case the plaintiff sued to recover the value of some rice consigned by him. "The defence of the Railway Company was that in the contract made with the plaintiff's Agent in Bombay, it was distinctly specified that the Railway did not guarantee, and were not responsible for the weights shown in the bill of lading." The stipulation referred to appears in the note printed at the foot‡ of the receipts. I shall have occasion to refer further to this note when I deal with the second point raised for the plaintiff. In the mean time I hold that the plaintiff cannot go behind the contract evidenced by Exhibits 34 to 42.

† Vide page 6.

The following is the full text of the note which has been referred to above and on which the plaintiff's pleader relies in his contention that the Company reserves to itself the right of recalculation of charges. *Note.*—It must be distinctly understood that the weight and description of goods in the Railway receipt and forwarding note are inserted for the purpose of estimating the Railway charges. The Company does not admit that the actual weight as therein shown has been received or that the description of the goods as furnished by the consignor is correct, and therefore§ reserves to itself the right of re-measurement, re-weighment, re-classification and re-calculation of charges at junction or place of destination.

§ Vide page 8.

It seems to me perfectly clear that the words "re-calculation of charges" in this rule cannot be isolated from the words immediately preceding it. The Railway Company merely reserves to itself the right to re-calculate the charges on goods the measurement, weight, or class of which has been wrongly described by the consignor. It is not denied that the consignments of the defendant's agent were properly described, and I hold that the Company cannot re-open its contract to convey these goods at the rates given in the Receipts. The money has been paid, || and the goods delivered, and the plaintiff is not, in my opinion, entitled to the relief sought.

I may briefly note two further points which have been raised in argument.

The first point is, that under section 55, clause (5), of the Railways Act, the Railway Administration may recover charges by suit. The argument is irrelevant. In the present case the Company was not, as I hold, entitled to

recover any charges other than those demanded and received from the defendant.

The second point is, that as the Company is liable to refund over-charges, it should have a corresponding right to recover under-charges. The plea is not sound. The Company is responsible for seeing that the proper charges are levied. It cannot levy more than the registered freight and the public* is protected against such levy. The law does not, however, afford the Company any means of escape from the consequence of its own laches.

* Vide page 10.

For the reasons herein recorded I vary the decree of the Lower Court and dismiss the claim *in toto* with costs throughout on the plaintiff.

(Signed) T. D. FRY,

Joint Judge.

AHMEDABAD, 7th August 1896.

Ex Parte The B. B. and C. I. Railway Company Re Claim for Under-charge on Goods sent from Javali and Auwa Stations to Sanand Station.

CASE PREPARED BY MESSRS. CRAWFORD, BURDER & CO.,
SOLICITORS, BOMBAY, FOR THE OPINION OF COUNSEL.

In the months of April and May 1894, one Jethmal Ramchundra, Agent of Mehta Gopal Sankalchund, consigned to the said Mehta Gopal Sankalchund 308 bales of *Kupas* (cotton with seeds) from the Javali station and 273 bales from the Auwa station to Sanand station.

According to the Company's Tariff rates *Kupas* is charged at 2nd class rate, and in accordance therewith the said Mehta Gopal Sankalchund was liable to pay Rs. 1,901-7-0 as freight for the goods in question, but through an oversight on the part of the Company's officials the Receipts were made out in accordance with the first class rate showing a sum of Rs. 1,299-14-0 only to be due from the said Mehta Gopal Sankalchund instead of Rs. 1,901-7-0, the correct amount as above mentioned, and the lesser amount, *viz.*, Rs. 1,299-14-0 was recovered from him, and on payment of the same delivery of the goods was given to him, thus leaving a balance of Rs. 601-9-0, the amount under-charged, still due to the Company.

Subsequently the Audit Department of the Company discovered the mistake and orders were issued to the Station Master at Sanand to recover the amount under-charged (Rs. 601-9-0), but the said Mehta Gopal Sankalchund refused to pay the same when demanded; hence a suit was filed against him in the year 1895 in the Court of the Joint Second Class Sub-Judge at Ahmedabad for the recovery of the said sum of Rs. 601-9-0, but the Sub-Judge who heard the case allowed the Company only Rs. 578-7-10 for the reasons stated in his judgment and directed that each party should pay their own costs. A copy of this judgment of the Sub-Judge is sent herewith.

