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the deficiency in court-fee on the appeal and I would accordingly allow him one month for this purpose conditional on the payment of Rs. 50 as costs.

Falshaw, J.

BHANDARI, C.J.—I agree.

FULL BENCH

Before Bhandari, C. J., Falshaw and Bishan Narain, JJ.

THE DOMINION OF INDIA,—*Defendant-Appellant.*

versus

FIRM AMIN CHAND-BHOLA NATH,—*Plaintiff-Respondent.*

Regular First Appeal No. 97 of 1949.

1956

May, 2nd

Indian Limitation Act (IX of 1908)—Article 31—Suit by consignee against carrier for compensation for part of the goods not delivered—Starting point for limitation of—Article 31—Scope of—"when the goods ought to be delivered"—Meaning of—Reasonable time—How to be determined—Limitation—When starts against a party—Cause of action when accrues against a carrier—Terminus a quo *under Article 31 in case of non-delivery or late delivery of an entire consignment or a part of it—What is—Provisions of the Limitation Act—How to be construed—Interpretation of Statutes—Doctrine of* stare decisis—*How far applicable.*

Held, that the limitation for a suit by the consignee against the carrier for compensation for a part of the goods not delivered starts on the expiry of the time fixed between the parties and in the absence of any such agreement the limitaton starts on the expiry of reasonable time which is to be decided according to the circumstances of each case.

Held, that the first column of Article 31 lays down the scope of this Article. It applies to cases in which goods are delivered to carriers to be carried and delivered at a destination. The goods are delivered for this purpose to the carrier under an agreement. This agreement may fix a

period of time within which or a particular date by which the carrier undertakes to deliver the goods at the destination. This may be done either by express term in the agreement or by necessary implication of the existence of such term in it. In such a case obviously the goods ought to be delivered by such stipulated period or date and the limitation starts on the expiry of the term fixed in the agreement for the purpose. This *terminus a quo in* such a case is applicable to a suit whether it be based on late delivery or non-delivery. On the other hand if there is no time fixed for delivery of the goods expressly or by necessary implication then the law implies an agreement on the part of the carrier to deliver the goods within a reasonable time. This rule is a rule of general application and is applicable to all cases in which an obligation is to be performed without fixing time for its performance. In such a case the limitation starts from the expiry of reasonable time whether the suit be based on late delivery or non-delivery.

Held, that the words "when the goods ought to be delivered" cannot be construed to mean when the carrier expresses its inability to or refuses to deliver the goods without doing violence to the language used by the legislature. These words mean the expiry of reasonable time within which the carrier should have delivered the goods to the consignee. Reasonable time cannot be construed to mean the time when the carrier expresses its inability to or refuses to deliver the goods. It also does not mean the ordinary time that is taken by the carrier in carrying the goods from one station to another in the ordinary course of business although it is a relevant consideration and in some cases may be an important consideration in determining the reasonable time. Normal time may or may not coincide with the expiry of the time when the goods ought to have been delivered and *per se* it is not sufficient to fix the time from which the limitation starts under Article 31 of the Limitation Act.

Held, that no inflexible rules can be laid down as to when the goods ought to be delivered in a given case when time is not expressly or impliedly fixed by a contract between the parties. The Court must decide the reasonable time within which the consigned goods ought to have been delivered having regard to all the circumstances of the case and evidence before it and then fix that date as the

date from which the limitation under Article 31 should start. The carrier is liable to deliver the goods as a bailor at the proper time (section 161, Contract Act), which is the same thing as reasonable time. Any delay which is attributable to the carrier's negligence or unreasonable conduct cannot be taken into consideration, while any delay, however, protracted if due to causes beyond the carrier's control or if caused or contributed to by the consignee should be taken into consideration in determining reasonable time. The traffic conditions prevailing at the time when the goods are given to the carrier and also the traffic conditions prevailing from that time till the time when the goods are ready for delivery at the destination are matters which may also be relevant for this purpose. The correspondence relating to the tracing of the goods by the railway authorities is not generally material, but if in that correspondence certain matters come to light which are relevant for the purposes of determining reasonable time of delivery, then to that extent subsequent correspondence would be relevant.

