

and in the circumstances of these cases, the delay might have been excused under section 5A of the Act of 1877 (section 5 of the present Act) a course not available for suits. I may also observe that no question relating to section 12 can arise in the case of suits. Passing on to the joint application of section 4 with other sections of the Act, I find that it was held in *Bai Hemkore v. Masamalli*(1) by JENKINS, C.J., and ASTON, J., that section 4 cannot be tacked on prior to the period of extension given by section 19. Again, *Makund Ram v. Ramraj*(2) and *Ramalingam Aiyar v. Subbier*(3) are on all fours with the present case and are authorities against the appellant. *Abhoya Churn Chuckerbutty v. Gour Mohun Dutt*(4) also supports the respondents' contention. I agree with them and hold that the suit is barred by limitation.

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RAMESAM, J.

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APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Ramesam.

1921,
March 15.

TARACHAND (PLAINTIFF), PETITIONER,

v.

THE MADRAS AND SOUTHERN MAHRATTA RAILWAY
COMPANY, LIMITED (DEFENDANTS), RESPONDENTS.*

Limitation Act (IX of 1908), arts. 31 and 62—Railways Act (Indian) (IX of 1890), sec. 56—Suit by consignor of goods for surplus sale-proceeds—Suit against the Company—Sale of goods under section 56 of the Railways Act—Suit for compensation, distinct from suit for surplus sale-proceeds—Money had and received—Applicability of art. 31 or 62, Limitation Act.

A suit by the consignor of goods by a Railway Company for the recovery of the surplus sale proceeds realized by the Company by sale of the goods under section 56 of the Indian Railways Act, is governed by article 62 and not article 31 of the Limitation Act.

M. & S.M. Ry. Co., Ltd. v. Haridoss Banmahidoss (1918) I.L.R., 41 Mad., 871, referred to.

(1) (1902) I.L.R., 26 Bom., 782.

(2) (1916) 14 A.L.J., 310.

(3) (1918) 8 L.W., 256.

(4) (1875) 24 W.R., 26, 28.

* Referred Case No. 18 of 1920.

TARACHAND ^{v.} CASE stated under section 69 of the Presidency Small Cause Courts Act by the Presidency Small Cause Court in Suit No. 3721 of 1920 (F.B. No. 118 of 1920).
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This reference was made to the High Court by the Presidency Small Cause Court, Madras, under section 69 of the Presidency Small Cause Courts Act, owing to a difference of opinion between the Judges of that Court on a question of limitation. The suit, in which the reference was made, was instituted by the owner and consignor of certain goods entrusted for carriage to the defendant, a Railway Company, for recovery of surplus sale-proceeds realized by the Company on the sale of such goods and not "rendered to the consignor" under section 56 of the Indian Railways Act. The consignment to the Company was made on 8th June 1918, the sale of the goods by the company was on 12th February 1919, and the suit was instituted on 26th March 1920. The majority of the Full Bench of the Small Cause Court held that article 62 and not article 30 or 31 of the Limitation Act governed the case. The other material facts and contentions appear from the following Letter of Reference of the Small Cause Court :

This is a case stated for the opinion of the High Court under section 69 of the Presidency Small Cause Courts Act as we have differed in opinion on the question of limitation raised during the hearing of the Full Bench application.

2. The facts are as follows :—

The plaintiff consigned on the 8th of June 1918 two cases of camphor to a certain consignee at Bangalore. The said boxes were not delivered to the consignee. The railway receipt was not produced, having been lost in course of post, and the defendant Company was unable to trace the goods to their owner as plaintiff stated that he consigned from Salt Cotours instead of Central Station. The duplicate of the railway receipt has been produced and proves that the goods in question were in fact consigned by plaintiff as alleged by him. The defendant Company held possession of the said two boxes till 12th February 1919 when they sold them under their powers contained in section 56 of the Railways Act, IX of 1890, and realized a sum of Rs. 550 or thereabouts.

3. The plaintiff brought this suit, on the 26th of March 1920, i.e., about 21 months after the boxes would ordinarily have been delivered in Bangalore and more than 13 months after the sale above referred to, for an account of the sale-proceeds of the two

boxes of camphor and for payment of a sum of Rs. 623, or as may be found due. There is no doubt about the facts but it is pleaded on behalf of the Railway Company that the suit is barred as falling within article 30 or 31 of the Limitation Act, IX of 1908. The plaintiff contended that the suit fell within article 62 of the same Act and his contention was upheld in the opinion of two of us, the third Judge holding the contrary view. *The reasons are set out in the enclosures which are called judgments and which contain our differing opinions. These, however, have not yet been pronounced pending the result of this Reference.

