

(1913) 01 CAL CK 0012

In the Calcutta High Court

Case No : Appeal from Appellate Decree No. 2679 of 1910

Lal Chand Sew Karan

APPELLANT

Vs

The E. I. Ry. Co.

RESPONDENT

Date of Decision : 28-01-1913

Acts Referred:

Citation : (1913) 01 CAL CK 0012

Final Decision : Dismissed

Judgement

1. There is nothing in this Appeal, which should never have been brought and could not possibly be argued upon the grounds on which it is sought to be argued. Whether the case falls under the common law of bailment and is governed by sec. 151 or 152 of the Contract Act, or whether it comes under the special provision of sec. 72 of the Railways Act, as undoubtedly it does, the suit is equally without foundation. The goods which were lost in transit were 83 tins of ghee in a consignment of 494 tins. They have been proved to have been locked and sealed in one of the Company's vans. They were put in in the presence of the consignor's own man and he saw that they were all right when they left Etwah. They were further checked and found to be all right at Asansole, and when they arrived at Liluah it was found that the van had been broken open by some thief unknown and the goods had been stolen. The matter was put in the hands of the Police, which was all the Railway Company could possibly do, and the Police did not find that any Railway servant had anything to do with the theft. That being so, the Railway Company discharged any onus which lay upon them; and there is not a particle of evidence to rebut any of the above facts, so that even if the Contract Act be applied in its strictest form and if the case of *Sheikh Ravuther v. B.I.S.N. Co.* I. L. R. 32 Mad. 95(1908) be followed the Plaintiff would have no case whatever. But that case is clearly distinguishable from this. There is no reason whatever why the Plaintiff should not contract under the statutory provision of sec. 72 of the Railways Act. He has done so. He has taken the benefit of reduced freight and he now seeks in a manner which is little short of dishonest to try and get out of the terms of the contract into which

he has freely and lawfully entered.

The result is that this Appeal must be dismissed with costs. We asses the hearing-fee at 2 gold mohurs