Held, that limitation starts against a party only when cause of action against that party has accrued and its liability has arisen. When the carrier undertakes to deliver goods at its destination, it is liable to do so at the proper or reasonable time. The cause of action against the carrier, therefore, should start from the expiry of reasonable time. It is at that time that the consignee becomes entitled to compensation. Therefore, the plain meanings of the words used in the third column of Article 31 are in accordance with the accrual of liability of the carrier to pay compensation.

Held, that in cases of non-delivery or late delivery of an entire or a part of consignment the *terminus a quo* should be the date fixed impliedly or expressly by agreement between the parties and failing that the date on which the carrier should have reasonably delivered the goods to the consignee.

Held, that it is well-established that the provisions of Limitation Act must be construed according to the plain meaning of the words used by the legislature and considerations of convenience or hardship are to be ignored.

Held, that there is no doubt that it is of utmost importance that law should be definite and settled and that it should not be fluctuating. It is also desirable that a course of practice which has continued since a long time should not be disturbed, but it is equally well-settled that if the course of practice is founded upon an erroneous construction of a statute there is no principle which precludes the Court from correcting the error. Any other conclusion would have the effect of the Courts of law enforcing a statute contrary to the intention of the legislature as expressed in the statute merely on the ground that wrong meanings have been accepted as correct for a certain length of time. It is not open to Judges to modify the plain meanings of statutory words on the ground of convenience, policy or on principles of *stare decisis.* Undoubtedy, if the words in a statute are capable of two interpretations or their meanings are doubtful, then the Courts of law should not up set a series of decisions over a considerable period even if the precedents have adopted a less logical view.

Held, that the principle of *stare decisis* should not be readily applied to matters which do not affect any rights in property or settled titles, nor should it be applied to matters which do not affect rights and liabilities under contracts, etc. This principle also does not apply to cases where there has been a conflict of decisions.

Case-law reviewed.

N. L. SALOOJA and PARTAP SINGH, for Appellant.

SOM DATT BAHRI and RAM SARUP, for Respondent.

ORDER.

BISHAN NARAIN, J.—The following question has been referred to the Full Bench: **Bishan Narain, J.**

> "From what time does the limitation start in a case in which the carrier delivers only part of the consigned goods and the claimant sues for compensation for remaining goods not delivered?"

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The facts relevant for the decision of this question are these: The firm Amin Chand-Bhola Nath of Jullundur City booked two consignments of tin ingots from Ram Kristopur to Jullundur City on the 22nd November, 1944, and the 7th July, 1945, respectively. The first consignment was delivered at Jullundur City on the 16th December, 1945, but it was found to be short by 11 cwts. The date of delivery of the second consignment is not clear from the record but that time it was found to be short by 5 cwts. There was certain amount of correspondence between the parties after this date and it was on the 28th April, 1947, that the consignees filed the present suit for the price of the tin ingots short delivered. The trial Court on the basis of the parties' correspondence held that as the railway administration had not refused to deliver the goods up to the 8th January, 1947, the suit filed on the 28th April, 1947, was within time. Then on the merits the trial Court granted a decree for part of the claim made by the plaintiff-firm. The railway appealed to this Court and challenged the correctness of the Court's finding on the question of limitation. The appeal came up before Dulat, J., and myself and finding serious divergence of opinion in this Court and in other Courts referred the question reproduced above for decision by a larger Bench.

It is conceded before us by both parties as was conceded before the Division Bench that in the circumstances of the present case Article 31 of the Indian Limitation Act, applies. It is also not disputed that there was no time fixed when the goods were to be delivered at Jullundur City. It is also nobody's case that there was any term in the contract of carriage which expressly or impliedly had any relevancy to the time when the goods were to be delivered at the destination.

Now Article 31 reads:—

"Description of suit	Period of Limitation	Time from which period begins to run
31. Against a carrier for compensation of non-delivery of, or delay in delivering, goods	One year ..	When the goods ought to be delivered

Article 30 and this Article lay down the period of limitation for a suit against a carrier in certain circumstances. The corresponding Article to Article 31 in the 1871 Act related only to delay in delivering goods. Its scope was extended to cases of non-delivery by the 1877 Act. The period of limitation at that time was fixed at two years by the 1871 Act, but it was reduced to one year in 1899. The words of column (3) "when the goods ought to be delivered" have, however, remained intact and unchanged since 1871 and in this reference these are the words that have to be construed. These words have to be given strict grammatical meaning and equitable considerations are out of place in provisions of law limiting period of limitation for filing suits or legal proceedings. The principles which should be followed in construing provisions of limitation were laid down in *Nagendra Nath* v. *Suresh* (1), in these words:—

> "The fixation of periods of limitation must always be to some extent arbitrary and may frequently result in hardship. But in construing such provisions equitable considerations are out of place, and the strict grammatical meaning of the words is the only safe guide."

