

the law creates a limitation, and the party is disabled to conform to that limitation, without any default in him, and he has no remedy over, the law will ordinarily excuse him. The facts in this case clearly entitle the plaintiff to be excused.

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Order accordingly.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

THE FIRM OF DOLATRAM DWARKADAS (ORIGINAL PLAINTIFF),
APPLICANT, v. THE BOMBAY BARODA AND CENTRAL INDIA
RAILWAY COMPANY (ORIGINAL DEFENDANT), OPPONENT.*

1914.

June 12.

*Railway receipt—Mercantile document—Title—Endorsee—Interest
in the goods—Action for damages.* }

A railway receipt is a mercantile document of title and the endorsee of the receipt has sufficient interest in the goods covered by it to maintain an action against the Railway Company for damages in respect of the goods covered by the receipt.

Amerchand & Co. v. Ramdas Vithaldas ⁽¹⁾, followed.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the decree of G. V. Saraiya, Judge of the Court of Small Causes at Ahmedabad, in Civil Suit No. 3040 of 1912.

Suit against a Railway Company to recover damages. The facts necessary for the purpose of this report were as follows :—

On the 18th June 1912 one Sukhdin Ramlal consigned 115 bags of wheat from Rahimabad, a station on the Oudh and Rohilkhand Railway, to Ahmedabad, a station

* Application No. 234 of 1913 under the extraordinary jurisdiction.

⁽¹⁾ (1913) 38 Bom. 255.

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on the Bombay Baroda and Central India Railway. The goods were consigned by Sukhdin to self, but he made an endorsement on the Railway receipt stating that the goods should be delivered to one Narandas Lakshmandas. The receipt was endorsed by Narandas in favour of the plaintiff Dolatram Dwarkadas.

The plaintiff paid the freight at Ahmedabad on the 4th July 1912 and signed the delivery book. He was allowed to take away the goods on the 19th idem on payment of Rs. 25-7-0 as demurrage. He then took delivery of 96 bags and refused to take the remaining 19 bags on the ground that they appeared to have been torn and empty and were not weighed by the station master of Ahmedabad though requested to do so.

The plaintiff brought the present suit to recover from the defendant Railway Company Rs. 277-13-6, that is, the value of the 19 bags of wheat including the amount of demurrage which was alleged to have been illegally levied.

The defendant Railway Company contended *inter alia* that the plaintiff being merely a commission agent was not entitled to maintain the suit.

The Small Cause Court Judge raised some issues of facts and recorded his findings thereon, but on the whole dismissed the suit on the ground that it was not maintainable by the plaintiff as he was a commission agent and as such could have no interest in the wheat not delivered.

The plaintiff preferred an application under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) urging *inter alia* that even as commission agent the plaintiff was entitled to bring the suit, that the Railway receipt being an instrument of title and having been duly endorsed in plaintiff's favour, the defendant was bound to deliver the

consignment on production of the said receipt by the plaintiff, that the defendant having chosen to accept the freight and demurrage from the plaintiff and having taken his signature in anticipation of the delivery to him, was not entitled to refuse delivery and that the defendant having by its acts recognized the plaintiff as the person entitled to take delivery was estopped from contending that it was not liable for failure to give the delivery.

A *rule nisi* was issued which required the defendant to show cause why the decision of the Judge should not be set aside.

G. N. Thakore appeared for the applicant (plaintiff) in support of the rule.

Binning with *Crawford, Brown & Co.* appeared for the opponent (defendant) to show cause.

BEAMAN, J. :—After having given this nice question our most careful consideration we think that in view of the recent decision of this Appeal Court in *Amerchand & Co. v. Ramdas Vithaldas*⁽¹⁾, it must be taken as settled law that a railway receipt is a mercantile document of title. That being so, we think it necessarily follows that the endorsee of such a railway receipt has sufficient interest in the goods covered by it to maintain an action of this kind. We are, therefore, of opinion that the decision of the Subordinate Judge with Small Cause Court powers was not according to law. Reversing his decision upon the point just mentioned we agree with his findings of fact, and now order that the decree be made in the plaintiff's favour in the terms of those findings. The defendant Company must pay all the costs.

Decision reversed

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