empowered to pass the order he did. I was referred to the case of *Empress of India* v. *Anand Sarup* (1), but in that case the Magistrate was under transfer from the original district in which he was to another and different district. The case of *Shaik Fakrudin* (2) is also not in point and can be at once distinguished and is no authority in the present case.

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Over and above all this, granting sanction is not the trial or punishment of the offence charged. To make such a proceeding drag through several courts is a mistake and in my opinion the Procedure Code has very properly confined this matter to two courts and two courts only, the court applied to and that court to which it is immediately subordinate.

I fully agree with what was laid down in *Mata Prasad* v. *Baran Barhai* (3). It is true that, that was a case in which a Civil Court had granted sanction, but the underlying principle is the same and I am quite prepared to extend it to cases in which sanction was granted by a Criminal Court.

On every ground I dismiss the application. As the six months during which the sanction can remain in force expires to-day, under section 195, clause (6), I extend the time up to the 30th of June, 1920.

Application rejected.

APPELLATE CIVIL.

Before Mr. Justice Piggott and Mr. Justice Walsh.

BENGAL AND NORTH-WESTERN RAILWAY AND ANOTHER (DEFENDANTS) *v.* MUL CHAND (PLAINTIFF).*

1920

May, 22.

Railway Company, duties of, as carriers—Goods allowed by consignee to remain on railway premises for an unreasonable time—Company not liable for loss or damage—Demurrage.

The consignee of goods sent by rail is bound to take delivery thereof within a reasonable time. If by his own laches he omits to do so, he cannot hold the railway company liable for any loss or damage which may accrue. Different considerations would arise if there were any evidence to show an agreement on the part of the railway company to act as warehousemen; but the mere fact of the company charging demurrage would not necessarily give

* First Appeal No. 143 of 1919, from an order of Jagat Narain, District Judge of Aligarh, dated the 14th of May, 1919.

(1) (1881) I. L. R., 3 All., 563. (2) (1894) I. L. R., 9 Bom., 40.

(3) (1914) I. L. R., 36 All., 439.

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rise to such an implication. *Chapman* v. *Great Western Railway Company*, (1) referred to.

THIS was a suit against the Bengal and North-Western Railway Company for damages for loss or non-delivery of goods. The facts out of which the suit arose were these. The plaintiff, a merchant of Agra, was the consignee of certain bags of chillies sent by a firm in Darbhanga. The goods were despatched by the Bengal and North-Western Railway on the terms of a consignment note signed by the consignors on the 3rd of May, 1918. The bags were marked with indentification letters and were noted on the consignment to be in some respects defective through damp and want of repair. They were sent in a sealed van over the Bengal and North-Western Railway and the Rohilkhand and Kumaun systems to Kasganj Station on the Rohilkhand and Kumaun Railway. The sealed van arrived at Kasganj station on the night of the 11th of May, in the same condition as it had been despatched and it was placed in the goods-shed ready for unloading on the 13th of May. On the 22nd of May, one Reoti Ram presented the railway receipt and handed it over to the goods clerk duly endorsed with a clear receipt for the whole consignment of 113 bags of chillies. He then seems to have gone away to his employers. On the 31st of May, one Jhamman Lal arrived at Kasganj railway station and asked to see the plaintiff's goods; but by that time, with the possible exception of one bag, no part of the plaintiff's consignment of chillies was to be found on the platform or on the railway premises. The plaintiff accordingly sued the company for damages amounting to Rs. 2,060. The court of first instance dismissed the suit. On appeal the lower appellate court reversed the decree of the Subordinate Judge and remanded the case for ascertainment of the amount of damages. Against this order of remand the defendant company appealed to the High Court.

Mr. *B. E. O'Conor*, for the appellants.

The Hon'ble Dr. *Tej Bahadur Sapru* and The Hon'ble Munshi *Narain Prasad Ashthana*, for the respondent.

PIGGOTT and WALSH, JJ.:—This is a suit brought by Mul Chand, a trader of Agra, against the Bengal and North-Western Railway, in the court of the Subordinate Judge of Aligarh for

(1) (1880) 5 Q. B. D., 278.

Rs. 2,060 damages for the loss or non-delivery of 113 bags of chillies consigned to him by a trading firm of the name of Bharose Potdar, of Darbhanga district. The latter firm were joined as defendants together with the Rohilkhand and Kumaun Railway, but both these defendants obtained judgment in their favour in the trial court.

