

APPELLATE CIVIL

Before Mr. Justice Shah and Mr. Justice Vyas.

THE UNION OF INDIA, PETITIONER (ORIGINAL DEFENDANT) v. TEHER-ALI ISAJI BOHARI, RESPONDENT (ORIGINAL PLAINTIFF).*

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Railway Receipt—Three bundles of tyres and tubes consigned by Railway to 'self' from Bombay to Dhulia by D—D. endorsed the R/R "please deliver to B"—B in turn endorsed the R/R in favour of T—Two bundles delivered to T and one lost in Dhulia Railway Station—T's suit in Dhulia to recover compensation for the lost bundle—Whether maintainable.

Indian Railways Act (IX of 1890), s. 72—Indian Contract Act (IX of 1872), ss. 151 and 152—Goods Tariff Rules Part I Rule 30 (2), 85AA—Whether Union of India liable for the loss—Responsibility of Railway Administration after goods reach destination till delivery.

D consigned to himself three bundles of cycle tyres and tubes from Bombay to Dhulia. The railway receipt issued by the Central Railway in this behalf was endorsed by D to Bank B, and B endorsed the receipt in favour of T. Only two of the bundles were delivered to T; the third bundle was lost at Dhulia. T filed a suit against the Union of India to recover compensation in respect of the lost bundles;

Held, that T, being an endorsee of the railway receipt, was entitled to file a suit against the railway administration for compensation for loss or damage to the goods covered by the receipt;

Mercantile Bank of India, Ltd. v. Central Bank of India, Ltd.⁽¹⁾ referred to.

The firm of Dolatram Dwarkadas v. The Bombay, Baroda and Central India Railway Company,⁽²⁾ *Bhayyalal Ramratan Jaiswal v. Agent and Central Manager of B. N. Rly.,*⁽³⁾ *Jalan and Sons, Ltd. v. The Governor-General in Council and others,*⁽⁴⁾ *Piarilal Gopi Nath v. The East Indian Railway Co.,*⁽⁵⁾ *M. S. M. Railway Co. v. K. Rangswamy Chetty & Another,*⁽⁶⁾ *Shri Ramkrishna Mills Ltd. v. Governor-General in Council,*⁽⁷⁾ *Erachshaw Kerawalla v. Governor-General in Council,*⁽⁸⁾ followed.

Shamji Bhanji & Co. v. North Western Railway Co.,⁽⁹⁾ *G. K. Abhyankar & Co. of Baroda v. G. I. P. Railway,*⁽¹⁰⁾ distinguished.

Held, that when goods are delivered to a railway administration for being carried to a particular destination the railway administration undertakes the responsibility to deliver the goods if delivery is demanded within a reasonable time of the goods reaching destination.

Held, also, that even after the expiry of such reasonable time the liability of the railway administration for negligence survives with respect to the said goods.

Chapman v. The London and North Western Railway Company,⁽¹¹⁾ *Bengal and North Western Railway and another v. Mul Chand,*⁽¹²⁾ relied on.

* Civil Revision Application No. 616 of 1954.

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| 1. (1937) L. R. 65, I. A. 75. | 2. (1914) 38 Bom. 659. |
| 3. [1944] A. I. R. Nag. 362. | 4. (1949) A. I. R. East Punj. 190. |
| 5. (1924) 46 All. 691. | 6. (1924) A. I. R. Mad. 517. |
| 7. [1945] A. I. R. Patna 387. | 8. (1955) A. I. R. Mad. 70. |
| 9. (1946) 48 Bom. L. R. 698. | 10. (1952) Civil Revision Application No. 1173 of 1950, decided by Chagla C. J., on April 4, 1952 (unrep.). |
| 11. (1880) 5 Q. B. D. 278. | |
| 12. (1920) 42 All. 655. | |

Held, what is 'reasonable time' would depend on the circumstances of each case. The period prescribed under Goods Tariff Rules 85AA and Rule 30 (2) do not form a term of the contract between the parties which binds the consignee with the result that the period as prescribed [the period of 2 days during which the goods are warehoused free of charge] cannot be regarded as conclusive of what may be considered as reasonable time by Court.

Held, therefore, in the circumstances of the case the railway administration was liable to compensate T for the bundle lost in the warehouse at Dhulia Station.

