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of Saran set aside and that of the Munsif of Chapra restored.

One can only observe once again that, although it may seem that the decision in these cases bear hardly upon those whose goods are carried by Railway Companies in this country under Risk Note B, the contract is one which involves those who thus confide their goods for carriage to a Railway Company in the greatest difficulty in recovering compensation in the case of their loss; the substantial remedy against such a state of affairs lies, however, in the hands of the individual, who is in no way bound to enter into a contract of such a type which in effect places him at the mercy of the Railway Company with which he enters into such an agreement.

ADAMI, J.—I agree.

LETTERS PATENT.

Before Mullick, A.C.J. and Kulwant Sahay, J.

RADHE LAL

v.

EAST INDIAN RAILWAY COMPANY, LIMITED.*

Railway Company, suit against—Agent impleaded as defendant—Suit whether maintainable—bona fide mistake, whether cures the defect—plaint, construction of.

In the case of a Railway Company, the proper name under which the Company should be sued is the name and style under which it carries on its business; and if a plaintiff deliberately chooses to sue, not the Company, but the Agent, he cannot by any decree which he obtains in the suit bind the Company. Where, however, upon a fair reading of the plaint it is made out that the description of the defendant is a mere error and that the Company is the real defendant, then the suit may proceed against the Company.

* Letters Patent Appeal no. 16 of 1925.

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Where the plaint bore the name of the Agent of a Railway Company as the defendant, but plaintiff, the Company and the Court all treated the suit as one against the Company and the Company in fact appeared and conducted the case up to a certain stage of the proceedings on the footing that they were the defendants in the suit, *held*, that this was a case of mere misdescription and the suit was one against the Company.

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East Indian Railway Company v. Ram Lakhan Ram(1), distinguished.

Sinchi Ram Behari Lal v. The Agent, East Indian Railway Company(2), *Agent, Bengal-Nagpur Railway v. Behari Lal Dutt*(3), referred to.

Appeal by the plaintiffs.

The facts of the case material to this report, were as follows :

On the 14th January, 1922, the firm of Kalu Ram Brijmohan of Bombay consigned three bales of cloth by railway to the firm of Ramlal Lachman Ram of Shaikhpora in the district of Monghyr. While the goods were in transit the latter firm assigned them to the present plaintiffs Radhe Lal and Ganga Prasad. It was admitted that delivery was to be made at Shaikhpora by the East Indian Railway Company. On the 9th February, 1922, the Company in question delivered only one bale and on the 24th October, 1922, the plaintiffs lodged a suit before the Munsif of Jamui claiming compensation from the " Agent of the East Indian Railway " for the loss of the two bales. The firm of Ramlal Lachman Ram were sued as pro forma defendants.

The plaint, which was filed on the 24th October, was not properly stamped and was returned to the plaintiffs. On the 28th October the plaint was re-filed with a proper court-fee and was accepted.

On the 21st November, 1922, the East Indian Railway appeared and asked for time to file a written

(1) (1924) I. L. R. 3 Pat. 230.

(2) (1921) 2 Pat. L. T. 679.

(3) (1924-25) 29 Cal. W. N. 614.

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statement. Time was granted and the written statement was filed on the 3rd January, 1923.

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After various adjournments the case was taken up on the 13th December, 1923. The defendant railway then took a new ground and urged that the suit was incompetent against the agent and that if it was sought to substitute or add the Company the time for doing so had expired. The Munsif accepted this argument and held that the frame of the suit was bad and made a decree in favour of the defendants.

The plaintiffs then went on appeal to the Subordinate Judge of Monghyr who, on the 21st July, 1924, set aside the Munsif's order and remanded the suit for trial on the merits.

A second appeal was then preferred to the High Court, and on the 18th December, 1924, Das, J., disagreeing with the Subordinate Judge, restored the order of the Munsif and dismissed the suit.

Murari Prasad, for the appellants.

Noresh Chandra Sinha, for the respondent.

MULLICK, A. C. J. (after stating the facts set out above, proceeded as follows): The present Letters Patent appeal is against an order of Das, J.

