

APPELLATE CIVIL.

1906
April 2.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

GREAT INDIAN PENINSULA RAILWAY COMPANY (DEFENDANT) v.
CHANDRA BAI (PLAINTIFF).*

Act No. IX of 1890 (Indian Railways Act), sections 3(6), 77 and 140—Notification of claim for refund as condition precedent to suit—To whom such notification must be given.

Where the plaintiff sued a Railway Company for recovery of money alleged to have been taken by the defendant as freight upon certain goods in excess of what was legally due, and before filing the suit gave notice of her claim for a refund to the General Traffic Manager, it was held that this was not a compliance with the provisions of the Indian Railways Act, 1890, and the suit could not be maintained. *Periannan Chetti v. South Indian Railway Company* (1), *The Secretary of State for India in Council v. Dipchand Poddar* (2), *East Indian Railway Company v. Jeth Mull Ramanand* (3) and *Bombay, Baroda and Central India Railway Company v. Sauti Lal* (4), followed.

THIS was a suit to obtain from the Great Indian Peninsula Railway Company a refund of Rs. 469-4-0, with interest and certain costs, alleged to have been overcharged by the defendant company on certain goods consigned to the plaintiff at Agra from Bezwada Station. The suit was resisted on the ground, *inter alia*, that no claim for a refund had been made in the manner provided by section 77 of the Indian Railways Act. The plaintiff set up a notice of claim served on the General Traffic Manager, and this the Court of first instance (Munsif of Agra) held to be sufficient; but for other reasons that Court dismissed the plaintiff's suit. On appeal, however, the District Judge of Agra reversed the decision of the Munsif and decreed the plaintiff's claim. The defendant thereupon appealed to the High Court.

Dr. Satish Chandra Banerji, for the appellant.

The Hon'ble Pandit *Sundar Lal*, for the respondent.

STANLEY, C.J. and BURKITT, J.—On the question of notice raised in the memorandum of appeal this appeal must succeed. The ground of objection is that no proper notice within the meaning of section 77 of the Indian Railways Act is proved to have

* Second Appeal No. 596 of 1904, from a decree of H. G. Warburton, Esq., District Judge of Agra, dated the 16th of April, 1904, reversing a decree of Babu Biddya Nath Das, Munsif of Agra, dated the 21st of November, 1903.

(1) (1899) 1 L. R., 22 Mad., 137. (3) (1892) 1 L. R., 26 Bom., 669.
(2) (1897) 1 L. R., 24 Calc., 306. (4) (1904) 1 L. R., 26 All., 207.

been served on the appellant company, and therefore the suit was not maintainable. Section 77 precludes any person from maintaining a suit for a refund of an overcharge in respect of animals or goods carried over a railway unless the claim for a refund has been preferred in writing by him or on his behalf to the Railway administration within six months from the date of the delivery of the animals or goods for carriage by railway. Section 140 prescribes modes of service of notice, directing that the notice may be served in the case of a railway administered by a Railway Company (a) by delivering the notice or other document to the Manager or Agent, (b) by leaving it at his office, (c) by forwarding it by post in a prepaid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act of 1866. The notification of a claim prescribed by section 77 may therefore be given either to the Railway administration as defined in section 3, sub-section (6), or in any of the ways mentioned in section 140. In this case, therefore, it was necessary for the plaintiff to prove service of notice of the claim upon the Great Indian Peninsula Railway Company at their office in London or else in any of the three ways prescribed in section 140. There is no proof of any such service, and the time for serving such notice has long since expired. It was contended on behalf of the plaintiff, respondent, and the contention indeed found favour with both the lower Courts, that service upon the General Traffic Manager of the Company was sufficient service; but in view of the express and distinct provisions of the Act, we are of opinion that this service is not a good service. We are supported in this view by a number of authorities and amongst others the cases of *Periannan Chetti v. South Indian Railway Company* (1), *The Secretary of State for India in Council v. Dipchand Poddar* (2), *East Indian Railway Company v. Jeth Mull Ramanand* (3) and *Bombay-Baroda and Central India Railway Company v. Sauti Lal* (4). We therefore allow the appeal, set aside the decree of the lower appellate Court, and restore the decree of the Court of first instance with costs in all Courts.

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(1) (1899) I. L. R., 22 Mad., 137.

(2) (1897) I. L. R., 24 Cal., 306.

(3) (1902) I. L. R., 26 Bom., 669.

(4) (1904) I. L. R., 26 All., 207