(1) A.I.R. 1932 P.C. 165.

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Their Lordships of the Privy Council again adverted to this matter in *General Accident Fire and Life Assurance Corporation Limited* v. *Janmahomed Abdul Rahim* (1), and enuniciated this principle in these words:—

> "It may be desirable to point out that a Limitation Act ought to receive such a construction as the language in its plain meaning imports, * * * *
> Very little reflection is necessary to show that great hardship may occasionally be caused by statutes of limitation in cases of poverty, distress and ignorance of rights; yet the statutory rules must be enforced according to their ordinary meaning in these and in other like cases."

In this very case the Privy Council approved the statement of law by Mr. Mitra in his Tagore Law Lectures and that statement is:—

> "A law of limitation and prescription may appear to operate harshly or unjustly in particular cases, but where such law has been adopted by the state * * *
> * * * * * *
> it must if unambiguous be applied with stringency. The rule must be enforced even at the risk of hardship to a particular party. The Judge cannot on equitable grounds enlarge the time allowed by the law, postpone its operation, or introduce exceptions not recognized by it."

It is, therefore, well-established that the provisions of Limitation Act must be construed according to the plain meaning of the words used by the legislature

(1) A.I.R. 1941 P.C. 6.

and considerations of convenience or hardship are to be ignored.

The first column of Article 31 lays down the scope of this Article. It applies to cases in which goods are delivered to carriers to be carried and delivered at a destination. The goods are delivered for this purpose to the carrier under an agreement. This agreement may fix a period of time within which or a particular date by which the carrier undertakes to deliver the goods at the destination. This may be done either by express term in the agreement or by necessary implication of the existence of such term in it. In such a case obviously the goods ought to be delivered by such stipulated period or date and the limitation starts on the expiry of the time fixed in the agreement for the purpose. This *terminus a quo* in such a case is applicable to a suit whether it be based on late delivery or non-delivery. This is also not disputed by the parties before us. On the other hand if there is no time fixed for delivery of the goods expressly or by necessary implication then the law implies an agreement on the part of the carrier to deliver the goods within a reasonable time. This rule is a rule of general application and is applicable to all cases in which an obligation is to be performed without fixing time for its performance. In such a case the limitation starts from the expiry of reasonable time whether the suit be based on late delivery or non-delivery. This is also conceded by both the parties before us.

The parties are, however, not agreed on the circumstances which ought to be taken into consideration in determining reasonable time and it is on this question that there appears to be a serious divergence in the views expressed in this Court and in other Courts. The position taken on behalf of the consignees before us is that in cases of non-delivery

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limitation starts only from the time when the carrier definitely refuses or expresses its inability to deliver the goods whether the goods are not delivered at all or are only partly not delivered. On the other hand it is contended on behalf of the railway authorities that the railway carries goods regularly and the reasonable time should be determined to be that which is normally or usually or ordinarily taken for this purpose.

The argument advanced on behalf of the consignees is that as long as the railway is enquiring into the matter there is no refusal to deliver the goods and it is open to the railway to effect delivery on completion of this enquiry. There is no doubt that as observed by Chakravartti, J., in *Jainarain* v. *The Governor-General of India* (1), there is impressive array of authorities which favours this view. The earliest case that has been cited in support of this view is a Madras decision in *The Madras and Southern Marhatta Railway Co., Limited, Madras* v. *Bhimappa and another* (2). This judgment neither relies on any earlier decision nor gives any reason for this view. This decision was accepted to be correct by a Division Bench of the Allahabad High Court in *Jugal Kishore* v. *The Great Indian Peninsula Railway* (3). In the Allahabad case, it was held that as long as the matter was being enquired into there could not be any inability or refusal to deliver the consignment and in the absence of such an inability or definite refusal it cannot be said that reasonable time within which the goods should have been delivered had expired and limitation under Article 31 had started to run. These decisions were then

(1) A.I.R. 1951 Cal. 462.
(2) (1912) 17 I.C. 419.
(3) I.L.R. 45 All. 43.