CIVIL Revision Application against the decision of N. A. Sapre, Esquire, Joint Civil Judge, Junior Division, at Dhulia.

Suit for compensation for goods lost in Railway Station.

The facts are set out in the Judgment.

Jamshedji Kanga and *R. M. Kantavala* with *Little & Co.* for the Petitioners.

V. J. Gharpure, for the Opponents.

Shah J.—The amount in dispute in this case is only Rs. 170, but it raises questions of some complexity. The plaintiff is a trader in bicycles at Dhulia in the district of West Khandesh. The plaintiff ordered out a quantity of bicycle tyres and tubes from the Dunlop Rubber Co. at Bombay. The Dunlop Rubber Co. consigned the articles ordered by the plaintiff from Bombay in three bundles. The bundles were delivered at the Byculla Goods Depot of the Central Railway for carriage to Dhulia under Railway Receipt No. 6513/32 dated May 1, 1952. The consignors were shown in the railway receipt as Dunlop Rubber Co. of India, Ltd., and the goods were consigned to 'Self'. The consignment reached the destination on May 13, 1952 and was kept in the warehouse of the Railway at the Dhulia Railway Station. On May 18, 1952, the goods were checked at the weekly inspection and the entire consignment was found in order. At the next inspection on May 25, 1952, one out of the three bundles in the consignment was found missing. The Dunlop Rubber Co. had sent the Railway Receipt to the Bank of Baroda, Ltd., after endorsing the same as follows: "Please deliver to Messrs. Bank of Baroda, Ltd., Jalgaon." The plaintiff obtained an endorsement of the railway receipt in his favour from the Bank of Baroda, Ltd., and presented the Railway Receipt on June 5, 1952, and demanded delivery of the consignment. The Station Master at Dhulia gave what is called "open delivery". Only two out of the three bundles were delivered and it was represented to the plaintiff that the remaining bundle was lost. The plaintiff then served the usual notices under s. 77 of the Indian Railways Act and s. 80 of the Civil Procedure Code and filed Small Cause suit No. 471 of 1953 in the Court of the Joint Civil Judge, Junior Division, at Dhulia, against the Union of India as representing the Central Railway, for a decree for Rs. 170 being the compensation for loss

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suffered by him by reason of the failure of the Central Railway to deliver the bundle. The suit was resisted by the Union of India on diverse grounds. It was contended that the plaintiff was not a consignee of the goods, that he was not entitled to file a suit for compensation for loss of the goods, that the goods had been received in due course on May 13, 1952, and the consignment was found in order in the weekly inventory on May 18 1952, but one bundle was found missing in the inventory on May 25, 1952, and a report in that behalf was made immediately, but on investigation the missing bundle and the person responsible for removing the same could be traced. It was also contended that the Union of India was by reason of r. 30 (2) of the Goods Tariff Rules Part I not liable for loss of the bundle, and that in any case the claim was excessive.

At the trial, the plaintiff gave evidence and stated that he had enquired about the goods on two or three occasions before June 5, 1952, but he was informed by the Station Master that the goods had not arrived and that he was not given intimation about the arrival of the goods. He then stated that he did not know about the deficiency in the goods till actual delivery was tendered to him by the Station Master. Dattatraya Gajanan, an employee of the Central Railway was examined on behalf of the Union of India. He stated that one of the bundles was found missing when inventory was made on May 25, 1952, and an endorsement in that behalf was made by the Goods Clerk Laxman Hiraji. He then stated that watchmen were kept to guard the warehouse and there was no report made about the breaking of locks of the warehouse. He also stated that the key of the warehouse used to remain with the Assistant Station Master and the warehouse was always opened in the presence of some official. The witness was unable to say how the bundle was lost. The witness also stated that he did not know whether the consignor was informed about the loss and that there was no fixed rule about 'the period of arrival of goods.'

The learned trial Judge held that the plaintiff was entitled to file the suit and that the Union of India was liable to pay compensation for loss of one bundle of bicycle tubes which was not delivered to the plaintiff. The learned Judge passed a decree in favour of the plaintiff for Rs. 170 with costs and future interests on Rs. 153 at 4 per cent per annum. The Union of India has invoked the revisional jurisdiction of this Court and has challenged the legality of the decree passed by the trial Court.