The cause of action alleged in the plaint was that the defendants' servant negligently pointed out the wrong bags at the destination of the consignment, and that the consignment was thus not delivered. It is not alleged to whom this demonstration was made, nor to whom the consignment was in fact delivered, but the breach of duty is alleged to have taken place on the 22nd of May. The Subordinate Judge dismissed the suit. The District Judge treating it as an action for non-delivery held that the defendants were liable and remanded the suit for the amount of damages to be ascertained. Against this order an appeal has been brought to the High Court. The learned District Judge says truly that the facts are not in dispute. They are more fully stated in the judgment of the trial court, and though no finding of that court has been overruled by the lower appellate court, the judgment under appeal does not in some respects set out the facts which were proved in evidence. We, therefore, looked into the evidence in order to supplement the findings contained in the lower appellate court's judgment The net result of the uncontradicted evidence and of the findings of the lower appellate court may be thus summarized.

The goods were despatched by the Bengal and North-Western Railway on the terms of a consignment note signed by the consignors on the 3rd of May. The bags were marked with identification letters and were noted on the consignment to be in some respects defective through damp and want of repair. They were sent in a sealed van over the Bengal and North-Western Railway and the Rohilkhand and Kumaun systems to Kasganj Station on the Rohilkhand and Kumaun Railway. The sealed van arrived at Kasganj Station on the night of the 11th of May, in the same condition as it had been despatched and it was placed in the goods shed ready for unloading on the 13th of May.

[Here a portion of the judgment which is not necessary for the purposes of this report is omitted.]

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The railway receipt was presented by one Reoti Ram on the 22nd of May. He handed it over to the goods clerk, duly endorsed with a clear receipt for the entire consignment of 113 bags of chillies. He then went away to his employers, and there he seems to have made a statement, in consequence of which one Jhamman Lal arrived at Kasganj Railway Station on the 31st of May, and asked to see the plaintiff's goods. The bags or sacks which had made up the plaintiff's consignment of chillies were not then on the platform or on the railway premises, with the possible exception of one single sack, but this circumstance is obviously irrelevant on the question of the liability of the Railway Company.

We have to consider in the first place why the railway receipt was not presented until the 22nd of May. This may conceivably have been due to pure negligence on the part of the local firm who were acting as the plaintiff's agents. It seems at least equally probable, if not more so, that the railway receipt had reached Kasganj before the 13th of May, and was being deliberately kept back as part of a swindle which was perpetrated on the plaintiff by the removal of his sacks, containing better quality chillies, for the benefit of some other person, but for which it was hoped ultimately to make the Railway Company liable. However this may be, it seems out of the question for the plaintiff to obtain a decree in this suit when he has not put Reoti Ram into the witness box, when he has not proved that Reoti Ram did not in fact remove the whole of his consignment of chillies and when he has given no evidence whatsoever as to the terms of the arrangement according to which the bags of chillies were allowed to remain on the station premises (assuming that they were so allowed to remain) after Reoti Ram had unloaded them from the wagon.

[The judgment here referred to the evidence and proceeded]:—

The Railway Company was certainly not responsible for the honesty of Reoti Ram or of any other agent or sub-agent of the plaintiffs employed to take delivery of the consignment. Even supposing there was no dishonesty but that the sacks making up the plaintiff's consignment somehow got mixed up with consignments intended for other people and were thus lost to the plaintiff,

this could not have happened without gross carelessness on the part of Reoti Ram, and it is impossible to agree with the lower appellate court that on the evidence produced in this case any liability in the matter attaches to the Railway Company.

We are, therefore, of opinion that the Subordinate Judge was right, and that the suit was properly dismissed. There is no evidence of misfeasance or conversion. There is no evidence of the allegation originally relied upon that the Railway servants pointed out the wrong goods to the plaintiff's agent, even assuming that he did not know which they were, of which there is also no evidence. There is no evidence as to how, when or by whom the consignment in dispute was in fact removed, nor as to what share the Railway servants took in its removal, nor as to what knowledge they had of the removal.

By a strict application of the ordinary rules of law and procedure to the plaintiff's case it ought on this ground alone to be dismissed for want of evidence to support it. But in order to remove any doubts we have gone on to consider whether, upon the lines of the judgment of the lower appellate court, assuming that some stranger wrongfully removed the goods destined for the plaintiff and marked with his name, the Railway Company can be held liable in law for a breach of duty as carriers.

