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had been paid and was no longer in default. We find, therefore, that regarded as an application for execution, the present application was within time, and we see no reason to amend the decree of the lower court on a purely technical point.

We, therefore, dismiss the appeal with costs, but as this has been regarded now as an appeal in execution, costs will be calculated accordingly.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Dalal and Mr. Justice Pullan.

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BENGAL AND NORTH-WESTERN RAILWAY (DEFENDANT) v. MATRU RAM AND ANOTHER (PLAINTIFFS) AND BOMBAY, BARODA AND CENTRAL INDIA RAILWAY (DEFENDANT).*

Act No. IX of 1890 (Indian Railways Act), section 47(f)—Rule framed by railway company—Sale of goods consigned to a railway company for transport without waiting for expiry of prescribed time—Illegal conversion.

Where goods which had been consigned to a railway company for carriage were sold by the company, on account of refusal to take delivery, without waiting for the expiry of the time prescribed by the rules framed under section 47 (f) of the Indian Railways Act, 1890, and without a proper bill for wharfage having been presented by the company, it was held that the action taken by the company amounted to illegal conversion and the owner of the goods was entitled to damages.

THIS was a Second Appeal arising out of a suit for damages against a railway company on account of the alleged illegal conversion of certain goods belonging to the plaintiffs. The facts of the case are stated in the judgement of the High Court.

* Second Appeal No. 852 of 1924, from a decree of Baij Nath Das, Second Additional Judge of Gorakhpur, dated the 10th of March, 1924, modifying a decree of Jogendra Nath Chaudhri, Subordinate Judge of Gorakhpur, dated the 11th of September, 1923.

Dr. *Surendra Nath Sen*, for the appellant.

Babu *Piari Lal Banerji* and Munshi *Janaki Prasad*, for the respondents.

DALAL and PULLAN, JJ. :—This is a second appeal. Both the subordinate courts have held that the defendant railway company unlawfully converted the goods of the plaintiff, which were in its custody. A consignment of salt was despatched from Khara-goda (Bombay Presidency) to Deoria in the Gorakh-pur district. Out of seven wagon loads, four got damaged through wet, when the salt was received at Deoria. The finding is in the appellant's favour that the company was not responsible for the damage. The plaintiff refused to take delivery and the salt was sold at auction by the company in October, 1921. The salt was booked in June, so the company kept custody of it for less than six months.

According to the lower appellate court the company acted unlawfully in selling the salt without giving to the plaintiff fifteen days' clear notice as required by section 55 of the Railways Act. In this Court the counsel for the appellant was prepared to satisfy us that proper notice was given. We did not accept this additional evidence because the appeal must fail on another ground. Section 55 does not apply because the railway company never presented a proper bill to the plaintiff. It did not come to any determination as to what should be charged for wharfage. At one time it was willing to give up that charge, at another time it was desirous of coming to terms over damages. When the company's demand was not a fixed sum, it cannot have a lien over goods under section 55 and cannot sell to produce a sum equal to the demand. Moreover, the entire consignment cannot be sold under the provisions of that section, but only so much as would satisfy the demand.

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Failing protection of section 55, the company ought to have kept custody of the goods for six months under rule 12 of the rules framed under section 47(f) of the Act. This was not done and the sale in contravention of that rule amounted to illegal conversion.

It was argued on behalf of the appellant that the plaintiff had not set up a case of unlawful conversion. This is inaccurate. In paragraph 6 of the plaint the complaint is made that the goods were sold at auction contrary to law. It is true that the trial court did not frame a specific issue on the subject, but the omission has not prejudiced the appellant. It was not denied that the goods were sold within six months of arrival and even of booking.

The amount of damage has been rightly assessed and we would not interfere with a matter which, under the circumstances of the present case, does not arise in second appeal.

It was argued half-heartedly that salt was a perishable article and so the company was authorized to sell it at once. In fact, the company did not sell it at once but about three months after the arrival of the consignment. It is clear that the company had no intention of treating salt as a perishable article.

We dismiss the appeal with costs.

Appeal dismissed.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

SUKHBIR SINGH (PLAINTIFF) v. MANGHISAR RAO
AND OTHERS (DEFENDANTS).*

*Hindu law—Mitakshara—Mayulchu—Adoption of
orphan—Custom.*

The Hindu law being a personal law, the presumption is that a Hindu who migrates to another part of India where the law differs from that of his domicile of origin carries with

* First Appeal No. 405 of 1923, from a decree of Gobind Sarup Mathur, Subordinate Judge of Saharanpur, dated the 27th of August, 1923.

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