

(1880) 07 CAL CK 0002

Calcutta High Court

Case No: None

Mackillican

APPELLANT

Vs

The Compagnie Des
Messageries
Maritimes De France

RESPONDENT

Date of Decision: July 23, 1880

Acts Referred:

- Contract Act, 1872 - Section 151

Citation: (1881) ILR (Cal) 227

Hon'ble Judges: Richard Garth, C.J; Pontifex, J

Bench: Division Bench

Judgement

Richard Garth, C.J. and Pontifex, J.

We think that the questions referred to us should be answered as follows:

(i)-The defendants, being a French company, are certainly not common carriers in the ordinary English sense of the word.

(ii)-We consider that the plaintiff was bound by the clauses and conditions on the back of the passage-ticket.

2. Although he may not understand French, he was a man of business contracting with a French company, whose tickets he knew very well were written in the French language. He had ample time and means to get the ticket explained and translated to him before he went on board; and it very plainly disclosed upon the face of it that the conditions endorsed were those upon which the defendants agreed to carry him. We think, therefore, that he was bound by those conditions.

3. The case of Henderson v. Stevenson (L. E. 2 Sc. App. 470) has been relied upon as showing, that if the plaintiff was not actually aware of the contents of the conditions, he could not be bound by them; but that case is not in point. There the ticket which

the plaintiff received did not disclose upon the face of it that there were any conditions on the back, and it was found, as a fact, that the plaintiff was not aware of any such conditions.

4. Here the fact that there were conditions was plainly disclosed upon both sides of the ticket, and it was the plaintiff's own fault if he did not make himself acquainted with them. We think that the principle of *Parker v. The South-Eastern Railway Co.* L. R. I. C. P. D. 618; s. C. on app. 2 Id. 416, and the observations of Lord Justice Bramwell in that case are directly applicable to the present.

5. It was contended also, that the conditions were not binding upon the plaintiff, because he did not sign the ticket; but we think that the clause as to the passenger's signature was inserted for the benefit of the company, and that they had a right to waive it if they thought fit.

(iii)-We do not consider it necessary to answer this question.

(iv)-We are of opinion that none of the conditions have the effect of relieving the company from the consequences of their own negligence, the existence of which has been found in the case submitted for our opinion.

(v)-We think that, in order to establish a defence, upon the ground that the plaintiff's luggage was not registered, it was necessary for the defendants to prove, not only that the plaintiff was bound by the conditions, but also that they (the defendants) were ready and willing to register the plaintiff's luggage, and that he (the plaintiff) did not in fact register it. So far as we can see, they have failed to establish both these points. It has not been shown that, on the one hand, they were ready to register the luggage, nor on the other, that he did not in fact register it.

(vi)-We think that, as the contract was made in Calcutta, the defendants were bound by the provisions of s. 151 of the Indian Contract Act.

(vii)-We do not consider it necessary to answer this question.

6. The judgment, therefore, that has been entered for the plaintiff will stand, and the defendants must pay the costs of this reference.