1958 *Present :* **Weerasooriya, J., and Sansoni, J.**

THE ATTORNEY-GENERAL, Appellant, *and* S. S. M. PURUSHOTHAMAM *et al.*, Respondents

S. C. 575—D. C. Colombo, 33,655/M

Railway—Loss of goods during transport—Owner's right to claim damages—Negligence—Quantum of proof—Railways Ordinance (Cap. 153), as amended by Act No. 18 of 1950, s. 15 (1).

Plaintiff sued the Attorney-General to recover damages for the loss of certain goods and injury to other goods which were being conveyed by the Ceylon Government Railway.

Held, that under section 15 (1) of the Railways Ordinance, as amended by the Railways (Amendment) Act, No. 18 of 1950, the Government was not liable unless the loss or injury had been caused by negligence or misconduct on the part of their agents or servants. In such a case, the plaintiff must show in what respect the Railway authorities failed in their duty to exercise due diligence.

APPEAL from a judgment of the District Court, Colombo.

A. C. Alles, Deputy Solicitor-General, with *W. Laduwahetty*, for the Defendant-Appellant.

N. Kumarasingham, with *S. Sharvananda*, for the Plaintiffs-Respondents.

Cur. adv. vult.

January 31, 1958. SANSONI, J.—

The plaintiffs sued the Attorney-General in this action to recover the sum of Rs. 3,084·77 as damages for the loss of certain goods and injury to other goods which were being conveyed by the Ceylon Government Railway from Talaimannar Pier to Jaffna.

The goods in question were loaded into a goods wagon at Talaimannar Pier on the night of 27th September, 1951. The wagon doors were locked on each side with two padlocks which were then covered with paper, waxed and sealed. The padlocks in question have been described in the evidence as " big railway padlocks " and also as " very heavy padlocks ". The wagon formed part of a train which was re-formed at Anuradhapura and then consisted of four passenger coaches, thirty-six goods wagons, and a guard's van. This particular wagon was the 9th from the engine and the 31st from the guard's van, which was at the rear of the train. There were two guards on each train, and it was their duty

to watch the wagons from the observation post on either side of the guard's van while the train was in motion, although they also had other duties to perform.

Although a person cannot get on to a train which is travelling fast, it is possible for him to do so when the train has stopped or is moving slowly. For this reason the guards are expected to keep a close look out when the train is either entering or leaving a station, or when it has stopped. The guards also have the duty of examining the goods wagons when the train stops at a station, if there is the time to do so.

The evidence shows that the re-formed train which left Anuradhapura for Jaffna reached Navatkulli Railway Station at 7.01 p.m. and stopped there for 8 minutes. Under-guard Seevaratnam then examined all the wagons and found that the seals and padlocks were all intact. When the train reached Jaffna at 7.24 p.m. it was discovered that a padlock of this wagon had been broken and certain goods stolen from it.

The learned District Judge has held that the theft took place between Navatkulli and Jaffna. The question he set himself to answer was whether the plaintiff had proved that there was negligence on the part of the Railway authorities.

Under section 15 (1) of the Railways Ordinance, Cap. 153 as amended by the Railways (Amendment) Act, No. 18 of 1950, " the Government shall in no case be liable for the loss or destruction of, or any injury to, any property carried by the railway, unless such loss, destruction or injury shall have been caused by negligence or misconduct on the part of their agents or servants ". The learned Judge considered that on the facts of this case the inference of negligence was inevitable. He pointed out that although goods wagons are padlocked with two padlocks on either side, which are covered with paper and sealed, and the wagons are examined at halts where there was time to do so, further preventive methods should have been taken. He thought that there would not be effective observation of the train from the guard's van as there was only one guard on observation duty throughout the run, and there was only one guard's van which was at the end of the train. It must not be forgotten, however, that observation at night hardly served any purpose since the goods wagons are not illuminated. Can it be said that there were other precautions which should have been taken, and that the failure to take such precautions amounted to negligence ?

The first plaintiff who alone gave evidence in support of his claim did not suggest in what respect the Railway authorities had failed in their duty to exercise due diligence. The learned Judge himself does not suggest what other measures should have been taken to ensure the safety of the goods. It can hardly be urged that the whole train should have been flood-lit or illuminated in such a way that a thief would be

detected in the act of breaking into a wagon. Is there any other reasonable precaution that the Railway authorities should have taken to prevent thefts after dark ? In this connection I think the statement of Willes J. that " the plaintiff should show with reasonable certainty what particular precaution should have been taken " [1], is relevant. The same Judge also said in another case " it is not enough for the plaintiff to show that he has sustained an injury under circumstances which may lead to a suspicion, or even a fair inference, that there may have been negligence on the part of the defendant ; he must go on and give evidence of some specific act of negligence on the part of the person against whom he seeks compensation " [2].

I do not suggest that there may not be cases where the inference of negligence is plain, but I do not think that this is such a case. The charge here amounts to one that the Railway authorities omitted to take precautions which a reasonable person would take, and the principle which applies is best set out in the words of Lord Dunedin : " Where the negligence of the employer consists of what I may call the fault of omission, I think it is absolutely necessary that the proof of that fault of omission should be one of two kinds—either to show that the thing which he did not do was the thing which was commonly done by other persons in like circumstances, or to show that it was a thing which was so obviously wanted that it would be folly in anyone to neglect to provide it ". In *Barkway v. South Wales Transport* [3] Lord Normand said that this principle is one of general application, although Lord Dunedin was dealing with an action between employer and employee.

It has not been shown that other Railway systems adopt measures to ensure the safety of goods which were not adopted in this case, nor can I see that there were any measures which were so obviously lacking, that their omission amounted to negligence. I suppose one could argue that apart from illuminating all the goods wagons, such steps as providing burglar alarms throughout the train, or multiplying the number of guard's vans, would go a long way towards foiling the attempts of criminals to remove goods from Railway wagons. But it is necessary to take a practical view of these things, and in the absence of evidence bearing on these matters I am unable to say in what particulars the plaintiff has established negligence in this case.

I would therefore allow this appeal and dismiss the plaintiffs' action with costs in both Courts.

WEERASOORIYA, J.—I agree.

Appeal allowed.

[1] *Daniel v. Metropolitan Ry. Company (1868) L. R. 3 C. P. 216.*
[2] *Lovegrove v. London and Brighton Ry. Company (1864) 16 C. B. (N. S.) 669.*
[3] *(1950) 1 A. E. R. 329.*