In support of the application, substantially two contentions were urged by Counsel for the Union of India: (i) that the plaintiff had no right to sue as he had not entered into a contract with the railway administration. It was submitted that even though the plaintiff was shown on the railway receipt

as an endorsee, the benefit of the contract entered into by the Dunlop Rubber Co. with the Central Railway was not assigned to the plaintiff and the plaintiff was, therefore, not entitled to file a suit for compensation for loss of the goods: (ii) that the plaintiff having failed to make a demand for delivery of goods within the period prescribed by r. 30 (2) of the Goods Tariff Rules read with r. 85AA, the liability of the Central Railway was extinguished, and for loss of the goods the plaintiff could not maintain a suit for compensation.

Now, the railway receipt issued by the Central Railway is in the name of Dunlop Rubber Co. of India Ltd. The goods are consigned to Self and at the foot of the receipt it is stated:

“(a) This receipt must be produced by the consignee or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made... (b) If the consignment or this railway receipt is sold one or more times, the endorsement must be a distinct or to deliver to a certain person or firm. *Special attention is drawn to the notices on the back, which form a legal contract.* (c) If this railway receipt is lost, the goods will be delivered upon a properly stamped Indemnity Bond.”

On the reverse of the railway receipt there are several printed conditions, the third condition whereof is as follows:

“That the railway receipt given by the Railway for the articles delivered for conveyance must be given up at destination by the consignee to the railway or the railway may refuse to deliver and that the signature of consignee or his agent in the delivery book at destination shall be evidence of complete delivery. If the consignee does not himself attend to take delivery, he must endorse on the receipt a request for delivery to the person to whom he wishes it made, and if the receipt is not produced the delivery of the goods may, at the discretion of the railway, be withheld until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the Railway”.

As I have stated earlier, the Dunlop Rubber Co. endorsed the receipt in favour of the Bank of Baroda, Ltd., and the Bank of Baroda, Ltd., endorsed it in favour of the plaintiff. Both the endorsements were in the form of directions to the railway administration to deliver the goods to the named endorsee.

A railway receipt is in form a document which acknowledges receipt of goods tendered for consignment by the consignor to the railway administration. When a consignor desires to send goods by rail from one station to another, the railway administration requires the consignor to execute a consignment note by which the administration is requested to send the goods from a named station to the destination. The consignment note contains the name of the consignor, the name and address of the consignee, the number, description and weight of the articles sent and the name of the person who is liable to pay the freight and a certificate that the particulars given are correct. Against the consignment note accompanied by delivery of goods, the

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railway issues a receipt to the consignor which in form is an authority to the consignee at the destination to apply for delivery of the consignment described therein.

Their Lordships of the Privy Council in *Mercantile Bank of India, Ltd., v. Central Bank of India, Ltd.*,⁽¹³⁾ characterised a railway receipt as "an ambiguous document" which is "in form merely an authority to take delivery of the goods". But under the Sale of Goods Act a railway receipt is regarded as a document of title and delivery of goods to which it refers may be effected by delivery of the railway receipt. It is, however, not a negotiable instrument. The endorsement being in the form of an endorsement authorising the endorsee to take delivery of the goods the railway receipt may as against the railway administration authorise the endorsee to take delivery of the goods, but the holding of the railway receipt which is delivered by the consignor with the intention of transferring the goods to which it relates also evidences title to the goods covered thereby. As we have stated earlier, the goods had been purchased by the plaintiff from the Dunlop Rubber Co. The plaintiff had paid the price for the goods and had obtained possession of the railway receipt from the Bank of Baroda, Ltd., to which it was sent after endorsement by the Dunlop Rubber Co. The plaintiff was, therefore, the owner of the goods covered by the railway receipt and he was also entitled to obtain delivery thereof by reason of the endorsement made thereon. It is true that the contract of consignment was entered into by the Dunlop Rubber Co. of India, Ltd., and by the mere endorsement of the railway receipt in favour of the Bank of Baroda, Ltd., and the ultimate endorsement in favour of the plaintiff, the plaintiff did not become the assignee of the benefit of the contract. It is well settled that "a contract cannot be annexed to goods so as to follow the property in the goods either at common law or in equity." (See Pollock on Contracts, 13th Edition at page 187). Therefore, by the sale of the goods by the Dunlop Rubber Co. to the plaintiff, the benefit of the contract evidenced by the Railway Receipt did not devolve upon the plaintiff.