followed and relied upon in *Mutsaddi Lal* v. *Governor-General in Council* (1), *South Indian Railway Company* v. *Narayana Iyer* (2), *Palanichami Nadar* v. *Governor-General of India in Council* (3), *Seetharama* v. *Hyderabad State* (4), *Raigarh Jute Mills* v. *Commissioners, Calcutta Port* (5), *Jainarain* v. *The Governor-General of India* (6), *Governor-General in Council* v. *S. G. Ahmed* (7), *Dominion of India* v. *S. G. Ahmed* (8), *Government of Mysore* v. *Kapurchand and Brothers* (9), *Manasarovar Agencies* v. *Governor-General in Council* (10), and other cases. It appears to me that it is not necessary to discuss these cases separately for the reason that in all these decisions reliance has been placed on *The Madras and Southern Marhatta Railway Co., Limited, Madras* v. *Bhimappa and another* (11), and *Jugal Kishore* v. *The Great Indian Peninsula Railway* (12), and subsequent cases to that effect.

The view taken in Patna has not been uniform. In *Gopi-Ram Gouri Shankar* v. *G.I.P. Railway Company,* (13), it was held to be a question of fact to be decided on evidence produced in each case. In *Bengal and North-Western Railway Company* v. *Kameshwar Singh* (14), *Governor-General in Council* v. *Kasiram Marwari* (15), and *Union of India* v. *Bansidhar Modi,* (16), a contrary view was taken and it was held that the consignee need not bring his suit until the carrier states that it has no intention to deliver the goods.

(1) A.I.R. 1952 All. 897 (F.B.).
(2) A.I.R. 1924 Mad. 567.
(3) A.I.R. 1946 Mad. 133.
(4) A.I.R. 1950 Mad. 30.
(5) A.I.R. 1947 Cal. 98.
(6) A.I.R. 1951 Cal. 462.
(7) A.I.R. 1952 Nag. 77.
(8) A.I.R. 1954 Nag. 115.
(9) A.I.R. 1953 Mysore 16.
(10) A.I.R. 1955 Mysore 123.
(11) (1912) 17 I.C. 419.
(12) I.L.R. 43 All. 43.
(13) A.I.R. 1927 Ptt. 335.
(14) A.I.R. 1933 Pat. 45.
(15) A.I.R. 1945 Pat. 268.
(16) A.I.R. 1954 Pat. 548.

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The view taken by this Court in this matter has also not been uniform. The earliest case brought to our notice is *Secretary of State* v. *The Dunlop Rubber Company Limited, Delhi* (1). In this case a Division Bench observed that the question as to when the recovery of the goods became hopeless was immaterial. The next case in point of time that was brought to our notice was the decision by Khosla, J. in *Dominion of India* v. *Messrs. Khurana Brothers,* (2). In this case the learned Judge came to the conclusion that a slightly more liberal interpretation should be given to these words and the date of non-delivery should be considered to be that on which the consignee is informed that the goods are not available for delivery. The learned Judge further observed in this judgment :—

> "Where a consignee, however, is vigilant enough to make frequent enquiries at the place where the consignment was expected and the Railway do not give him a definite reply regarding the consignment, the consignee may assume that the goods may still be received, and it is only when a definite refusal is given to him that he can start to pursue his remedy."

The learned Judge noticed *Secretary of State* v. *The Dunlop Rubber Company, Limited, Delhi* (1), but distinguished it. This decision of Khosla, J., and the decisions of the other High Courts referred to above were approved by a Division Bench of this Court consisting of Harnam Singh and Dulat, JJ., in *Dominion*

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(1) I.L.R. 6 Lah. 301.

(2) A.I.R. 1951 Simla 254.

of India v. *Amar Singh* (1). The main judgment is written by Harnam Singh, J., who observes:—

> "Article 31 prescribes a period of one year from the time when the goods ought to be delivered. If there is a contract between the parties as to the date of delivery of the goods that will be the date on which the goods ought to be delivered for purposes of Article 31. In case there is no such contract the period of one year should be calculated from the expiry of a reasonable time within which the goods ought to have been delivered having regard to the circumstances of the case *and the conduct of the parties.*"

The learned Judge then considered the correspondence that had passed between the parties long after the delivery of the consignment was due and came to the conclusion that till just before the filing of the suit the railway administration was not in a position to give delivery of the consigned goods and the limitation did not start from a date earlier than this. It is clear from this judgment that according to the learned Judges the conduct of the parties evidenced by the correspondence started by the consignee demanding the delivery and the railway making enquiries into the matter was relevant. In this Division Bench case no reference was made to the earlier Division Bench case of the Lahore High Court reported in *Secretary of State* v. *The Dunlop Rubber Company, Limited, Delhi* (2).

