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and authority are against our allowing a mere advertisement in a newspaper to take the place of a notice delivered to the tenant (or, conversely, to the landlord) in terminating a tenancy. The person to be affected must be addressed in a way which leaves no reasonable doubt of his knowledge; otherwise very serious evils would probably arise.

As the tenancy, supposing a tenancy in fact existed, was not terminated in the way intended, and the tenant could not safely have left the premises on a supposition that he could not be charged with further rent, it continued for his benefit at the time, though now, as it has turned out, to his ultimate disadvantage. The tenancy, not having been determined, continued in 1876. What precisely the nature of the tenancy was, and whether the notice then given was sufficient with reference to the character of the tenancy as monthly or otherwise, are questions on the merits of which the Courts below must determine. We reverse the decision that the suit was barred by limitation, and remand the cause for re-trial by the Court of first instance, and disposal on the merits, apart from the question of limitation. The costs of the appeals in this Court and the District Court to be borne by the respondent.

Case remanded.

APPELLATE CIVIL.

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August 7.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

MOHANSINGH CHAWAN (ORIGINAL PLAINTIFF), APPELLANT, *v.* HENRY CONDER, GENERAL TRAFFIC MANAGER, G. I. P. RAILWAY COMPANY, AND ANOTHER (ORIGINAL DEFENDANTS), RESPONDENTS.*

Limitation Act (XV of 1877, Sch. II Arts. 30, 49 and 115—Carrier by railway —Loss—Non-delivery of goods—Onus of proof.

563 bags of grain were made over to the defendants at Cawnpur and Nagpur for carriage to Sholapur. All that was proved was that the defendants delivered to the plaintiff, the owner of the grain, 512 bags only, having previously obtained from his agent receipts for the full number as arrived at Sholapur. In a suit by the plaintiff to recover the price of the bags not delivered, brought after more than two, but within three, years of the time when the rest of the goods were delivered,

* Second Appeal, No. 454 of 1882.

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the defendants claimed that the suit was barred by the provisions of article 30 of Schedule II of Act XV of 1877, as not having been brought within two years of the time "when the loss occurred".

Held that mere non-delivery of the bags was no proof of their loss, the *onus* of proving which as an affirmative fact lay on the defendants before they could claim the benefit of the special limitation of two years provided in article 30 of Schedule II of Act XV of 1877; and that the suit, therefore, was in time.

THIS was a second appeal from the decision of G. Druitt, Assistant Judge of Poona at Sholapur, reversing the decree of Rav Saheb Naro Mahadev, Subordinate Judge of Sholapur. The plaintiff's firm about January, 1877, made over to the defendants, the Great Indian Peninsula and East Indian Railway Companies, 563 bags of wheat for delivery at Sholapur. They were in three lots: the first one consisted of 101 bags, and was given in charge of the East Indian Railway Company at Cawnpur; the second consisted of 408 bags, and was given to the same company, also at Cawnpur; and the third, of 54 bags, was given to the Great Indian Peninsula Railway Company at Nagpur. The consignments were in the name of one Ram Narayan, but it was not disputed that the plaintiff was the owner of all the grain. When the plaintiff's agent went to the railway station at Sholapur to take delivery, the station-master took from him receipts for the full number of bags as having arrived at their destination, but gave delivery of only 512 bags. The plaintiff, therefore, sued the managers of the two companies and the station-master of the Sholapur Railway Station to recover from them the price of the remaining 51 bags, which he alleged the defendants had wrongfully detained. The suit was brought in 1879—that is, after more than two, but within three, years of the time when the rest of the goods were delivered.

The defendants contended that the suit was one to which the special limitation of two years, provided by article 30 of schedule II of Act XV of 1877, applied; and that the suit was, therefore, barred.

The Subordinate Judge as well as the Assistant Judge found in favour of the plaintiff on the merits. The former Judge held the claim not barred, and made a decree in favour of the plaintiff; but the latter Judge, holding the claim barred, reversed that decree.

