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**(1928) 02 MAD CK 0045**  
**In the Madras High Court**

A.M. Appavoo Chettiar

APPELLANT

Vs

The South Indian Railway Company and Another

RESPONDENT

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**Date of Decision :** 14-02-1928

**Acts Referred:**

Contract Act, 1872 — Section 72

**Citation :** AIR 1929 Mad 177 : (1928) 28 LW 591 : (1929) 56 MLJ 269

**Hon'ble Judges :** Ramesam, J

**Bench :** Division Bench

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**Judgement**

Ramesam, J.—The points arising for decision in this case are substantially the same as those arising in C.R.P. No. 1259 of 1925 decided by us on the 29th November last. In that case the Government was not represented, but now we have had the advantage of hearing the learned Advocate-General who appeared for Government. In the former case we relied on *Cooper v. Phibbs* (1867) L.R. 2 H.L. 149 and the observations of Stirling, J., in *Allcard v. Walker* (1896) L.R. 2 Ch. 369. No issue was raised in that case as to whether the payment was voluntary. On that ground we refused to consider the two decisions in *Slater v. Mayor, etc. of Burnley* (1888) 59 L.T. 636 and *William Whiteley, Ltd. v. The King* (1909) 101 L.T. 741. In those cases the ground of the decision was that the payments were voluntary and we therefore held there was no need to consider those decisions at length; but, towards the end of the judgment, there is an observation that even if it is necessary to consider them, we do not prefer to follow them. This observation is, of course, obiter. But in the present case the point has to be considered and we have had the advantage of the argument of the Advocate-General on this point and on the application of *Cooper v. Phibbs* (1867) L.R. 2 H.L. 149. Mr. R. Srinivasa Aiyangar, the learned vakil who appeared for the petitioner, relied on Section 72 of the Contract Act and on the change in the language of Article 96 of the Limitation Act of 1908. We may at once observe that there can be no case of coercion in this case, for it is not suggested that the goods were demanded by the consignee on the offer of a smaller amount than what was demanded and that the company's agent refused to deliver them. On

the other hand, the plea of mistake shows that the petitioner himself was not aware of the true situation at the time of the delivery of the goods, and could not have made such an offer; or, in other words, the case of mistake would be inconsistent with the case of coercion. This is in fact conceded by Mr. Srinivasa Aiyangar. The only question is whether there is such a mistake as would afford relief to the petitioner. On account of the change of language in Article 96 of the Limitation Act, it may be conceded that some kind of mistake of law may be a ground for relief. What exactly is the mistake of law that may be a ground for relief is really the point to be considered in the case. If the mistake of law is of such a kind that it is mixed up with certain specific facts relating to a particular individual so much so that it may be said that as the combined effect of a party's view of the law and the facts, he made a mistake at the time of entering into the transaction as to the nature of his pre-existing private right, it may be said that such a mistake is not a pure mistake of law and is covered by the language of Lord Westbury in *Cooper v. Phibbs* (1867) L.R. 2 H.L. 149 which was quoted by Stirling, J., in *Allcard v. Walker* (1896) L.R. 2 Ch. 369. Some such limitation must be placed on the words of Lord Westbury which on their face seem to be too wide and which if literally applied will cover cases of all mistakes of law, for every mistake of law committed by a party and made the basis or ground of relief must ultimately lead to some mistake as to his right; and in that sense, all mistakes of law are mistakes affecting private rights; but in this sense, there will never be a case to illustrate the proposition that a mistake of law cannot be a ground for relief. In the present case the mistake of law is a mistake as to the general law in British India--a law which is applicable to the petitioner exactly in the same way as to all other citizens in British India. There is no fact peculiar to the plaintiff, nor can it be said that, at the time of the consignment of goods, there was any special or private right peculiar to the plaintiff as distinguished from any other citizen. The right of the plaintiff is a general right, that is, a right which he possesses in common with every other citizen in British India, to consign goods through the Railway Company on payment of particular surcharge. A right of that kind could not have been intended by Lord Westbury in his observations in *Cooper v. Phibbs* (1867) L.R. 2 H.L. 149, illustrations of which are afforded by the decisions in *Earl Beauchamp v. Winn* (1874) L.R. 6 H.L. 223 and in *Rani Chandra Misra v. Ganesh Chandra Gangopadhyaya* (1916) 21 C.W.N. 404 as being cases of mistake as to private rights. The same conclusion seems to emerge on a consideration of the sections of the Contract Act. Though the word "mistake" in Section 72 is not limited, it must refer to the kind of mistake that can afford a ground for relief as laid down in Sections 20 and 21 of the Act. Section 21 says that a mistake as to law of British India is not a ground for relief, which means that a mistake of law to be a ground of relief within the meaning of Section 21 must be really a mutual mistake relating to the nature of the private right of a party with reference to special facts peculiar to him mixed up with a question of law. In this case it is therefore clear that the mistake of the petitioner is a pure mistake of law and cannot be said to be a mistake bearing upon the private or the special right of the petitioner and therefore it cannot become a ground of