Against this judgment the said Mehta Gopal Sankalchund appealed to the District Judge of Ahmedabad, who varied the decree of the Lower Court and dismissed the Company's claim *in toto* with costs throughout. A copy of the judgment of the District Judge is sent herewith.

Under the conditions printed at the foot of each of the 9 Receipts which were given by the Company for these goods (a printed form of which receipts is sent herewith) Counsel will observe that the Company reserved to itself the right of re-measurement, re-weighment, and re-classification and re-calculation of charges at junction or place of destination [*vide* also Rule 5 (p. 2) of the Company's Goods Tariff Book sent herewith].

Counsel's attention is also drawn to section 55 of the Railways Act IX of 1890, which empowers the Railway authorities to detain any goods belonging to any person who has failed to pay on demand any rate, terminal or other charge due from him whether such goods are at the time of such failure in or subsequently came into the possession of the Company, and also under subsection 5 to recover by suit any such rate, terminal or other charge or balance thereof.

It is also contended on behalf of the Company that as under section 77 of the Railways Act any claim for the refund of an over-charge in respect of animals or goods carried by the Railway must be preferred within 6 months from the date of the delivery of the goods for carriage by the Railway, the Company should have a corresponding right of recovering the amount of any under-charge in respect of animals or goods so carried by them.

As mistakes in the amount of charges, &c., inserted in receipts given to consignors for goods received by the Company may and do frequently occur from the carelessness of booking clerks or from other causes, and as goods would in such cases usually be delivered before the mistake was discovered, the question whether the Company can after they have parted with possession of such goods to the consignee under the provisions of section 55 of the Railways Act or otherwise recover any under-charges either by a suit or by detaining subsequent goods consigned to the same consignee is one of great importance to the Railway Company.

The present Goods Tariff Book (1896, *vide* Rules 5, 62 and 64) of the Company is also forwarded herewith for Counsel's information.

Counsel is requested to peruse the accompanying papers and to advise.

QUESTION.

(1) Whether in the event of an appeal being filed in the High Court against the decision of the Lower Appellate Court the Company will in his opinion be successful in reversing such decision.

(2) Whether the Company have power under the provisions of section 55 of the Railways Act IX of 1890 or otherwise to recover from a consignee either by filing a suit against him or by detention of subsequent goods consigned to him under-charges upon goods which they have delivered to

OPINION.

(1) I find nothing in Act IX of 1890, nor in the Receipt given to a consignor, to fix the latter in any way with knowledge or notice of the Company's classification of goods, so that in my opinion the fact that the Company might (and ought to) have charged for the *Kupas* in question under Class II by virtue of the classification cannot affect the contract actually made to carry the *Kupas* for rates under Class I. The case appears to me to be one of mistake on the part of the Company by its servant, and the contract stands as an engagement by the Company to carry these particular goods at a less rate than the Company was entitled to charge. If the mistake had been discovered before instead of after the carriage of the goods, the result would, I think, be the same. The weight and description appear to have been correctly given, and I think, therefore, that even before the goods had been delivered the Company would not have been entitled to claim to reclassify the goods under the "Note" in the Receipt. It follows, *a fortiori*, that after delivery a suit on the basis of a reclassification will not lie. I think the Lower Appellate Court's judgment is right, and for the reasons given in it, and that an appeal to the High Court would fail.

(2) My answer to this query is in the negative. I think the consignor is not affected by the Company's rules, except so far as they are reproduced on the Receipt given him, and that if the Company charge *less* than the rules warrant, they are nevertheless bound by the rate stated in the

QUESTION.

him (in consequence of an error on the part of their servants) on payment of an amount less than that which under their rules they are entitled to charge.

(3) And to advise generally.

OPINION.

Receipt, provided that the consignor has correctly given weight and description, and provided, of course, there is no fraud on his part nor collusion between him and the Company's servants. If, however, the Company charge *more* than the rules warrant, the consignor can always recover the excess, subject to section 77 of Act IX of 1890 and to the law of limitation, as any charge beyond the rates prescribed by the rules is *ultra vires* of the Company.

(3) If my opinion is not accepted (it will, of course, not be acceptable!) I think an appeal to the High Court can be made and carried through at very trifling expense.

