**BOMBAY HIGH COURT**

Girjashankar Dayashankar Vaidya

Vs

The B.B. And C.I. Railway

(B Scott, Kt., C.J. Batchelor, J.)

11.12.1917

**JUDGMENT**

**Batchelor, J.**

1. The appellant before us was the plaintiff in the Court below, his suit having been dismissed by Kajiji J. The plaintiff, who is a managing clerk in a firm of Bombay Solicitors, brought the suit to recover damages from the defendant railway company, on account of the wrongful and tor tious acts of their servants, an engine-driver and a guard.

2. Owing to various admissions made by the parties at the trial, the facts have not been elicited from the witnesses with the usual completeness, but there can be no doubt upon the record what the essential facts are, and Mr. Campbell for the railway company did not press his attempt to give to them any other complexion than that which appeared to the learned trial Judge. These facts are as follows :-On the night of the 18th March 1916, the plaintiff was a third class passenger in one of the defendant's trains. The plaintiff's compartment was greatly overcrowded to the inconvenience and discomfort of the occupants. After ineffectual efforts to obtain assistance from the guard or the station master at a station, the plaintiff stopped the train by pulling the communication chain. The train was re-started, but no other incident then occurred, nor was any step taken to relieve the overcrowdedness of the compartment. Consequently when the train had gone some little distance further on its journey, the plaintiff again stopped it by pulling the communication chain. Thereupon the driver and the guard got down from the train: the driver pulled the plaintiff out of the compartment and cuffed and slapped him, the guard assisting in this assault. The degree of violence used is not now material: it was, I think, probably not much, but the assault is admitted, and the plaintiff naturally resents the indignity and affront to which he was subjected. The plaintiff was arrested by the driver and guard at Dadar station, where he was handed over to the station master: his statement having been recorded by the Police, he was released and allowed to go on to his destination. The guard and driver were prosecuted to conviction before the Magistrate, who fined them for the assault.

3. The only question in appeal is whether, in the above state of facts, the railway company are liable for the wrongful acts of their servants.

4. Now the general proposition of law applicable to the question of the master's liability for the wrongful acts of his servants may, for our present purposes, be stated thus: the master is liable where the servant, acting in a matter which is within the scope of his authority, that is, within the course of his employment, commits a wrong by exceeding the authority vested in him. The act itself which constitutes the wrong may be-and usually is-in excess of the servant's authority, but if in thus transgressing his authority the servant is doing in the master's interests one of the class of acts which the master has employed him to do, then the master is liable. It is unnecessary to refer to decided cases in support of this general proposition, which, as a broad statement of the law, is well established and has been accepted by both sides at the bar.

5. It remains to see how this principle is to be applied in such a case as this where a person is arrested and wrongfully assaulted by the servant. Here, in conformity with the general principle, the law, as I understand it, is this : the assault being an incident of the arrest, and being an excess of the servant's authority, the master is liable if, and only if, the arrest was within the servant's authority. In other words, if the supposed offence for which the person was arrested was an offence for which the master himself would have had authority to make the arrest, then the master will be liable : he will not be liable where he himself, for the alleged offence, would not have been justified in arresting the offender, for in such a case the arresting would be beyond and outside the course of the servant's employment, and the added assault would not be referable to any of the class of acts which the master had impliedly put the servant there to do.

6. This principle may be illustrated by a comparison of two decisions, that in *Poulton v. London and South Western Railway Co*[1]. and that in *Bayley v. Manchester, Sheffield, and Lincolnshire Railway Co*[2]. In the former case the plaintiff was detained in custody under a station master's orders because he refused to pay the railway fare for a horse travelling by one of the defendant company's trains. It was held that the company were not liable for the wrongful arrest on the ground that, since the company themselves would not have had the power to arrest the plaintiff on the assumption that he had wrongfully taken the horse by the train without paying, there could be no authority implied from them to the station master to arrest the plaintiff on this assumption. Bayley's case fell on the other side of the line. Bayley, a passenger on the defendant company's railway, sustained injuries in consequence of being violently pulled out of a railway carriage by one of the defendant's porters, who acted under the mistaken impression that Bayley, the plaintiff, was in the wrong train. The Court held the company liable on the ground that the removal of a passenger from a carriage by a porter was an act within the porter's authority, so that the injuries caused by the plaintiff's violent ejection were caused by the porter in the course of doing one of

the class of the acts which the company had put him there to do.