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4. As will appear the majority of us held that this was in fact a suit for money had and received to the use of the plaintiff and that as a suit of the present character is not in terms comprised within the wording of either article 30 or 31, there was no reason for holding that a Railway Company was exempt from the ordinary provisions of the law and that it could not be said that the articles in question are exhaustive of all actions that can be brought against carriers in respect of goods carried. The third Judge on the other hand holds that this is a suit against a carrier for compensation for non-delivery and is therefore governed by article 31 of the Limitation Act. It may be observed that there seems to be no direct authority in any of the reports, though the ruling in *Venkatasubba Rao v. The Asiatic Steam Navigation Co., Calcutta*(1) shows that in suits for the return of specific goods three years are the period of limitation and that therefore articles 30 and 31 are not the only articles of the Limitation Act applicable to sections against Railway Company.

5. The question therefore we beg to refer for the opinion of the High Court is:

“ Whether a suit by the owner of goods entrusted to a railway for carriage, for recovery of the sale-proceeds of such goods when sold under section 56 of the Railways Act, is governed by article 31 or by article 62 of the Limitation Act.

P. Venkataramana Rao for appellant.

R. N. Ayyangar for respondent.

The Court delivered the following JUDGMENT:—

The plaintiff in this reference is the consignor of goods for carriage by the Madras Railway Company to a consignee at Bangalore. The goods were not delivered and there seems

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to have been a certain amount of correspondence and inquiry after them by plaintiff. But it came to nothing apparently, because it is common ground that the goods had not on them his correct address and that he stated the station, at which he booked them incorrectly. It has further been found that, in the end, the goods which were in the Railway Company's possession were sold in the exercise of their right under section 56 of the Indian Railways Act. The plaintiff is now suing to recover the surplus proceeds of that sale, which, in the words of the section, the Railway Company is bound to render to the person entitled.

We are asked to decide what is the article of schedule 1 of the Limitation Act applicable to this suit. The plaintiff contends, and two learned Judges of the Small Cause Court have held, that the article is No. 62 :

“For money payable by the defendant to the plaintiff for money received by the defendant for the plaintiff's use.”

On the other hand, as one learned Judge has held, the Railway Company contends for the application either of article 30 or article 31, the two articles dealing with suits against a carrier. Article 30 may at once be dismissed from consideration, because there is no question in the present case of loss or injury to goods. We, therefore, have to decide between articles 31 and 62.

It is not disputed that article 62 would apply in terms to the sale-proceeds. The argument of Mr. R. N. Ayyangar on behalf of the Company is, however, that plaintiff, having a right of suit for compensation for non-delivery of the goods, must be supposed to be now suing to enforce that right and that article 31 is applicable. Mr. Ayyangar has relied strongly on the fact that section 56 of the Indian Railways Act is contained in Chapter VI thereof, dealing with the “Working of Railway,” whereas the responsibility of Railway Companies is dealt with in Chapter VII, and he has referred to the statement of His Lordship the Chief Justice in *M. & S. M. Ry. Co., Ltd. v. Haridoss Banmalidoss*(1), that Chapter VII must be taken and was intended to cover the whole liability of the Railway Company, including among other things the responsibility of the Railway

(1) (1918) I.L.R., 41 Mad., 871, 877.

Company for misdelivery by whatever reason caused. It is sufficient to observe that section 56 (2) and the procedure authorized therein were not in question in that case and there is no reason for assuming that it was present to the mind of his Lordship or that, if it had been brought to his notice, he would have used the same expressions.

As we read section 56, it authorizes the Railway Company to adopt a certain procedure and to hold a sale, and gives a direction as to the disposal of the proceeds thereof. We cannot hold that that direction is merely moral or administrative. There is no reason why it should not confer a right to the surplus proceeds on the person referred to in the section as entitled to them. That person would be in the present case the plaintiff. There is further no reason why that right should not be enforced by a suit. Such a suit could not be brought until after the sale, that is, in the words of the third column of the schedule until after the date when the money was received for the plaintiff's use. The argument for the application of article 31 can be supported only on the assumption that what the plaintiff is suing for is not merely the surplus sale-proceeds, but compensation for the non-delivery of goods; and that is not how the plaintiff has described his claim. The distinction is material. For compensation for the non-delivery of the goods might very well be, and in fact very frequently would be, much more than the surplus sale-proceeds. The two classes of suits are entirely distinct and, because the suit to which article 31 would apply might have been available for the plaintiff, that is no reason why we should refuse to regard his suit as one for the money referred to in section 56 (2), to which article 62 would apply.

We hold that the suit is in time and answer the reference accordingly. The costs of this Reference will be provided for in the decree.

Solicitors for respondent: *Messrs. Brightwell and Moresby.*

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