The principal question which then falls to be determined is, whether the plaintiff as an endorsee of the railway receipt is entitled to file a suit for damages for loss of goods relying upon his ownership or interest in the goods covered by the railway receipt. A division bench of this Court held in *Dolatram Dwarkadas v. The Bombay, Baroda and Central India Railway Company*,⁽¹⁴⁾ that

"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 main-

13. (1937) L. R. 65, I. A. 75.

14. (1914) 38 Bom. 659.

tain an action against the Railway Company for damages in respect of the goods covered by the receipt."

In that case the goods were consigned by one Sukhdin Ramlal at a railway station in the United Provinces to Ahmedabad. The goods were consigned to self but the consignor endorsed the railway receipt asking the railway administration to deliver the goods to one Narandas Lakshmandas. The receipt was endorsed by Narandas in favour of the plaintiff Dolatram Dwarkadas. At Ahmedabad the plaintiff paid the freight and the railway administration delivered to the plaintiff a part of the goods on payment of demurrage which was due and payable as the goods had not been taken delivery of within the period allowed for delivery free of demurrage. The plaintiff then filed a suit against the railway administration for the value of certain bags of wheat which had been illegally recovered from him. The Court of Small Causes at Ahmedabad, which tried the suit, held that the suit filed by the plaintiff was not maintainable as the plaintiff was a commission agent and had no interest in the goods delivered to him. A revision application was filed against that decision and this Court reversed the decision and held that a railway receipt being a mercantile document of title the endorsee of such a receipt had sufficient interest in the goods covered by it to maintain an action of the nature filed by the plaintiff. This view appears to have been accepted in a large number of decisions of the Courts in India. In *Bharryalal Ramratan Jaiswal v. Agent and Central Manager of B. N. Rly.*⁽¹⁵⁾ the Nagpur High Court held that an endorsement on a railway receipt entitled the endorsee to claim delivery of the goods and to file a suit for compensation for damage to the consignment. In *Jalan and Sons, Ltd., v. The Governor-General in Council and others*,⁽¹⁶⁾ it was held that (p. 192):

"A railway receipt being a mercantile document of title the endorsement of it vests the endorsee with a valuable right...the endorsee of a railway receipt not only can take delivery of the goods covered by the receipt but he can also give a complete discharge...it follows from all that he is also competent to bring a suit in respect of the goods."

It was held in *Piari Lal, Gopi Nath v. The East Indian Railway Company*,⁽¹⁷⁾ that

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

The Madras High Court in *M. S. M. Railway Co. v. K. Rangaswamy Chetty*,⁽¹⁸⁾ has taken the view that where goods have been consigned and property in the goods has passed it is only the consignee who can file a suit and not the consignor.

15. (1944) A. I. R. Nag. 362.

17. (1924) 4 All. 691.

16. (1949) East Punjab. 190.

18. (1924) A. I. R. Mad. 517.

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A similar view appears to have been taken in *Shri Ram Krishna Mills, Ltd., v. Governor-General*.⁽¹⁹⁾ In *Erachshaw v. Dominion of India*,⁽²⁰⁾ (representing B. B. & C. I. Railway), it was held that a consignee of goods under a railway receipt, or an endorsee thereof even if he is an agent of the consignor, has sufficient interest in the goods to file a suit for compensation for loss of the goods. It appears therefore that there is a formidable body of authority which has taken the view that an endorsee of a railway receipt even if he is a commission agent is entitled to file a suit against the railway administration for compensation for loss or damage to the consignment.