The learned Judge, relying on the decision in *Sinehi Ram Behari Lal v. The Agent, East Indian Railway Company*⁽¹⁾ and *East Indian Railway Company v. Ram Lakhan Ram*⁽²⁾ held that this was a case brought against the Agent of the Railway and not the Railway Company and that the plaintiffs were not entitled to any relief against the Company, and the learned Judge laid down his view of the law in the following words: "In my opinion when there were two known persons in existence and the plaintiff brings the suit against one of them and afterwards applies to have the other brought on the record as a defendant

(1) (1921) 2 Pat. L. T. 679.

(2) (1924) I. L. R. 3 Pat. 230.

on the ground that he all along intended to sue the other and that in substance he sued the other and no question of representation arises in the case, it is impossible to maintain the view that the case is one of misdescription." There is no reason for dissenting from this statement of the law. It has been accepted in other cases and also recently in *Agent, Bengal Nagpur Railway v. Behari Lal Dutt*(1). The question now before us depends not upon the correctness of the proposition as stated above but upon its application to the facts of this case. Was the suit against the Railway in substance or not? If it was a suit against the Agent then obviously no relief can be given against the Railway Company but the point is whether upon a consideration of the plaint and the circumstances of the case it is possible to hold that in truth and substance the plaintiff sued not the Agent as a designated person but the Railway Company as a corporate body. That is a question of fact and must be decided upon the evidence in the case. The decision in other cases cannot therefore be any guide. Now the view that the learned Subordinate Judge took in appeal was that the suit was in substance one against the Railway and that it was competent to proceed. This is a finding of fact which is conclusive in second appeal but it is urged on behalf of the respondent before us that there is no evidence to support it. It is necessary therefore for us to see whether there was any evidence upon which the learned Judge was competent to come to the conclusion that this was really a case of misdescription.

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* In order to come to a finding upon this point it is necessary to see what the plaintiffs did. In their plaint they describe the first party defendants as the

"Agent of the East Indian Railway."

In paragraph 5 they state that the two bales were lost when in the custody of the defendant first party.

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 RADHE LAL to the Agent. In the relief portion they pray for
 v. judgment against the defendant first party,
 E. I. RY. " as Agent of the East Indian Railway Company."
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MULLICK, A. In their application of the 24th October, 1922, asking
 C. J. for issue of process they describe the defendant not as
 Agent but as the East Indian Railway Company. In
 filing the deficit court-fee with their plaint on the
 28th October they again repeat this description.

Let us now see what the defendant did. The defendant who appeared on the 21st November, 1922, was not the Agent but the Company. The defendant who filed the written statement on the 3rd January was again not the Agent but the Company and no objection was taken to the competency of the suit until the 12th December, 1923. It is pointed out by the appellant that if that ground had been taken at the earliest moment the error could easily have been remedied within the period of limitation which appears to have not expired till about February 1923. In reply it is urged on behalf of the respondent that paragraph 1 of the written statement does take the objection. That paragraph runs as follows :

"That the suit as framed is not maintainable."

It is clear, however, from the fact that the Railway Company appeared on the 21st November and also filed a written statement that this objection had reference not to the designation of the defendant but to other grounds upon which the suit of the plaintiffs was liable to fail.

Let us next see what the Court did. In the order sheet it describes the suit as one between Radhe Lal, plaintiffs, and the East Indian Railway Company and others defendants. On the 21st November, 1922, the Court accepts a petition from the Railway Company for time and on the 3rd January, 1923, it accepts the written statement not from the Agent but from the

Company. It is true that process was issued upon the Agent but that was clearly in consequence of the provisions of section 140 of the Indian Railway, Act.

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It is clear therefore that the plaintiffs, the Company, and the Court, till the 13th December, 1923, all thought that the suit was not against the Agent but against the Railway Company.

Is this therefore a case in which the plaintiffs have deliberately chosen to proceed not against the principal but his servant? Clearly the plaint differs from that in *East Indian Railway Company v. Ram Lakhan Ram*(¹) for here in the prayer portion the plaintiffs claim against the defendant first party as Agent and they make it clear that they desire to proceed against the corporation and not against the Agent in his personal capacity.