In *Balli Mal and others* v. *Dominion of India* (3), Kapur, J., however, took a different view and held that the words in question cannot mean the date when the railway finally refuses to deliver the goods

(1) 1955 P.L.R. 403.
(2) I.L.R. 6 Lah. 301.
(3) A.I.R. 1954 Pb. 44.

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and that when the goods ought to be delivered is a question of fact depending on all the circumstances of each case. The learned Judge followed the dictum in *Secretary of State* v. *The Dunlop Rubber Company, Limited, Delhi* (1), but it appears that his attention was not invited to the judgment of Khosla, J., referred to above.

This question again came up for decision in *Rajmal Pahar Chand* v. *Dominion of India* (2), before Falshaw and Kapur, JJ. Kapur, J., wrote the main judgment with which Falshaw, J., agreed. In this judgment the entire case law was reviewed and the view taken in the Allahabad, Madras and Patna cases was not approved and it was held that merely because the railway authorities write that they are making enquiries as to what had happened to the goods does not make any difference to the meaning of the words "ought to be delivered". It was further observed:—

> "Besides I find no warrant, and I say so with the greatest respect, for the proposition that a claimant by starting into correspondence with the defendant can enlarge the period of limitation. "Ought to be delivered" in my opinion would remain the same, i.e., the *normal period which a consignment would take to travel from one station to another,* and should be irrespective of any promises of enquiry made by the Railway or actual enquiries by the Railway."

From the examination of the entire case law, however, it is clear that most of the decisions are in favour of the view that the limitation under Article 31 for non-delivery of the consigned goods does not

(1) I.L.R. 6 Lah. 301.
(2) A.I.R. 1955 Punjab 83.

start till the railway expresses its inability to or refuses to deliver the goods. This conclusion is based on the grounds, broadly speaking, that on completion of enquiries the railway authorities may succeed in tracing the goods and in offering delivery to the claimants, that this view prevents the claimants from filing suits which may subsequently become premature or unnecessary and that till railway refuses to deliver the goods, it is not a case of non-delivery. It must be admitted that this conclusion has the merit of fixing a definite date from which limitation should start and enables the consignee to wait till the carrier has completed the enquiry necessary to trace the goods.

It appears to me, however, with the respect to the learned Judges, that the words "when the goods ought to be delivered" cannot be construed to mean when the carrier expresses its inability to or refuses to deliver the goods without doing violence to the language used by the legislature. This construction does not appear to me to be in consonance with the intention of the legislature. If the intention of the legislature had been to fix the date of refusal to deliver the goods as the time for starting the limitation then it would not have been difficult for it to have used appropriate words for the purpose, e.g., "the date of refusal to deliver" and it may be pointed out that similar words have been used in Articles 18 and 78 of the Indian Limitation Act. Moreover, if these meanings are given to these words then they will be of no assistance in fixing the *terminus a quo* in cases where a suit is filed against a carrier for late delivery of the consigned goods. In cases of late delivery there cannot be in the nature of things a refusal to deliver nor can a carrier express its inability to deliver the goods, but on the other hand the carrier must have offered or delivered the goods although

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after the expiry of the time when the goods ought to have been delivered. It will be against all recognised canons of construction of statutes to construe these words in different senses in the same Article when there is nothing in this Article to suggest that the words have been used in different senses in the third column of Article 31 as far as they are applicable to suits based on late delivery or suits based on non-delivery. It must be remembered that in substance the cause of action in such cases is that the goods have not been delivered when they ought to have been delivered and this point of time may not necessarily coincide with the carrier's expression of inability to or refusal to deliver the goods. The carrier may do so before or long after the expiry of reasonable time.