But strong reliance was sought to be placed on behalf of the Union of India upon a judgment of Mr. Justice Bhagwati in *Shamji Bhanji & Co. v. North Western Railway Co.*,⁽²¹⁾ in support of the contention that a suit for compensation for loss of the consignment against the railway administration can only lie at the instance of the consignor, when the consignor has obtained a railway receipt under which the goods are to be delivered 'to self'. It was urged, relying upon that judgment that the plaintiff in this case has no right to file a suit for damages against the railway administration. In *Shamji Bhanji & Co.*'s case the plaintiffs had sold certain goods to one S and the goods were to be supplied to S at Peshawar. The goods were entrusted by the plaintiffs to the railway administration of the B. B. & C. I. Railway to be carried at "railway risk" and the goods were consigned to self. The plaintiffs paid the freight and the railway receipt was endorsed by the plaintiffs in favour of a third party. During transit the goods were destroyed by fire. The receipt was successively endorsed to various parties till it reached the hands of S. When the railway receipt finally came into the possession of the plaintiffs it bore an endorsement made by S in their favour. The plaintiffs then filed a suit against the railway administration of the North Western Rly. Co. for compensation for loss of the goods. It was contended on behalf of the railway administration that the plaintiffs were not entitled to file a suit for compensation for loss of the goods inasmuch as the railway receipt had been endorsed in favour of various persons and the ultimate endorsement in favour of the plaintiffs by S, having been made after the goods were destroyed by fire it could not clothe the plaintiffs with right to sue. Mr. Justice Bhagwati rejected the contentions raised by the railway administration, and held that the suit filed by the plaintiffs for compensation for loss of goods was maintainable. The learned Judge exhaustively dealt with the evidence and held that the property in the goods had even till the date when

19. (1945) A. I. R. Patna 387.

20. (1955) A. I. R. Mad. 70.

21. (1946) 48 Bom. L. R. 698.

the goods were destroyed remained vested in the plaintiff, and that the endorsement on the railway receipt was made by the plaintiffs only with a view to authorize collection and not with a view to transfer property in the goods. It was held that S, the purchaser of the goods, was not a transferee of the goods represented by the railway receipt and that he did not become entitled to obtain possession of the goods from the railway administration in his own right. It was further held that even assuming that the title was vested in S at the time when the goods were destroyed, the plaintiffs had still a right to file a suit because they had entered into a "special contract" with the railway administration whereby the goods were deliverable to them. According to Mr. Justice Bhagwati, the consignors having entered into a special contract with the railway administration under which the goods were deliverable to them, the plaintiffs as consignors were still entitled to maintain the suit, even though the property in the goods had passed to the consignee at the time of the consignment. It was observed that in considering whether the consignor was entitled to file a suit for loss of a consignment the primary test is whether at the date when the consignment was despatched the consignor was the owner of the goods. We are not called upon in this case to decide whether the consignor as the party who has entered into a contract with the railway administration is entitled to file a suit for compensation for failure to deliver the goods by the railway administration. In *Shamji Bhanji & Co.'s* case it was clear on the evidence that the title in the goods had remained with the plaintiffs even after the consignment was despatched and S had only a right to collect the goods. In other words, the railway receipt was endorsed only for authorizing the endorsee to take delivery of the goods. The plaintiffs in that case as owners of the goods and also as parties who contracted with the railway administration, were held entitled to file a suit for compensation for loss or destruction of the consignment. Again the plaintiffs in that case were the ultimate endorsees of the railway receipt and even as ultimate endorsees they were entitled to file the suit. The Court in that case was not called upon to decide whether an endorsee to whom property in goods was transferred was entitled to maintain a suit for compensation for loss of the goods against the railway administration. The case is, therefore, not an authority for the proposition that an endorsee of a railway receipt, who is also an owner of the goods covered thereby, cannot maintain a suit for compensation for loss of the goods against the railway administration. This Court has held in *The Firm of Dolatram Dwarkadas v. The Bombay, Baroda and Central India Railway Company*,⁽²²⁾ that even a commission agent to whom

