

person not holding a season ticket or any other ticket has to pay only the ordinary ticket fare without any penalty.

This court sitting in its summary jurisdiction has no power to pronounce a declaratory judgment and for that reason I must decline to make the declaration asked for in para. 1 of the claim.

With regard to the rest of the claim I award the plaintiff £6 damages under para. 2 and the return of 16s.11d. under para. 3. There will therefore be judgment for the plaintiff for £6.16s.11d. with costs.

Judgment for the plaintiff.

WEBBER v. SIERRA LEONE RAILWAY

Supreme Court (McDonnell, Ag. J.): November 15th, 1926

[1] Carriers — common carriers — limitations on liability — “owner’s risk” clause in consideration of reduced rates enforceable if carriage at carrier’s risk also offered at reasonable alternative rate: When the consignor of goods, in consideration of a pecuniary benefit, voluntarily agrees in writing to exonerate the carrier from any liability for the loss of or damage to the goods unless caused by the misconduct of the carrier’s servants, this contract may be enforced as just and reasonable if the consignor was *bona fide* offered the alternative of sending his goods at the carrier’s risk at a reasonable, though higher, rate; the additional 10% charged by the Sierra Leone Railway for the carriage of goods at the Railway’s risk is just and reasonable (page 134, line 17—page 135, line 14).

[2] Contract — exceptions clauses — common carriers — written contract excluding carrier’s liability in consideration of reduced rates enforceable if carriage at carrier’s risk also offered at reasonable alternative rate: See [1] above.

[3] Railways — carriage of goods — carrier’s liability — written contract excluding railway’s liability in consideration of reduced rates enforceable if carriage at railway’s risk also offered at reasonable alternative rate — additional 10% charged by Sierra Leone Railway reasonable: See [1] above.

The plaintiff brought an action against the defendant in the Supreme Court claiming damages for breach of contract.

The defendant Railway Company gave their customers the choice of two alternative rates for the carriage of goods. Carriage at the higher rate was at the Railway’s risk, while a 10% reduction was offered if the consignor would agree in writing to exonerate the company from liability for any loss of or damage to the goods

unless caused by the wilful misconduct of the Railway's servants.

The plaintiff chose to send his goods at the reduced rate and signed the requisite agreement. The goods were stolen from a Railway warehouse before delivery to the consignee.

Although there was no evidence of misconduct on the part of the Railway's servants the plaintiff brought proceedings for damages for breach of contract, contending that the defendant could not rely upon those terms of the contract that excluded liability for loss or damage since they were unreasonable and so unenforceable.

The suit was dismissed.

Cases referred to:

- (1) *Great Western Ry. Co. v. McCarthy* (1887), 12 App. Cas. 218; 56 L.T. 582, applied.
- (2) *Manchester, Sheffield & Lincs. Ry. Co. v. Brown* (1883), 8 App. Cas. 703; 50 L.T. 281.
- (3) *Peek v. North Staffs. Ry. Co.* (1863), 10 H.L.C. 473; 11 E.R. 1109.

McDONNELL, Ag. J.:

This is an action against the Railway in respect of goods conveyed on an owner's risk consignment note to Bradford and stolen before delivery from the Railway warehouse.

The crucial part of the consignment note is as follows:

"Consignment Note For Goods To Be Carried At Owner's Risk Rates.

The Sierra Leone Railway hereby gives notice that there are two rates for the carriage of the undermentioned goods, at either of which rates the said goods may be consigned, at the sender's option: one, the ordinary rate, when the Railway takes the ordinary liability of a Railway; the other a reduced rate, adopted when the sender agrees to relieve the Railway from all liability for loss, damage, misconveyance, misdelivery, delay or detention, except upon proof that such loss, damage, misconveyance, misdelivery, delay or detention arose from wilful misconduct on the part of the Railway's servants,"

which it will be observed is very much more explicit than the model printed in Disney's *Carriage by Railway*, 6th ed., at 299 (1923):

“The *X.Y. Railway Company* hereby give notice that they have alternative rates for the carriage of the undermentioned goods at either of which rates the goods may be consigned at the sender’s option, (1) the ordinary rate, and (2) a lower rate charged upon the terms of the following Special Contract.”

It is clear to me that if the conditions herein are what I adjudge to be just and reasonable the company must succeed in the absence of neglect or default, for there is a special contract in writing signed by the consignor so as to bring it under the leading case of *Peek v. North Staffs. Ry. Co.* (3) on the interpretation of s.7 of the Railway and Canal Traffic Act, 1854.

According to Lord Herschell in *Great Western Ry. Co. v. McCarthy* (1) it is settled since the decision of the House of Lords in *Manchester, Sheffield & Lincs. Ry. Co. v. Brown* (2) that (12 App. Cas. at 228; 56 L.T. at 585):

“[I]f the consignor has an offer bonâ fide made to him of having his goods carried upon terms just and reasonable, and voluntarily chooses in consideration of a pecuniary benefit to exonerate the carrier from any part of his ordinary responsibility, a contract thus limiting the carrier’s liability may be just and reasonable, though without the alternative option it would not be so.

It appears to me that all the questions in the present case resolve themselves into this one: was the alternative offered to the plaintiff, and which it was open to him to accept in lieu of that contained in the contract which he in fact entered into, a just and reasonable one?

I now turn to the consideration of the terms upon which the company intimated that they were prepared to carry at what they designated the company’s risk rate, and to the inquiry whether they constituted a reasonable alternative.

I may advert, in the first place, to the expressions which have been more than once used by learned judges, that not only must the alternative offered be reasonable per se, but that the two alternatives must be reasonable inter se. It has been said that the difference of rate may be so small as to be illusory, or so great as to make the higher rate a prohibitory one. I am not sure that I am able to follow the reasoning upon which this view has proceeded, but it is not

necessary in the present case to pronounce any opinion upon it. The difference of rate here is 10 per cent, and it cannot, I think, be maintained that the difference is either so small as to be illusory or so great as to make the higher rate prohibitory.”

Since therefore the reasonableness of the conditions depends on the existence of an alternative rate the company must prove that a reasonable alternative rate exists. This is undoubtedly to be found in r.32 of the Railway (Goods Tariff) Rules which provide for railway risk rates at an addition of 10% per ton-mile over and above the owner's risk rates, an additional freight which cannot but be thought to provide a reasonable alternative, since it makes the difference between the two rates precisely that which was held just and reasonable in *Great Western Ry. Co. v. McCarthy* (1).

This being so, no evidence having been led by the plaintiff to prove misconduct by the defendant's servants or any neglect or default which would serve to set aside the terms of the contract I have no alternative but to say that I think the plaintiff was very ill-advised in bringing this action, the defence to which is so plain and unmistakable.

I therefore give judgment for the defendant Railway Company with costs.

Suit dismissed.

GPANNEH and ANOTHER v. CAULKER

Supreme Court (Purcell, C.J.): March 7th, 1928

- [1] Civil Procedure — appeals — right of appeal — no appeal from decision of Kroo Chief's Court: There is no appeal from a decision of the Kroo Chief's Court and so although a party to proceedings heard by him may apply to a magistrates' court for an order enforcing his decision, the correctness of the Chief's decision on the substantive issue between the parties may not be raised by either of them on such an application (page 139, lines 3—9).
- [2] Civil Procedure — judgments and orders — enforcement — application for order enforcing decision of Kroo Chief may be made to magistrates' court — parties not to re-open substantive issue during application: See [1] above.
- [3] Courts — magistrates' courts — jurisdiction — may hear application for order enforcing decision of Kroo Chief — substantive issue not to be re-opened: See [1] above.