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The plaintiff appealed to the High Court.

Shantaram Narayan for the appellant.—The only question is one of limitation. We contend that the limitation of three years contained in article 49 or 115 of schedule II of Act XV of 1877 applies. Article 30 does not apply, as it lay on the defendants to adduce evidence to show when the alleged loss of the bags occurred, and they failed to discharge themselves of that *onus*. No intimation whatever was given to the plaintiff of any loss. On the contrary, he was put off from time to time under promise of payment.

Farran (instructed by Messrs. *Cleveland, Little and Hearn*) appeared for the respondents.—A loss by misdelivery by a carrier is within the meaning of article 30—*Millen* v. *Brash* (1); *Morritt* v. *North-Eastern Railway Company* (2).

The judgment of the Court was delivered by

WEST, J.—The railway company in this case were bound to deliver the particular bags which they received from the plaintiff's firm for carriage. They did not deliver them, nor did they, so far as the evidence goes, announce their inability to deliver them on account of having lost them either in transit or by misdelivery to some one not entitled. On the other hand, they took from the plaintiff's agent receipts for the full number of bags as arrived at their destination, and gave gate passes for delivery. The natural presumption under such circumstances is that all the goods arrived, and that the railway company was in a position to deliver them. We are asked to infer from the mere non-delivery that they could not be delivered, because they were lost; but that is an affirmative fact of which the company ought to have given evidence. *Primâ facie*, the responsibility rested on the company, and the non-delivery of the goods might arise from other causes than loss. Had the company announced to the plaintiff that his goods were lost, that might have helped the defendants' case; but no such announcement was made, and the plaintiff could only tell that goods received and carried for him were not delivered. Under these circumstances we do not think that a loss never intimated, and not in any way proved,

(1) L. R., 8 Q. B. D., 35. (2) L. R., 1 Q. B. D., 302.

can be gathered by inference from mere probability, so as to make article 30 of schedule II of the Limitation Act bar the plaintiff's suit. We, therefore, reverse the decree of the District Court and restore that of the Subordinate Judge, with all costs on respondents, adding six per cent. interest *per annum* on award of Subordinate Judge from date of his judgment till satisfaction of this decree.

Decree reversed.

APPELLATE CIVIL.

Before Mr. Justice West and Mr. Justice Nanabhai Haridas.

CHOGALAL (ORIGINAL PLAINTIFF), APPELLANT, *v.* MAJOR TRUEMAN (ORIGINAL DEFENDANT), RESPONDENT.*

1883 *August* 13.

Decree—Execution—Jurisdiction—The Code of Civil Procedure, Secs. 239 *to* 244 *—Nasirabad.*

Where a decree passed by a Court governed by the Code of Civil Procedure is sent for execution to another Court in British territory likewise governed by the Code, it is not open to the latter to refuse to execute it on the ground that the former had no jurisdiction. In case of doubt, the Court where execution is sought may adjourn the execution proceedings in order to enable the party interested to make an application to the Court passing the decree, and thence, if necessary, to the higher Courts of the same province in their turn.

THIS was an appeal from an order of C. F. H. Shaw, Judge of Belgaum, refusing to execute a decree.

At suit of the plaintiff, a money decree was passed against the defendant by the Court of the Subordinate Judge of Nasirabad, in the province of Ajmir. On the transfer of the defendant, Major Trueman, to Poona the Court at Nasirabad sent the decree to the District Court at Poona for execution; and the Poona Court made an order for its execution. In the meantime Major Trueman was transferred to Belgaum. The plaintiff thereupon applied to the District Judge of Belgaum for execution. The Judge held that the decree could not be executed in consequence of a formal defect, and expressed an opinion that the Nasirabad Court had jurisdiction. Mr. Trueman appealed against this order

* Regular Appeal, No. 52 of 1882.