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a railway receipt is endorsed has sufficient interest to maintain a suit against the railway administration for compensation for loss of goods and there is nothing in the judgment in *Shamji Bhanji's* case which is inconsistent with the earlier decision. It is true that the property in the goods covered by a railway receipt is not necessarily transferred merely by an endorsement on the railway receipt. The endorsement is in form only an authority by the consignor or by his endorsee to a named person to ask for delivery of the goods represented by the receipt from the railway administration. By the request endorsed on the railway receipt to deliver goods to the endorsee, the endorsee does not become a transferee of the goods represented thereby. But a railway receipt being a document of title to goods, the property in the goods may be transferred by mere delivery of the receipt. In each case, the question is not whether an endorsement effects a transfer of the goods but whether the endorsement of the railway receipt and the delivery thereof is made with the intention of transferring the goods to the endorsee. If the delivery of the railway receipt with an endorsement is made with the intention of transferring the goods, the holder of the railway receipt would be entitled, as owner of the goods, to file a suit against the railway administration for loss or damage thereof. Even if the endorsee is a mere commission agent, he would still be entitled to file a suit for loss or damage to the consignment. In *Shamji & Co.'s* case the plaintiffs being the consignors and consignees as well and having themselves entered into a contract with the railway administration and also being the ultimate endorsee were on any view entitled to file a suit for compensation. That decision cannot be regarded as an authority for the proposition that an endorsee of a railway receipt is not entitled to file a suit for compensation for loss or damage, even if he is the owner of the goods consigned.

Reliance was also sought to be placed upon an unreported judgment delivered by the learned Chief Justice in *G. K. Abhyankar & Co. of Baroda v. G. I. P. Railway and others.*⁽²³⁾ In that case the plaintiffs had sent a consignment of jaggery from Lonand on the M. S. M. Rly. to Baroda and when delivery was given at Baroda it was found that there was a shortage in the consignment. The plaintiffs filed a suit to recover compensation for short delivery. The suit was dismissed by the Court of Small Causes Poona, on the ground that the railway receipt having been endorsed in favour of the purchaser no suit could be maintained by the consignors. The learned Chief Justice delivering the judgment followed the decision of *Shamji Bhanji & Co.'s* case and held

23. (1952) Civil Revision Application No. 1173 of 1950, decided by Chagla C. J., on April 4, 1952 (unrep.).

that the plaintiffs as owners of the goods at the date of consignment were entitled to file the suit. In the view of the learned Chief Justice, if at the date of consignment the plaintiff was the owner of the goods it was difficult to understand why the consignor could not sue the railway administration for compensation for loss of the goods merely because at a subsequent date the property in the goods had passed to someone else. That case also can have no application to the facts of the present case. We are not concerned in this Revision Application to decide whether the consignor can maintain a suit, relying upon the contract of consignment, for compensation for failure to deliver the goods. As we have pointed out earlier, the transfer of the goods does not transfer the benefit of the contract relating to the goods which the transferor has entered into. If the transferee of the goods, therefore, seeks to file a suit relying upon the terms of the contract entered into by the transferor, he is liable to be non-suited. But the transferee as the owner of the goods or having some interest in the goods is, according to the decisions to which we have already referred, entitled to file a suit against the railway administration, relying upon the title or interest that he has in the goods. That seems to be the effect of the decisions to which we have already referred. The view taken by the learned trial Judge, therefore, that the plaintiff is entitled to maintain a suit for compensation for loss of a part of the consignment which was not delivered to him must be accepted.

The consignment of three bundles reached Dhulia railway station on May 13, 1952, and two out of the three bundles were delivered on June 5, 1952. On the evidence of Dattatraya Gajanan, it is clear that one of the bundles was lost some time between May 18 and 25, 1952. The railway administration is unable to explain how the bundle disappeared from their custody. The plaintiff says that he had gone to the Dhulia railway station many times to enquire about the arrival of the goods and he had been told that the goods had not been received. The learned trial Judge has accepted that evidence and we see no reason to disagree with the view of the learned trial Judge. It must, therefore, be held that the plaintiff came to know on June 5, 1952, that the goods had been received at Dhulia, and when he demanded delivery he was given a part of the consignment. But the Union of India contends that the goods having been received on May 13, 1952, on the expiry of the period prescribed in the Goods Tariff Rules, Part I-A, the liability of the railway administration ceased altogether and if thereafter the goods could not, on account of circumstances beyond their control, be delivered, the railway administration was not liable to pay compensation. Reliance in that behalf was sought to be placed upon r. 30, Chapter I, of the Goods

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Tariff framed by the Central Railway. Rule 30, in so far as it is material states :

"The Railway Administration hereby gives public notice: (2) That in respect of goods not removed from railway premises at station of destination within the time allowed free of demurrage and wharfage the railway is not liable in any respect for any loss, destruction, deterioration of or damage to such goods arising from whatever cause notwithstanding that the railway may have warehoused or otherwise kept the goods and notwithstanding that the railway shall be entitled to be paid the authorized charges for goods so left on their premises."

