

It is accordingly conjectured that damage was caused by the rain water which appears to have penetrated through the crevices of the flap doors of the wagon in the long journey from Nagpur to Delhi. The defendants contend that they took as much care of the consignment belonging to the plaintiff as they would have taken of their own goods and cannot possibly be saddled with liability if strong winds carried the rain water into the wagon and damaged the bales.

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This explanation cannot, in my opinion, exonerate the defendants from blame or exculpate them from the charge of negligence which has been preferred by the plaintiffs. It is a well-known rule of law that when damage is caused by an article which is under the control of management of the defendant and the occurrence is one which does not happen if due care has been taken the damage speaks for itself (*res ipsa loquitur*) and is *prima facie* evidence of negligence. Although this doctrine does not shift the burden of proof from the plaintiff to the defendant, it certainly establishes a *prima facie* case against the defendant and places an obligation on him to show that the damage was not due to his want of care.

The defendants have not been able to satisfy the Court that they were not negligent in the discharge of the duties which devolved upon them in their capacity as carriers of goods. The order of the trial Court must therefore be affirmed and the petition dismissed with costs. Ordered accordingly.

REVISIONAL CIVIL.

Before Bhandari, C. J.

SIR SOBHA SINGH AND SONS,—Petitioners.

versus

M/s. BIHARI LAL-BENI PARSHAD,—Respondents.

Civil Revision No: 419-D of 1955.

Evidence Act (I of 1872)—Section 102—Burden of proof—Suit for recovery of money advanced as loan—Defendant denying having received the money as loan—

1956.

Jan. 16th.

Burden of proving that money was advanced as loan, on whom lies. . .

Held, that where the plaintiff asserts that he advanced a certain sum of money to the defendant by way of a loan payable on demand and if the defendant denies having received it as a loan the burden of establishing the fact devolves on the plaintiff. The person who asserts something to be due to him has the burden of proof and he cannot be permitted to shift this burden to shoulders other than his own.

Petition under section 115, Civil Procedure Code, Act V of 1908, and Article 227 of Constitution of India, for revision of the order of Shri Tilak Raj Handa, Sub-Judge, 1st Class, Delhi, dated the 12th August, 1955, framing the issue and placing its onus on the petitioner.

A. R. WHIG, for *Petitioner*.

H. R. SAWHNEY, for *Respondent*.

JUDGMENT

Bhandari, C.J. BHANDARI, C. J.—On the 1st March, 1955, Messrs. Behari Lal-Beni Parshad brought a suit against Sir Sobha Singh and Co., for the recovery of a sum of Rs. 1,42,884-5-0 on the basis of a cheque for Rs. 1,20,000 issued by it as a short term loan payable on demand. The defendant denied his liability to repay the amount on the ground that this sum of money was given to him not by way of loan but for payment of interest on a loan of Rs. ten lacs raised by the defendant from the Bank of Jaipur. In view of the pleadings of the parties the trial Court proceeded to frame the following issue, namely—

“Was the amount of Rs. 1,20,000 given by the plaintiff firm by means of the cheque in question to the defendant company not a loan and was given for the benefit of Shri Banarsi Lal Tulsyan as per circumstances explained in paras, 2 and 10 of the amended written statement? If so to what effect?”

The defendant states that the onus of this issue has been wrongly placed on him and has come to this Court in revision.

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Section 102 of the Indian Evidence Act declares that the burden of proof shall lie on the person who would fail if no evidence at all were given on either side. If therefore the plaintiff asserts that he advanced a certain sum of money to the defendant by way of a loan payable on demand and if the defendant denies having received it as a loan the burden of establishing the fact devolves on the plaintiff. The person who asserts something to be due to him has the burden of proof and he cannot be permitted to shift this burden to shoulders other than his own. As pointed out by Bhide, J., in *Bihari Lal v. Lala Chandu Lal*, (1) every payment made by one person to another is not necessarily a loan and there is no legal presumption that it was meant to be repaid. The person who brings an action for the recovery of money must establish to the satisfaction of the Court that it was intended to be repaid.

For these reasons I would accept the petition, set aside the order of the trial Court and direct that the issue be reframed so as to shift the burden of proof from the defendant to the plaintiff.

The learned counsel for the plaintiff prays that permission may be accorded to him to prefer an appeal to the Supreme Court. No substantial question of law arises for decision and the leave asked for cannot be allowed.

Having regard to the circumstances of the case I would leave the parties to bear their own costs.

(1) A.I.R. 1939 Lah. 386