It was argued that this more or less uniform view expressed by majority of the High Courts is convenient both to the carrier as well as to the consignee. It enables the carrier to investigate the matter and trace the goods without undue hurry and the consignee is not compelled to file a suit before the investigation is complete. It was also contended that the adoption of any other view may result in hardship to the consignees who are naturally anxious to wait for completion of enquiries by the carrier and to get the goods before suing for compensation. It will be noticed that these arguments are not applicable to cases of late delivery. When the goods or a portion thereof are not delivered by the railway the consignee generally starts correspondence demanding his goods or compensation when in his opinion reasonable time for delivering the goods has already expired. It is true that considering distances and different zones and he complicated nature of the organization of the railway in this country it takes the railway authorities some time in enquiring into the

matter and in tracing the goods, but the period of one year provided under Article 31 and the additional period of two months for giving notice under section 80, Civil Procedure Code, appear to me to be long enough to enable a vigilant consignee to get the enquiries completed and in case of non-delivery of the goods to file a suit within the prescribed time. In actual practice there are likely to be very few cases in which a consignee will be in such a hurry to file a suit, that it may be disposed of on the ground that it has been filed before the expiry of reasonable time. In any case, in accordance with the Privy Council, as I have already stated, this consideration that it may cause inconvenience or hardship should be ignored by the Courts of law when dealing with the question of limitation.

For these reasons I find myself unable to accept, with great respect to the learned Judges, the construction that has been placed on the words "when the goods ought to be delivered" by Khosla, J., in *Dominion of India* v. *Messrs. Khurana Brothers* (1) and by Harnam Singh and Dulat JJ. in *Dominion of India* v. *Amar Singh,* (2) I am of the opinion that the "reasonable time" should not be construed so as to mean the time when the carrier expresses its inability to or refuses to deliver the goods.

It was next urged by Shri Som Datta Bahri on behalf of the consignees that since 1911 all the Courts in India have held that in cases of non-delivery limitation under Article 31 does not start till the delivery of the goods is refused by the Railway authorities and that it would be improper and inconvenient if these meanings of the words are not accepted by this Court. The learned counsel has for this purpose placed his reliance on the observations of the Supreme Court in

(1) A.I.R. 1951 Simla 254.
(2) 1955 P.L.R. 403.

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Sha Mulchand & Co. Ltd. v. *Jawahar Mills Ltd.* (1). In that case the question arose whether Article 181, Indian Limitation Act, was applicable to all applications or whether its operation is limited to appliiations under the Code of Civil Procedure. Their Lordships of the Supreme Court in that case observed and it is on this passage that reliance has been placed by the learned counsel for the consignees:—

> "It does not appear to us quite convincing, without further argument, that the mere amendment of articles 158 and 178 can *ipso facto* alter the meaning which, as a result of a long series of julicial decisions of the different High Courts in India, came to be attached to the language used in article 181. This long catena of decisions may well be said to have, as it were, added the words "under the Code" in the first column of that article. * *
> * * * * * *
> If, however, as a result of judicial construction, those words have come to be read into the first column as if those words actually occurred therein, we are not of opinion, as at present advised, that the subsequent amendment of articles 158 and 178 must necessarily and automatically have the effect of altering the long acquired meaning of article 181 on the sole and simple grounds that after the amendment the reason on which the old construction was founded is no longer available."

It appears to me, however, that these observations of their Lordships of the Supreme Court have no relevency to the present case. In the present case the

(1) 1953 S.C. 351.

argument is that on account of long *catena* of decisions the words "when the goods ought to be delivered" have acquired the meaning of "when the railway refuses to or expresses its inability to deliver the goods". It cannot be said that these words of the statute, if construed according to their plain meanings, are capable of the meanings sought to be put by the learned counsel for the consignees. These meanings if adopted would result in introducing new words in Article 31 of the Limitation Act and this result should not be readily accepted. There is also no substance in the argument that nevertheless the doctrine of *stare decisis* should be observed in the present case and the construction of Article 31 placed by most of the Courts in India should not now be disturbed. There is no doubt that it is of utmost importance that law should be definite and settled and that it should not be fluctuating. It is also desirable that a course of practice which has continued, since a long time should not be disturbed. It appears to me, however, that these principles are not applicable to the present case. This is a case in which it is necessary to construe a statute and it is well settled that if the course of practice is founded upon an erroneous construction of a statute there is no principle which precludes he Court from correcting the error. Any other conclusion would have the effect of the Courts of law enforcing a statute contrary to the intention of the legislature as expressed in the statute merely on the ground that wrong meanings have been eccepted as correct for a certain length of time (vide *Hamilton* v. *Baker* (1). It is not open to Judges to modify the plain meanings of statutory words on the ground of convenience, policy or on principles of *stare decisis*. Undoubtedly, if the words in a statute are capable of two interpretations or their meanings are doubtful, then the Courts of law should not upset a series

(1) 14 A.C. 209.