(Sd.) JOHN MACPHERSON.

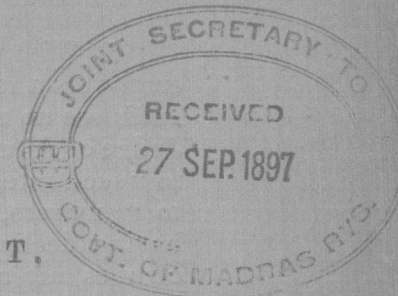
27th September 1896.

No. 678 R. T.

GOVERNMENT OF INDIA.

PUBLIC WORKS DEPARTMENT.

RAILWAY TRAFFIC.



To

THE SECRETARY TO THE GOVERNMENT OF BOMBAY,
PUBLIC WORKS DEPARTMENT.

Simla, the 3rd September 1897.

SIR,

I am directed to refer to your letter No. 553, dated 24th February 1897, forwarding for the orders of the Government of India certain correspondence regarding the power of railways to recover under-charges after goods have been delivered.

2. It appears from the papers forwarded that the Bombay, Baroda and Central India Railway Company failed to recover certain under-charges from a consignee after the goods had been delivered on payment of the freight demanded. The Company therefore propose a modified clause for insertion in the standard form of consignment note and goods receipt in order to give railway administrations definite power to recover under-charges under these circumstances. This clause is, on the advice of the Company's legal adviser, submitted for the approval of the Governor General in Council in exercise of the control vested in him under section 54 (1) of the Indian Railways Act, IX of 1890.

3. In reply I am to state that the Governor General in Council is unable to accept the proposed modification since the clause which it is proposed to amend was expressly limited in its scope to giving railways power to correct charges before the delivery of goods. The ground of this limitation was that it would be an unreasonable impediment to trade to allow a transaction which, on ordinary business principles, would be treated as completed by the delivery of the goods and the payment of the freight demanded, to be subsequently re-opened by the railway on a claim for under-charges.

4. There is much to be said from the point of view of the trade in favour of the railway being bound by the charges shown on the railway receipt. It is considered that the information published in the goods tariff regarding the rates charged should be so clearly expressed as to enable station masters and others, to whom references are usually made, to afford the public correct information. It has, however, been recognised as reasonable, in view of the quality of the staff usually and necessarily employed to receive and despatch goods, that railways should have the power of correcting charges at destination before delivery. The exercise of this power is subject to the provision that the public are made aware of its existence by notices in the goods tariff and on the receipt and consignment note forms.

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5. With regard to the contention that section 55 (5) of the Railways Act empowers a railway to recover such under-charges by suit, the Government of India see no reason to doubt the soundness of the view expressed by the District Judge of Ahmedabad. The provision in the sub-section alluded to refers only to "such rate, terminal or other charge as aforesaid," i.e.,—see sub-section (1)—to "any rate, terminal or other charge due." The Governor General in Council having declined to admit a condition providing for the recovery of under-charges after the delivery of the goods and payment of the freight demanded, such under-charges cannot, after delivery and payment, be "due," and, therefore, section 55 (5) does not apply to them.

6. With regard to the contention that since a railway administration is liable under section 77 to refund over-charges claimed within six months, it should have a similar power to recover under-charges, the Government of India are of opinion that the grant of this power to railway administrations would be opposed to public policy and in no way justified by the section, which is not an enabling section, but merely limits the time within which claims can be preferred.

I have the honour to be,

SIR,

Your most obedient servant,

G. A. ANDERSON,

Under Secretary.

Documents accompanying.

Nil.

No. 679 R. T., dated the 3rd September 1897.

Copy, with copy of the letter replied to and of its enclosures, forwarded to the Governments of Madras, Bengal and Burma, the Chief Commissioner of Assam, the Resident at Hyderabad, the Agent to the Governor General for Rajputana, the Director General of Railways, the Consulting Engineers to the Government of India for Railways, Calcutta, Lucknow and Assam, and to the Accountant General, Public Works Department, for information.

Ry order,

W. M. L. A. I. T.

Under Secretary.

*SLX
10/9/97*

*To The Joint Secy. to the Govt of Madras,
Public Works Department,
Railway branch.*