

CIVIL RULE.

Before Mr. Justice Mitra and Mr. Justice Caspary.

1907
 Nov. 28.

NADIAR CHAND SHAHA

v.

WOOD.*

Railway Company—Notice of claim—“May be directed”—Indian Railways Act (IX of 1890), ss. 77, 140—Claim against Railway administered by a Railway Company.

A notice of claim for short delivery was served upon the Traffic Manager of a Railway administered by a Railway Company, and not on the Agent:—

Held, that such a notice was not a sufficient compliance with the provisions of sections 77 and 140 of the Indian Railways Act.

Secretary of State for India v. Dip Chand Poddar(1) referred to.

The word “may” in section 140 of the Indian Railways Act means that if a plaintiff is desirous of serving an effective notice of claim, the notice must be directed to the Manager or Agent as the case may be.

Great Indian Peninsula Railway Company v. Chandra Bai(2) followed.

Periannan Chetti v. South Indian Railway Company(3) dissented from.

BULK obtained by the plaintiff, Nadiar Chand Shaha, under s. 25 of the Provincial Small Cause Courts Act.

The plaintiff sued Mr. Wood, the Agent of the Assam-Bengal Railway Company, to recover damages for non-delivery of goods. His allegation was that he consigned certain goods from Calcutta and Dacca for conveyance to Chittagong, but they were short-delivered. He, also, stated that one of the consignments was not delivered at all.

The defendant Company pleaded, *inter alia*, that the suit was not maintainable, and that no notice was served according to the Railways Act.

The learned Small Cause Court Judge having found that the notices were served on the Traffic Manager, and not on the Agent

* Civil Rule No. 2751 of 1907, See No. 3539 of 1907.

(1) (1896) I. L. R. 24 Cal. 306. (2) (1906) I. L. R. 28 All. 552.

(3) (1898) I. L. R. 22 Mad. 137.

of the Railway Company, held that they were insufficient in law, and dismissed the plaintiff's suit.

Against this decision the plaintiff moved the High Court and obtained the Rule.

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Babu Sharat Chandra Basak, for the petitioner. The question is, whether the notice, which was given in this case to the Traffic Manager, was a sufficient notice under the Railways Act. Section 140 of the Act speaks of the persons upon whom notice is to be served; the section is not exhaustive, and a notice on the Traffic Manager is a sufficient compliance with the provisions of the Act. The case of *Periannan Chetti v. South Indian Railway Company*(1), and the judgment of Mr. Justice Tyabjee in the case of *East Indian Railway Company v. Jethmull Ramanand*(2), which was not reversed on the point that the Traffic Manager was the proper person to serve notice upon, support my contention. I also rely upon s. 229 of the Contract Act.

Mr. Garth (*Babu Joy Gopal Ghosha* with him), for the opposite party, was not called upon.

MITRA AND CASPERSZ, JJ. This is an application in a suit instituted in the Court of Small Causes at Chittagong by the plaintiff for recovery of damages from the Assam-Bengal Railway Company for short delivery, on different dates, of goods carried by the Railway Company under risk notes.

The plaint is extremely imperfect. It does not state the date or dates on which the notices of non-delivery were given to the defendant; it does not, also, state to whom the notices were given, and when and how they were served. The plaint is also silent as to the dates when the delivery in each case was expected.

The defendant, who is the Agent of the Assam-Bengal Railway Company, denied the receipt of proper notices and, also, denied the liability of the Company even if the notices were duly served.

(1) (1898) I. L. R. 22 Mad. 137.

(2) (1902) I. L. R. 26 Bom. 689.

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The learned Small Cause Court Judge came to the conclusion that the alleged notices of claim were insufficient, they, admittedly, having been served on the Traffic Manager, and not on the Agent of the Railway Company.

The main question argued before us in this Rule is whether the notice to the Traffic Manager was a sufficient compliance with the provisions of sections 77 and 140 of Act IX of 1890, the Indian Railways Act.