Under r. 85AA, which deals with "warehousing and retention of goods and levy of wharfage" the free time allowed for delivery of goods at the Dhulia Station is two days including the day on which the goods are available for delivery. It is urged that the goods having been received at the Dhulia Railway Station on May 13, 1952, if delivery was not taken by May 14, 1952, the liability of the Administration thereafter ceased. Now, r. 30 (2) in form appears to be a mere assertion by the Railway Administration that the Administration will not be liable if the goods are not removed within the time allowed free of demurrage and wharfage. There is nothing to indicate that the rule is made a part of the contract of consignment. The railway receipt issued by the Central Railway does not incorporate the terms of r. 30 as one of the conditions on which the goods are consigned.

It is true that the Railway Administration is a public carrier and undertakes to carry goods and to deliver the same and the responsibility of the railway administration under a contract of consignment is as a carrier and not as a warehouseman. If goods are warehoused by the railway after they are received at the destination, that is only incidental to the liability of the railway to deliver the goods. Under s. 72 of the Indian Railways Act,

"the responsibility of a railway administration for the loss, destruction or deterioration of goods delivered to the administration to be carried by railway shall, subject to the other provisions of the Act, be that of a bailee under ss. 151, 152 and 161 of the Indian Contract Act."

Sections 151 and 152 of the Contract Act prescribe the care to be taken by a bailee of goods bailed to him and the responsibility of the bailee for loss, destruction or deterioration thereof. Section 161 prescribes the responsibility of the bailee when the goods bailed are not duly returned. By sub-s. (2) of s. 72 it is provided that an agreement which purports to limit that responsibility shall be void.

"unless it is in writing signed by or on behalf of the person sending or delivering to the railway administration the goods and is otherwise in a form approved by the Central Government."

When goods are delivered to a railway administration for being carried to a particular destination the railway

administration undertakes the responsibility to deliver the goods if delivery is demanded within a reasonable time after the goods reach the destination. If the goods are lost after they have reached the destination the railway administration is not in all cases absolved from liability for loss or damage to the goods. It is true that if there has been undue delay on account of the default of the consignee the railway administration may be absolved from liability imposed by s. 72 of the Act, but the liability under the contract of consignment continues till the expiry of reasonable time after the goods are received at the destination. Again even after the expiry of reasonable time after the arrival of goods the liability for negligence of the railway administration survives. In *Chapman v. The London and North Western Railway Company*,⁽²⁴⁾ it was held that when the goods consigned to the plaintiff had not been called for within a reasonable time after they were received at the destination station, "the liability of the defendants (railway administration) as common carriers in respect of the goods had ceased, and they had become mere warehouse men of them" and consequently the action in damages was not maintainable in the absence of any evidence of negligence on the part of the defendants. It may be observed that in England a railway company is an insurer of goods. In *Chapman's* case the plaintiff sought to render the London and North Western Railway Company liable to pay compensation for accidental loss of goods which were after arrival at the destination burnt in the warehouse of the railway and the Court held that the railway company was not liable as the liability of the railway as carriers had ceased, the plaintiff having failed to call for delivery within a reasonable time after arrival of the goods. It was held in that case that (p. 281) :

"the contract of the carrier being not only to carry, but also to deliver, it follows that, to a certain extent, the custody of the goods as carrier must extend beyond, as well as precede, the period of their transit from the place of consignment to that of destination",

and if consignment is demanded within a reasonable time after the receipt of the goods the railway administration would be liable as carriers even though the goods are warehoused. As to what would be reasonable time, it must depend on the circumstances of each case. It was observed (p. 282) :

"When once the consignee is in *mord* by delaying to take away the goods beyond a reasonable time, the obligation of the carrier becomes that of an ordinary bailee, being confined to taking proper care of the goods as a warehouseman; he ceases to be liable in case of accident. What will amount to reasonable time is sometimes a question of difficulty, but as a question of fact, not of law. As such it must depend on the circumstances of the particular case."

24. (1880) 5 Q. B. D. 273.