In my opinion the facts of this case are such that the decision in *East Indian Railway Company v. Ram Lakhan Ram*(¹) has no application.

There was evidence on which the Subordinate Judge could find that this was a case of misdescription and his finding is conclusive.

The appellant also urges that the Munsif's orders of the 21st November, 1922, and of the 3rd January, 1923, are really orders substituting the Railway Company as a defendant in the suit. Order 1, rule 10, of the Civil Procedure Code would therefore apply and no question of limitation would arise. It is true that no formal amendment of the plaint was made. This should have been done but the omission was an irregularity and I do not think it vitiates the order of the Subordinate Judge.

With regard to the general question as to what is the correct way of designating the defendant in a claim against a Railway Company the point has been argued but it is unnecessary to deal with it in detail.

(1) (1924) I. L. R. 3 Pat. 230.

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The Civil Procedure Code of 1882 and the present Code both contemplate that a registered corporation should be described by its official name and title. In the case of an unincorporated or unregistered Company the names of the individuals must be given or the ordinary name by which the company is known and under which it carries on its business. There are companies constituted by Statute which are permitted to sue or be sued in the name of an officer or trustee. As to this class provision was made in section 435 of the Code of 1882 but Order XXIX of the present Code of 1908 is silent. The omission, however, is remedied in the appendix to the Code which makes it clear that this class of Company may be sued through the designated officer. Therefore in the case of the East Indian Railway the proper name under which the Company should be sued is the name and style under which it carries on its business. A suit against the Agent would be incompetent and would fix no liability upon the Company. The Company has no registered office in India but the Indian Railways Act provides that an officer named the Agent may be appointed in India upon whom service may be made of all notices and processes addressed to the Company. The appointment of such an officer, however, does not in any way relieve the plaintiff of the duty of suing the proper person and of correctly describing him.

If a plaintiff deliberately chooses to sue not the Company but the Agent he cannot by any decree which he obtains in the suit bind the Company. If, however, upon a fair reading of the plaint it is made out that the description of the defendant is a mere error and that the Company is the real defendant then the suit may proceed against the Company.

Here the Railway did in fact appear and conducted the case till the 12th December, 1923, on the footing that they were the real defendants in the suit.

In these circumstances the judgment of the learned Judge of this Court must be set aside and the

appeal must be decreed with costs. The order of the Subordinate Judge will be restored and the case will proceed to trial as directed by him.

KULWANT SAHAY, J.—I agree.

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PRIVY COUNCIL.

SOURENDRA MOHAN SINHA

v.

HARI PRASAD.*

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Santal Parganas—Mortgage of land in Santal Parganas—Jurisdiction of Civil Courts—Statutory restriction on interest recoverable—Interest after bringing of suit—Discretion of High Court—Santal Parganas Settlement Regulation, 1872, (III of 1872), section 6—Santal Parganas Settlement (Amendment) Regulation, 1908, (III of 1908), section 5.

The effect of section 5 of the Santal Parganas Settlement (Amendment) Regulation, 1908, which replaced section 6 of Regulation III of 1872, was to exclude the jurisdiction of the Civil Courts to try cases relating to land in the Santal Parganas only during such period as that land should be under settlement, the period being reckoned from the time when the land is notified as under settlement to the time when the settlement is completed.

Maha Prasad v. Ramani Mohan Singh(¹), applied.

A Civil Court exercising jurisdiction under section 5 of the Regulation of 1908 is a "Court having jurisdiction in the Santal Parganas", within the meaning of section 6 of the Regulation of 1872, and is bound by the rules relating to usury enacted by that section.

Those rules preclude compound interest from being decreed, and limit the amount which can be decreed for interest under a mortgage bond or other loan to a sum equal to the amount actually advanced less any sum which already has been paid by way of interest.

* PRESENT: Lord Shaw, Lord Carson, Sir John Edge and Mr. Ameer Ali.

(1) (1924) I. L. R. 42 Cal. 116; L. R. 41 I. A. 197.