

Present : Schneider J.

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DEEN *v.* THE ATTORNEY-GENERAL.

152—C. R. Galle, 3,271.

*Parcel tendered for transmission by post to Bangkok—Insurance fee paid—
No insurance to Bangkok—Insurance fee accepted by mistake by
postmaster—Parcel lost—Liability of Government.*

Plaintiff tendered to a postmaster a parcel for transmission to Bangkok, and 75 cents as insurance fee. Parcels to Bangkok could not be insured under the postal rules, but both plaintiff and the postmaster were not aware of this. The parcel was lost in course of transmission by post, and plaintiff brought this action for the value of the parcel and the postage.

Held, that Government was not liable.

“The plaintiff must be presumed to have had knowledge that the authority of the Government to enter into contracts of insurance is defined by the Ordinance.”

“By the provision of the Ordinance and the rules framed under it the plaintiff was referred to the Post Office Guide as to the extent and limits of the authority of the postmaster to enter into a contract for the insurance of his parcel to Bangkok.”

THE facts are set out in the judgment.

B. F. de Silva, for plaintiff, appellant.

Obeyesekere, C.C., for defendant, respondent.

September 3, 1923. SCHNEIDER J.—

All the facts necessary for the decision of this appeal are admitted, The plaintiff-appellant tendered at the Post Office in the Fort of Galle a parcel for transmission by post to Bangkok in Siam, the contents of which were declared by him to be precious stones of the value of Rs. 200. He holds P1 dated January 3, 1922, which is a

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receipt for this parcel signed by the postmaster acknowledging payment by the plaintiff of Rs. 2·15 as postage, 75 cents as "insurance fee," and that the insured value of the parcel was Rs. 200. The parcel was lost in course of transmission by post. In this action against the Attorney-General, the plaintiff seeks to recover Rs. 202·15 "by way of compensation or damages." It was alleged in the plaint that the parcel was insured "against the risk of loss or damage in course of transmission by post." The nature of the insurance has not been traversed in the answer nor questioned by the issues raised at the trial. It may, therefore, be assumed that if the parcel had been rightly insured, the risk insured against was as stated in the plaint. The learned Commissioner dismissed the plaintiff's action on the ground of mutual mistake on part of the postmaster and of the plaintiff that parcels to Bangkok could be insured under our postal rules governing insurance. The plaintiff has appealed.

The contention on his behalf both in the lower Court and before me was that a contract of insurance had been entered into by the postmaster on behalf of the Government and the plaintiff and that the fact did not matter that under the postal regulations parcels to Bangkok were not insurable. The defence was that the postmaster had no authority to enter into the contract. The decision of the appeal is governed by the provisions of the Ceylon Post Office Ordinance, 1908 (No. 11), and certain rules made under that Ordinance.

Insurance is a contract of indemnity whereby the insurer undertakes to indemnify the assured in the manner and to the extent thereby agreed against loss. Assuming that the insurance was rightly effected, the plaintiff, the assured in this instance, was entitled to be indemnified only to the extent of Rs. 200, which was the amount for which the insurance was effected, his claim in excess of that sum is, therefore, clearly unsustainable upon the general principle applicable to ordinary contracts of insurance; but the special provision in rule 227 of the rules relating to foreign post (Ceylon Post Office Guide) entitles him to claim a refund of the postage and registration fee in addition to the compensation payable as insurance.

Section 34 of the Ordinance has adopted the general principle as to the payment of the indemnity in enacting what the liability of the Government shall be in cases of the loss of an insured article.

The plaintiff's claim must, strictly speaking, be regarded as one for the recovery of Rs. 200 as indemnity upon a contract of insurance entered into with the Government through its agent, the postmaster in question, and for the refund of postage paid on a lost postal article. That being so, it is incumbent on the plaintiff to show that the agent acted within the scope of his authority in entering into the contract. He can rightly say that the postmaster

of a Post Office such as that at which he offered the parcel in question for insurance, being a Post Office at which parcels are ordinarily insured, has authority to enter into contracts of insurance, and that such a postmaster is set out by Government as an agent having its authority for that purpose by being placed in that official position. The fact that the postmaster had authority to enter into contracts of insurance is not disputed by Government ; but what is denied is that the postmaster had no authority to enter into a contract of insurance of a parcel for transmission by post to Bangkok. This limitation of the general authority of a postmaster to enter into such contracts must be brought to the knowledge or notice of the plaintiff before the Government can repudiate the contract entered into with the plaintiff by the postmaster on the ground that the postmaster had acted *ultra vires*. The decision upon the appeal, therefore, turns upon the question of notice or knowledge. Every subject is presumed to know the law. The plaintiff must, therefore, be presumed to have had knowledge that the authority of Government to enter into contracts of insurance is defined by the Ordinance, in section 8 of which it is enacted that the Government " shall not incur any liability by reason of the loss, misdelivery, or delay of, or damage to, any postal article in course of transmission by post, except in so far as such liability may in express terms be undertaken by the Governor in Executive Council as hereinafter provided." By virtue of that section the Government is protected from incurring any liability not coming within the exception.

In several sections of the Ordinance provision is made for the Governor in Executive Council making rules. Rules made under those provisions when published in the *Gazette* have force " as fully as if they had been enacted in the Ordinance " by virtue of section 11 (1) (e) of the Interpretation Ordinance (No. 21). Certain rules made under the provisions of section 12 were published in *Gazette* No. 6,324 of August 20, 1909, at page 795 *et seq.* In rule 48 of these rules it is enacted that " foreign parcels may be sent to such countries and places as are shown in the Ceylon Post Office Guide and as are from time to time notified in the Post Office Daily List," and in rule 62 it is enacted that " insurance shall be available from the place of posting to destination for parcels addressed to any of the countries and places and up to the limit of value shown against each in the foreign parcel post schedule."

These rules, apart from the Ordinance, are clear indications of the limitations as to insurance contracts. The reference to the Post Office Guide must put a person on inquiry. It is a publication open to the public. It must be regarded as an authoritative statement regarding the conditions under which any postal contracts may be entered into, and therefore as defining the limits placed upon the authority of agents to enter into contracts regarding postal matters.

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In the Post Office Guide for 1922, under the head of "Foreign Parcel Post" at page 82 is to be found the following: "222. Where the insurance system is shown as available to certain places only, a list of such places can be obtained on inquiry at the General Post Office, Colombo, and only parcels addressed to those offices can be accepted for insurance." And under the head "Foreign Post Directory, Siam Parcel Post," at page 167 it is stated: "Parcels are accepted for the following places only, viz., Bangkok, &c.

"Insurance.—Not available.

"Remarks.—No compensation is paid in respect of loss or damage of parcels or their contents."

By the provisions of the Ordinance and the rules framed under it the plaintiff was referred to the Post Office Guide as to the extent and limits of the authority of the postmaster to enter into a contract for the insurance of his parcel to Bangkok. If he had consulted that publication he would have seen that the postmaster had no authority to enter into such a contract, and he cannot be heard to plead ignorance of the contents of the Post Office Guide in respect of the provisions relating to Bangkok.

The appeal is dismissed, with costs.

Appeal dismissed.