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of decisions over a considerable period even if the precedents have adopted a less logical view. In the present case, however, as I have already stated, the statutory words cannot bear the meanings sought to be placed on them by Shri Som Datta Bahri. It was held by their Lordships of the Privy Council in *Tricomdas Gooverji Bhoja* v. *Gopinath Jiu Thakur* (1), that when the terms of a statute are clear then even a long and uniform course of judicial interpretation of it may be overruled, if it is contrary to the meaning of the enactment. This is the principle of law which, to my mind, applies to the present case. I may state at this stage that their Lirdships of the Supreme Court in *Pate* v. *Pate* (2), did not hesitate to overrule an interpretation of a section after an interval of 44 years in spite of the fact that that interpretation had been current for all this period. In that case, it was observed:—

> "The present is not one of those cases in which inveterate error is left undisturbed because titles and transactions have been founded on it which it would be unjust to disturb."

The principle of *stare decisis* should not be readily applied to matters which do not affect any rights in property or settled titles, nor should it be applied to matters which do not affect rights and liabilities under contracts, etc. The words which are to be construed in this judgment obviously relate to matter of procedure only and do not relate to matters affecting rights and titles in properties. Moreover, it was held in *Pirji Safdar Ali* v. *Ideal Bank* (3), that the principles of *stare decisis* do not apply to cases where

(1) I.L.R. 44 Cal. 759.
(2) (1915) A.C. 1100.
(3) A.I.R. 1949 E.P. 94 (F.B.).

there has been a conflict of decisions. From the discussion of the case law in the earlier part of this judgment, it is clear that there has been no such uniformity or unanimity in the decisions of various High Courts as to invite the application of the principle of *stare decisis*. I am, therefore, of opinion that the principle of *stare decisis* should not deter us from construing the words used in column (3) of Article 31 of the Limitation Act according to their plain meanings.

This brings me to the contention of Mr. Saluja on behalf of the railway authorities that the limitation under Article 31 starts on the expiry of normal or usual or ordinary time when the goods ought to be delivered. It is argued that the railway is carrying goods regularly and there is always a normal or ordinary time within which the goods are carried between specified stations and this is the time that is contemplated as reasonable time under Article 31. In support of this argument the learned counsel has relied on the decision of the Division Bench in *Rajmal Pahar Chand* v. *Dominion of India* (1). In this case it was observed by Kapur, J., that the words "when the goods ought to be delivered" mean the normal period which a consignment would take to travel from one station to another station. This view has, however, not been accepted in Allahabad, Calcutta, Madras and Mysore,—vide *Jugal Kishore* v. *The Great Indian Peninsula Railway* (2), *Mutsaddi Lal* v. *Governor-General in Council* (3), *Jainarain* .v. *The Governor-General of India* (4), *Seetharama* v. *Hyderabad State* (5), and *Manasarovar Agencies* v. *Governor-General in Council* (6).

(1) A.I.R. 1955 Punjab 83.
(2) I.L.R. 45 All. 43.
(3) A.I.R. 1952 All. 897 (F.B.).
(4) A.I.R. 1951 Cal. 462.
(5) A.I.R. 1950 Mad. 30.
(6) A.I.R. 1955 Mysore 123.

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It appears to me that the time normally or ordinarily taken in carrying the goods from one place to another may be a relevant consideration and in some cases may be an important consideraion, but it cannot be said that *per se*, it is sufficient to fix the time from which the limitation starts under Article 31 of the Limitation Act. As is observed by Bind Basni Prasad, J., in *Mutsaddi Lal's case* (1).

> "It is significant to note that the phrase is not followed by the phrase "in the normal course of business." If the law contemplated only the period required in the ordinary course of business for the transit then the words "in the ordinary course of business" should also have occurred there".