7. There are numerous other cases in the books which illustrate the same principle, notably, *Dyer v. Munday*[3] and Rowlatt J.'s decision in *Ormiston v. Great Western Railway Company*[4]. But probably no more concise or lucid statement of the distinction could be found than the words used by Mr. Justice Blackburn, as he then was, in the course of the argument in Poulton's case. Counsel for the plaintiff there contended that the station master was the person in authority to do all acts required by the exigency of business, and that consequently the company were bound by his act in arresting the plaintiff: and counsel cited, in support, a case where a passenger was wrongfully arrested on the mistaken assumption that he had not paid his fare : *Goff v. The Great Northern Railway Company*[4] Blackburn J. interposing said :- "In that case there was a power to arrest, on the assumption that the facts were as the officer arresting supposed ; hero there is no such power.

8. The application of these principles to the present facts raises the question whether the defendant company would have had authority to arrest the plaintiff for the offence for which the company's servants arrested him. That offence was, clearly on the evidence, the pulling of the communication chain "without reasonable and sufficient cause," an offence made punishable under Section 108 of the Indian Railways Act, .1890. It is unnecessary to decide whether the plaintiff had, or had not, reasonable and sufficient cause. I will assume, in favour of his present suit, that he had not, and that, in consequence, he laid himself open to punishment under Section 108. But for this offence, it is admitted that, under the Act, the defendant company had no authority to arrest him. It follows, as my learned brother, Kajiji J. held, that the company cannot be held liable for the assaults committed by their servants in the course of the arrest. To escape from this difficulty Mr. Setalvad for the plaintiff ingeniously contended that the offence for which the arrest must be taken to have been made was an offence falling, not only under Section 108, but also under Sections 121 and 128. If this contention were sound, the plaintiff would, no doubt, be entitled to succeed, for persons offending under Section 121 or Section 128 may, as provided by Section 131, be arrested without warrant by any railway servant. In my opinion, however, the contention is not sound. Section 121 deals with the obstructing of any railway servant in the discharge of his duty, and Section 128 (so far as we are now concerned with it) provides punishment for any person who obstructs any rolling-stock upon any railway. It is admitted that, owing to the working of the mechanical contrivance, the pulling of the communication chain automatically stops the train, which cannot be re-started till the vacuum has been restored. Mr. Setalvad consequently contended that the plaintiff's action here obstructed the driver in the discharge of his duty to keep the train running, and obstructed the rolling-stock of the train by bringing it to a stop. It may be admitted that, as a mere matter of words, some colour may be lent to this argument from the generality of the phraseology in Sections 121 and 128, and if Section

108 did not exist, the plaintiff's offence might perhaps be brought within the scope of either of the later sections. But interpreting the Act as we have it, I think that Mr. Setalvad's construction is forced and unnatural. Reading the sections together, the fair conclusion seems to me to be that the stopping of the train by the wrongful pulling of the communication chain is one special kind of obstruction, for which the Legislature has made special provision. It has ordained a particular punishment, which is lighter than that allowed for other obstructions presumably because the stopping of the train by this mechanical means is not likely to be attended with any danger to the travelling public. This differentiation of the consequences or results seems to me strongly in favour of the view that the special provisions of Section 108 are not to be controlled by the more general language of the wider sections. If Mr. Setalvad's contention were allowed, it would follow that in every case where a passenger wrongfully pulled the communication chain, he would be liable to imprisonment for a term of two years under Section 128; but in Section 108 the Legislature expressly enacts that for this particular offence the maximum penalty shall be a fine of Rs. 50. Remembering that we are dealing with penal sections, I think that the imposition of the heavier punishment would be a result wholly outside the contemplation of the Legislature; in other words, the plaintiff's offence is, under the Act, punishable under Section 108, and not under Section 121 or Section 128. The rule- of construction here applied is but a particular case of the general principle embodied in the maxim, generalia specialibus non derogant, which is invoked in the interpretation of a later general Act bearing upon an earlier special Act. In explaining this maxim in *Barker v. Edger*[6] Lord Hobhouse used the following language, which, mutatis mutandis, appears to me to guide us to the- true meaning of the earlier and the later sections in the Act now under consideration :- "When", said his Lordship, "the Legislature has given its attention to a separate subject, and made provision for it, the presumption is that a subsequent general enactment is not intended to interfere with the special provision...." So here: the earlier special provision must be held to control the general provision quoad the particular case specially provided for.

9. On these grounds I come to the conclusion that for the offence for which defendants' servants arrested the plaintiff the defendants themselves would have had no authority to arrest him, and, consequently, that the defendants are not liable for the assaults committed by their servants. The appeal, therefore, fails and must be dismissed with costs.

**Basil Scott, Kt., C.J.**

10. I concur.

Cases Referred.

1(1867) L.R. 2 Q.B. 534, 536
2(1872) L.R. 7 C. P. 415

3[1895] 1 Q.B. 712
4[1917] 1 K.B. 598
5(1861) 30 L.J.Q.B. 148
6[1898] A.C. 748, 754