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plaintiff in this case is not entitled to deduct the time from 28th March to 30th May 1913, he is entitled to such extension of time as may be necessary to give him a reasonable opportunity to enable him to file the suit in time.

We are indebted to Mr. G. S. Rao for having argued the case on behalf of the defendant at our request.

Order accordingly.

R. R.

CIVIL REFERENCE.

Before Mr. Justice Heaton and Mr. Justice Shah.

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April 7.

RUPCHAND MAKUNDAS, PLAINTIFF v. MUKUNDA
MAHADEV, DEFENDANT.*

Limitation—Limitation Act (IX of 1908), section 4—Exclusion of time—Certificate of conciliator—Time taken up in obtaining conciliator's certificate—Abolition by Government of the conciliation system—Closing of the Court during vacation—Suit filed on the opening day is suit filed in time—Dekkhan Agriculturists' Relief Act (XVII of 1879), section 48.†

The plaintiff advanced money on two bonds which became due on the 24th February 1910. He applied for a conciliator's certificate on the 13th February 1913 and obtained it on the 26th April 1913. From the 28th April to the 8th June 1913 the Court was closed for the Summer Vacation. In the meanwhile, Government abolished the conciliation system with effect from the 30th May 1913. The plaintiff filed the present suit to recover the money on the 9th June 1914 and claimed to exclude the time taken up in the conciliation proceedings :—

Held, that the suit, though filed on the 9th June 1913 when the conciliation system was abolished, was substantially one to which the provisions of

* Civil Reference No. 15 of 1913.

† The section runs as follows :—

48. In computing the period of limitation prescribed for any such suit or application the time intervening between the application made by the plaintiff under section 39 and the grant of the certificate under section 46 shall be excluded.

Chapter VI of the Dekkhan Agriculturists' Relief Act were applicable throughout the period of limitation which expired during the vacation, and the plaintiff was, therefore, entitled to deduct the period between his application and the grant of the certificate.

Held also, that assuming that section 48 of the Dekkhan Agriculturists' Relief Act did not apply, as the plaintiff's suit would be strictly in time up to a certain date during the vacation, on which day he could not file it as the Court was closed, he could file it on the re-opening of the Court under section 4 of the Limitation Act.

Held further, that when the law had created a limitation, and the party had been disabled from conforming to that limitation without any default in him, and he had no remedy over, the law would ordinarily excuse him.

THIS was a reference made by M. N. Choksi, Additional First Class Subordinate Judge of Dhulia.

The reference was in the following terms :—

The plaintiff Rupchand Makundas has filed the suit to recover Rs. 300, principal, and Rs. 159-12-0, interest, on two bonds dated the 3rd December 1908. The bonds are payable on 24th February 1910. The suit was filed on 5th June 1913. This Court was closed on account of the Summer Vacation from 28th April to 8th June 1913, both days inclusive. The plaintiff applied to the conciliator for a certificate under the Dekkhan Agriculturists' Relief Act on 13th February 1913 and obtained the certificate on 26th April 1913 (see Exhibit 4).

The question for decision is, whether the suit is in time? My opinion is in the negative.

REASONS.

When the suit was filed on 9th June 1913, the conciliators were abolished by Government Notification No. 3478, dated the 10th May 1913, and so there being no conciliators on the date of suit, no conciliator's certificate was necessary under section 48 of the Dekkhan Agriculturists' Relief Act, and so the period intervening between the dates for applying for and obtaining the certificate could not be excluded.

But the plaintiff applied for the certificate before the suit was time-barred, and also obtained the certificate at a time when such certificate was necessary. His period of limitation expired during the vacation, if the period before the conciliator be excluded. The suit is therefore not free from doubt, and so I refer the above question for the opinion of their Lordships.

SHAH, J. :—On the facts stated in the reference, we are clearly of opinion that the suit is not time-barred.

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The plaintiff applied for a certificate and obtained it at a time when the conciliation system was in existence and when under the provisions of the Dekkhan Agriculturists' Relief Act it was incumbent upon him to obtain such a certificate. He could have filed the suit in time and claimed the benefit of section 48 of the Dekkhan Agriculturists' Relief Act, had it not been for the fact that the Court was closed for the Summer Vacation from the 28th April to 8th June 1913. He filed the suit on the opening day after the vacation. The incident of the Local Government having cancelled the appointments of the conciliators on the 10th May with effect from the 30th May 1913 cannot make any difference in the plaintiff's position. The suit, though filed on the 9th June when the conciliation system was abolished, was substantially one, to which the provisions of Chapter VI of the Dekkhan Agriculturists' Relief Act were applicable throughout the period of limitation which expired during the vacation. The plaintiff is accordingly entitled to deduct the period between his application and the grant of the certificate.