Section 77 of the Act requires that before a person can sue for refund for loss or non-delivery of goods, or for short delivery, he must prefer, in writing, a claim within six months from the due date of delivery by the Railway Company. Section 140 speaks of the mode of service of notices and the persons to whom the notices are to be directed. It says—"Any notice or other document required or authorized by this Act to be served on a Railway Administration, may be served, in the case of a Railway administered by the Government or a Native State, on the Manager, and, in the case of a Railway administered by a Railway Company, on the Agent in India of the Railway Company." The present case is one of a Railway Company not administered by the Government or any Native State, and the section requires that the notice should be served on the Agent in India. Admittedly, the notice or notices were served on the Traffic Manager.

The authorities in this Court as well as in the Bombay High Court are to the effect that the service of notice under section 77 of the Act must, in order to be effective, be served in the form and manner indicated in the Act itself, *i.e.*, section 140 of the Act. In the case of *The East Indian Railway Company v. Jethmal Ramanand*(1), Mr. Justice Tyabji held that section 140 of the Act was merely an enabling section and that the service of the notice on the Traffic Superintendent, or a person of that character, would be sufficient. The Court of appeal, however, consisting of Jenkins, C.J., and Crowe, J., held that the formalities required by the Legislature could not be dispensed with, and they came to the conclusion that a notice, in strict accordance with the provisions of the Act, must be served before an action could be

(1) (1902) I. L. R. 26 Bom. 669.

brought. The learned Judges were of opinion that the fact that the East Indian Railway Company knew of the claim of the plaintiff, and that intimation of the notice, which, in that case, was served on the B. B. and C. I. Railway Company, had been given to the East Indian Railway Company, were not sufficient; and they followed the decision of this Court in *Gunga Pershad v. The Agent, Bengal and North-Western Railway Company*(1).‡

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In the case of *The Secretary of State for India in Council v. Dip Chand Poddar*(2), this Court held that section 77 of the Railways Act required that the claim should be preferred to the Railway Administration, and that the words *Railway Administration* mean, having regard to the provisions of section 3 of the Act, the Manager in the case of a State Railway, and that the service of notice to the Traffic Manager was not sufficient. The case of *The Secretary of State for India in Council v. Dip Chand Poddar*(2) was one against a State Railway, but the principle of construction adopted by this Court was that the directions in section 140 must be strictly followed, and the word "may" in that section must be constructive as meaning *must*, if a plaintiff desires to make a claim.

A similar interpretation has been put on similar clauses in other enactments in which directions are given that notices should be served on a particular person in a particular manner. The case of notices under section 424 of the Civil Procedure Code, on the Secretary of State for India in Council, may be cited as an illustration of this principle of construction.

We cannot agree with Tyatji, J. or the learned Judges of the Madras High Court who decided the case of *Periannan Chett; v. South Indian Railway Company*(3), in the view they have taken as to the effect of the word "may" in section 140. In our opinion, the word "may" in this section means that, if a plaintiff is desirous of serving an effective notice of claim, the notice must be directed to the Manager, or Agent, as the case may be. This is, also, the view taken in *Great Indian Peninsula Railway Company v. Chandra Bai*(4) in which all the earlier cases have been cited and followed.

(1) H. C. Decisions, Ind. Ry. Cas. 82.

(3) (1898) I. L. R. 22 Mad. 137.

(2) (1896) I. L. R. 24 Calc. 306.

(4) (1906) I. L. R. 23 All. 552.

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We are, therefore, of opinion that the judgment of the Small Cause Court Judge is correct and that this Rule must be discharged.

The learned vakil for the petitioner has contended that the case should be sent back to the lower Court for a finding on the question whether the Traffic Manager was authorized by the Agent of the Assam-Bengal Railway Company to receive notices, but the question does not arise on the pleadings, and there is no evidence on the record on the point.

The Rule is accordingly discharged with costs.

Rule discharged.

S. C. G.