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This case was followed by the Allahabad High Court in *Bengal and North Western Railway and another v. Mul Chand*.⁽²⁵⁾ The Allahabad High Court in that case held that if a consignee fails to take delivery of goods "by his own laches, he cannot hold the railway company liable for any loss or damage which may accrue". It was further held that "the consignee of goods sent by rail is bound to take delivery thereof within a reasonable time." It must, therefore, be held that the liability of the railway administration as a carrier does not cease merely on arrival of the goods at the destination station but it extends for the time which is necessary for carrying out the obligation to deliver the goods. What that time may be must depend upon the circumstances of each case. It cannot be said that the period prescribed by r. 85AA under Goods Tariff Rules read with r. 30 (2) forms a term of the contract between the parties which binds the consignee, nor can it be said that the period during which the goods are warehoused free of charge must be regarded as conclusive of what may be regarded as reasonable time by the Court. It cannot be forgotten that in India sometimes the consignees have to travel long distances to take delivery of the consignments and cases of considerable delay in carriage of goods from the station of consignment to the destination station are not unknown. It cannot be expected of the consignee that he should attend at the railway station at the arrival of every train which might possibly carry the goods belonging to him, and if he fails to do so and the goods are lost or damaged after the expiry of the period for which they remain free of charge for demurrage and wharfage, the liability of the administration ceases. Warehousing of goods, to a certain extent, is necessary even for the purpose of effecting delivery, and the mere commencement of the liability to pay demurrage, in our judgment does not extinguish the liability of the railway administration as carriers. In any event, so long as the goods remain with the railway administration, they do remain bailees of the goods and if there is negligence on the part of the railway administration, the railway administration would be liable, notwithstanding the expiry of the period of free warehousing.

The learned trial Judge has, as we have already pointed out, believed the evidence of the plaintiff that he had gone to the railway station to demand the consignment on various occasions but it was only on June 5, 1952, that the goods were actually delivered to him. The railway administration has been unable to explain how one of the bundles from the consignment disappeared from their warehouse. No clear or reliable evidence has been led by them to show that due precau-

25. (1920) 52 All. 655.

tion was taken for protecting the plaintiff's goods. In the circumstances, the view taken by the learned trial Judge that the railway administration did remain liable, even after the arrival of the goods, for the safety of the goods belonging to the plaintiff and that they were liable to pay damages, must be accepted. The rule is, therefore, be discharged with costs.

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Rule discharged.

G. N. V.

APPELLATE CRIMINAL

Before Mr. Justice Gajendragadkar and Mr. Justice Gokhale.

STATE v. THE MANAGER, SUTARIA AUTOMOBILES*

Factories Act (LXIII of 1948), ss. 63, 92—Bombay Factories Rules, R. 91—Scope of exemption under r. 91 in respect of 'urgent repairs'—Whether 'urgent repairs' include both repairs to the factory and repairs to the car of customer in an Automobile Repair Factory.

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The exemption granted in respect of 'urgent repairs' under R. 91 of the Rules made under the Factories Act, 1948, applies to repairs to the factory itself and not to urgent repairs of a car of a customer in an automobile factory.

CRIMINAL Appeals against orders of acquittal passed by G. H. Chabbi, Esquire, Judicial Magistrate, First Class, Belgaum Cantonment.

The facts are fully set forth in the Judgment.

A. A. Mandgi, Assistant Government Pleader, for the State.

N. M. Shah, for the Accused.

Gajendragadkar J.—These two appeals have been preferred by the State against the order of acquittal passed in favour of the respondent in two criminal cases filed against him. In both these cases the respondent was charged with having committed an offence punishable under s. 63 read with s. 92 of the Factories Act. The learned Magistrate who tried this case has held that the offence charged was not proved. That is why he passed an order of acquittal in favour of the respondent. In the present appeals, the State contends that the orders of acquittal passed by the learned Magistrate are based on an erroneous construction of the material provisions of r. 91 framed under the Factories Act.

The facts leading to the prosecution are not in dispute. Mr. Keskar, the Junior Inspector of Factories, Kolhapur, visited the Sutaria Automobiles at 8-10 p.m. on March 12, 1955.

* Criminal Appeals Nos. 1443 and 1444 of 1955.