Assuming, however, that section 48 of the Dekkhan Agriculturists' Relief Act does not apply, as at the date of the suit there were no conciliators in the district, it is clear that the plaintiff's claim is still in time on another ground. On the facts the position is clearly this that the plaintiff's suit would be strictly in time up to a certain date during the vacation, on which day he could not file it as the Court was closed. He could file it on the re-opening of the Court under section 4 of the Limitation Act. But by the Government notification the whole position was changed, and it became impossible for the plaintiff to file his suit in time. It is clear that the law does not compel a man to do that which he cannot possibly perform. Under the circumstances we think the proper rule to apply is that when

the law creates a limitation, and the party is disabled to conform to that limitation, without any default in him, and he has no remedy over, the law will ordinarily excuse him. The facts in this case clearly entitle the plaintiff to be excused.

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Order accordingly.

R. R.

APPELLATE CIVIL.

Before Mr. Justice Beaman and Mr. Justice Hayward.

THE FIRM OF DOLATRAM DWARKADAS (ORIGINAL PLAINTIFF),
APPLICANT, v. THE BOMBAY BARODA AND CENTRAL INDIA
RAILWAY COMPANY (ORIGINAL DEFENDANT), OPPONENT.*

1914.

June 12.

*Railway receipt—Mercantile document—Title—Endorsee—Interest
in the goods—Action for damages.*

A railway receipt is a mercantile document of title and the endorsee of the receipt has sufficient interest in the goods covered by it to maintain an action against the Railway Company for damages in respect of the goods covered by the receipt.

Amerchand & Co. v. Ramdas Vithaldas (1), followed.

APPLICATION under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) against the decree of G. V. Saraiya, Judge of the Court of Small Causes at Ahmedabad, in Civil Suit No. 3040 of 1912.

Suit against a Railway Company to recover damages. The facts necessary for the purpose of this report were as follows :—

On the 18th June, 1912 one Sukhdin Ramlal consigned 115 bags of wheat from Rahimabad, a station on the Oudh and Rohilkhand Railway, to Ahmedabad, a station

* Application No. 234 of 1913 under the extraordinary jurisdiction.

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on the Bombay Baroda and Central India Railway. The goods were consigned by Sukhdin to self, but he made an endorsement on the Railway receipt stating that the goods should be delivered to one Narandas Lakshmandas. The receipt was endorsed by Narandas in favour of the plaintiff Dolatram Dwarkadas.

The plaintiff paid the freight at Ahmedabad on the 4th July 1912 and signed the delivery book. He was allowed to take away the goods on the 19th idem on payment of Rs. 25-7-0 as demurrage. He then took delivery of 96 bags and refused to take the remaining 19 bags on the ground that they appeared to have been torn and empty and were not weighed by the station master of Ahmedabad though requested to do so.

The plaintiff brought the present suit to recover from the defendant Railway Company Rs. 277-13-6, that is, the value of the 19 bags of wheat including the amount of demurrage which was alleged to have been illegally levied.

The defendant Railway Company contended *inter alia* that the plaintiff being merely a commission agent was not entitled to maintain the suit.

The Small Cause Court Judge raised some issues of facts and recorded his findings thereon, but on the whole dismissed the suit on the ground that it was not maintainable by the plaintiff as he was a commission agent and as such could have no interest in the wheat not delivered.

The plaintiff preferred an application under the extraordinary jurisdiction (section 115 of the Civil Procedure Code, Act V of 1908) urging *inter alia* that even as commission agent the plaintiff was entitled to bring the suit, that the Railway receipt being an instrument of title and having been duly endorsed in plaintiff's favour, the defendant was bound to deliver the

consignment on production of the said receipt by the plaintiff, that the defendant having chosen to accept the freight and demurrage from the plaintiff and having taken his signature in anticipation of the delivery to him, was not entitled to refuse delivery and that the defendant having by its acts recognized the plaintiff as the person entitled to take delivery was estopped from contending that it was not liable for failure to give the delivery.

A *rule nisi* was issued which required the defendant to show cause why the decision of the Judge should not be set aside.

G. N. Thakore appeared for the applicant (plaintiff) in support of the rule.

Binning with *Crawford, Brown & Co.* appeared for the opponent (defendant) to show cause.

BEAMAN, J. :—After having given this nice question our most careful consideration we think that in view of the recent decision of this Appeal Court in *Amerchand & Co. v. Ramdas Vithaldas*⁽¹⁾, it must be taken as settled law that a railway receipt is a mercantile document of title. That being so, we think it necessarily follows that the endorsee of such a railway receipt has sufficient interest in the goods covered by it to maintain an action of this kind. We are, therefore, of opinion that the decision of the Subordinate Judge with Small Cause Court powers was not according to law. Reversing his decision upon the point just mentioned we agree with his findings of fact, and now order that the decree be made in the plaintiff's favour in the terms of those findings. The defendant Company must pay all the costs.

. . . *Decision reversed.*

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