Primâ facie the proper person to sue for non-delivery is the consignor against whom the consignee has his own remedy. This is so if the consignor undertakes to make delivery himself. If the terms of the contract of sale are such that delivery is to be on rail, the consignor undertaking to send the goods for the consignee, the former is the agent of the latter and the railway becomes the bailee of the person to whom the goods are sent. This view is supported by and carried out in sections 90 and 91 of the Indian Contract Act. The peculiarity of this case is that neither the consignee nor the agent Reoti Ram has given evidence, and the only terms of the contract in evidence are such as are to be gathered from the consignment note. But assuming in favour of the plaintiff that he had the right to sue the Railway Company as bailees for failing to take reasonable care of the goods entrusted to them as carriers, whereby a total loss has occurred, the first question which arises is at what point does

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their obligation under such a contract of carriage cease, and have the defendants been guilty of any breach of duty within the period of their obligation.

The principles governing this question are contained in a clear statement by Chief Justice COCKBURN in the course of the judgment in *Chapman* v. *Great Western Railway Co.* (1). The contract of the carrier being not only to carry but also to deliver, it follows that the custody of the goods as carrier must extend beyond the period of their transit. A reasonable time must be allowed for the exigencies of traffic and for the convenience of the consignee to whom delivery has to be made. And when the carrier is ready to deliver, the recipient is allowed a reasonable time, and no more, to take delivery. But he cannot for his own convenience or by his own laches extend the liability of the carrier beyond a reasonable time. In that case the goods having arrived at their destination both on the 24th and on the 25th of the month, were destroyed by fire on the 27th on which date also at a later hour the plaintiff who was consignor and consignee called for the goods. It was held that the liability of the Company as carriers had ceased. This view of the case has been overlooked in the lower appellate court. No explanation of the delay between the unloading on the 13th of May, and the so-called breach of duty on the 22nd of May, was attempted by the plaintiff or required of the defendants. It is clear that the contract of carriage was over. To hold otherwise would be to impose a wholly unreasonable burden upon carriers. The Railway Company might be responsible as warehousers, when a somewhat different set of considerations would arise, if any evidence had been led to show that such an arrangement was either expressly or impliedly made. The charge for demurrage does not necessarily give rise to such an implication, nor would any duty rest upon the Company for breach of which they have been held liable by the lower appellate court until such an arrangement had begun.

Having regard to the absence of any attempt at the trial to prove delivery by the Rohilkhand and Kumaun Railway to the wrong person as alleged in an offensive letter written by Mul Chand's vakil on his instructions to the agent of the Rohilkhand

(1) (1880) 5 Q. B. D., 278

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and Kumaun Railway at Bareilly City on the 6th of June, 1918, the claim appears to be an attempt to obtain money from the Railway by a statement either wilfully untrue or made recklessly without any belief in its truth.

The appeal must be allowed and the suit dismissed with costs here and below.

Appeal allowed.

REVISIONAL CIVIL.

Before Mr. Justice Piggott and Mr. Justice Kanhaiya Lal.

SUKHNATH RAI AND ANOTHER (APPLICANTS) *v.* NIHAL CHAND AND ANOTHER (OPPOSITE PARTIES).*

1920
May, 22.

Civil Procedure Code (1908), *schedule II, paragraphs* 17 *and* 18—*Arbitration—Failure of arbitrators to make an award—Suit as to part of the matters referred Direction by Court to proceed with the arbitration accepted by the parties.*

Certain persons agreed to refer matters in dispute between them to arbitration and two arbitrators and an umpire were appointed. But, owing to further disputes arising, the arbitration was not proceeded with, and one of the parties sent a notice to the umpire purporting to revoke his authority as umpire. Thereafter one of the parties to the submission filed a suit in a Munsif's Court as to part of the matters referred to arbitration (the whole of such matters being beyond the pecuniary jurisdiction of the Munsif). The Munsif at first dismissed the suit; but, the matter having been remanded to him on appeal, then passed an order staying the suit under paragraph 18 of the Code of Civil Procedure and further went on to issue a precept to the arbitrators and the umpire to continue the arbitration. No exception, however, being taken by any one concerned to this order, the arbitration proceeded, the parties argued their respective cases fully before the arbitrators and an award was made. An application to have this award made a rule of court was accepted by the Subordinate Judge and an appeal against this order was dismissed by the District Judge.

Held that in the circumstances there was no ground for holding that the arbitrators had no jurisdiction to proceed with the case and deliver an award. *Appavu Rowther* v. *Seeni Rowther* (1) and *Sheo Babu* v. *Udit Narain* (2) referred to

THE facts of the case were briefly as follows :—

The parties entered into an agreement by which they referred all their disputes to arbitration. Owing to certain criminal proceedings which were going on between the parties, the arbitration could not make any headway. Subsequently

* Civil Revision No. 84 of 1919.

(1) (1917) I. L. R., 41 Mad., 115. (2) (1914) 12 A. L. J., 757.