relief within the meaning of Section 72 of the Contract Act or Article 96 of the Limitation Act. In *Allcard v. Walker* (1896) L.R. 2 Ch. 369 Stirling, J., went on to observe at page 831:

It is not accurate to say that relief can never be given in respect of a mistake of law.

2. He then referred to the statement of Turner, L.J., in *Stone v. Godfrey* (1854) 5 De G. M. & G 76, which was recognised by the Court of Appeal in *Rogers v. Ingham* (1876) L.R. 3 Ch. D. 351; but the weight of these observations seems to be very much shaken by the observation of the Court of Appeal in *Holt v. Markkam* (1923) 1 K.B. 504.

3. The observations of Scrutton, L.J., particularly are useful. He refers to the observations of Lord Sumner in *Baylis v. Bishop of London* (1913) 1 Ch. 127 and in *Sinclair v. Brougham* (1914) A.C. 398 where it is said:

There is now no ground left for suggesting as a recognizable "equity" the right to recover money in personam merely because it would be the right and fair thing that it should be refunded to the payer.

4. It is unnecessary to pursue this ground of the plaintiff's action with reference to English cases as the Indian Law seems to be clear, namely, that a mistake, in the sense that it is a pure mistake as to law in India, resulting in the payment by one person to another and making it inequitable that the payee should retain the money is no ground for relief. That being so, the plaintiff will not be entitled to recover.

5. It is really unnecessary to consider the question whether the payment can be said to be voluntary, for the distinction whether in a particular case the mistake is one of mistake of pure law or the payment is voluntary becomes really academic. We may, however, observe, that though it might be possible to distinguish the decision in *William Whiteley, Ltd. v. The King* (1909) 101 L.T. 741 it is impossible to distinguish the case in *Slater v. Mayor, etc. of Burnley* (1888) 59 L.T. 636. Anyhow it is clear that the plaintiff is not entitled to recover. To this extent, we depart from the view taken in C.R.P. No. 1259 of 1925.

6. In the course of the argument our attention has been invited by the learned Advocate-General to a circular letter issued by the Government of India (Ex. D) which shows that they did not mean to exempt cotton seeds under the Act of 1921 and that if any Local Government or administration considers it necessary for special reasons to extend the concession to any other varieties of fodder such as oil cake or cotton seed, the previous sanction of the Government of India should be obtained. For the respondent our attention has been drawn to a letter issued by the Government of India under which they direct refund of amounts like those claimed in this case. Neither of these is relevant for the decision of this case when the matter goes before a Court of Law. The learned Advocate-General referred to items in the Tariff Act of 1921 relating to grains and pulses, seeds and

fodder; but, after giving our best attention to this case, we are not able to depart from the view already taken by us and by Waller, J., namely, that cotton seeds are fodder within the meaning of the Act.

7. The result is that the Civil Revision Petition fails; but, having regard to the circumstances of the case and particularly the fact of the Government circular directing refund of such amount, we make no order as to costs in the Civil Revision Petition.