I have already said that the contractual liability of a carrier in the absence of any express or implied agreement is to deliver the goods within reasonable time. Obviously this reasonable time is not the ordinary time that is taken by the railway in carrying the goods from one station to another in the ordinary course of business. Normal time may or may not coincide with the expiry of the time when the goods ought to have been delivered. It was observed by Lord Herschell in *Hick* v. *Raymond and Reid* (3):—

> "There is of course no such thing as a reasonable time in the abstract. It must always depend upon circumstances. * * * * * * * * * * * *. But what may without impropriety be termed the ordinary circumstances differ in particular ports at different times of the year. * * * * * * * * * * * *. Could it

(1) A.I.R. 1952 All. 897 (F.B.).
(2) 1893 A.C. 22.

be contended that in so far as it lasted beyond the ordinary period the delay caused by it was to be excluded in determining whether the cargo had been discharged within a reasonable time? It appears to me that the appellant's contention would involve constant difficulty and dispute and that the only sound principle is that the "reasonable time" should depend on the circumstances which actually exist."

It is obvious on these observations that ordinary time is not the same thing as reasonable time. I am therefore, of the opinion, with due respect, that the observations in *Rajmal Pahar Chand* v. *Dominion of India* (1), to the effect that the words used in the third column of Article 31 of the Indian Limitation Act mean the normal period which is required for delivery of the consignment are not in accordance with law.

The correct position appears to me to be that no inflexible rules can be laid down as to when the goods ought to be delivered in a given case when time is not expressly or impliedly fixed by a contract between the parties. The Court must decide the reasonable time within which the consigned goods ought to have been delivered having regard to all the circumstances of the case and evidence before it and then fix that date as the date from which the limitation under Article 31 should start. The carrier is liable to deliver the goods as a bailor at the proper time (section 161 Contract Act) which is the same thing as reasonable time. Any delay which is attributable to the carrier's negligence or unreasonable conduct cannot be taken into consideration, while any delay

(1) A.I.R. 1955 Punjab 83.

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however, protracted if due to causes beyond the carrier's control or if caused or contributed to by the consignee should be taken into consideration in determining reasonable time. In *Hick* v. *Raymond and Reid* (1), Lord Watson observed:—

> "When the language of a contract does not expressly, or by necessary implication, fix any time for the performance of a contractual obligation, the law implies that it shall be performed within a reasonable time. The rule is of general application, and is not confined to contracts for the carriage of goods by sea. In the case of other contracts the condition of reasonable time has been frequently interpreted; and has invariably been held to mean that the party upon whom it is incumbent duly fulfils his obligation, notwithstanding protracted delay, so long as such delay is attributable to causes beyond his control, and he has neither acted negligently nor unreasonably."

The traffic conditions prevailing at the time when the goods are given to the carrier and also the traffic conditions prevailing from that time till the time when the goods are ready for delivery at the destination are matters which appear to me to be relevant for this purpose. The correspondence relating to the tracing of the goods by the railway authorities is not generally material, but if in that correspondence certain matters come to light which are relevant for the purposes of determining reasonable time of delivery, then to that extent subsequent correspondence would be relevant. It must be remembered that limitation starts against a party only when cause of action

(1) 1893 A.C. 22.

against that party has accrrued and its liability has arisen. When the carrier undertakes to deliver goods to its destination it is liable to do so at the proper or reasonable time. The cause of action against the carrier, therefore, should start from the expiry of reasonable time. It is at that time that the consignee becomes entitled to compensation. Therefore, the plain meanings of the words used in the third column of Article 31 are in accordance with the accrual of liability of the carrier to pay compensation. It is true that it is desirable that the date from which limitation starts in a case should be definite and specific, otherwise a suit when filed may be held to be premature or barred by time and thereby defeat a just claim. I am also conscious of the fact that the conclusion to which I have arrived in this case brings about a certain amount of uncertainty and flexibility which is not desirable in matters of limitation, but the words used by the legislature are so plain that, to my mind, they admit of only one meaning and it is not possible to arrive at any other conclusion. It is to be observed that these are the only meanings which are appropriate to the nature of the case as it is at that point of time that the consignee becomes entitled to compensation from the carrier.

This brings me to the point as to when the limitation starts in a case which relates to a claim for non-delivery or late delivery of part of the consignment as distinct from the entire consignment. Applying the same test as in cases of non-delivery or late delivery of an entire consignment, it is clear that the *terminus a quo* should be the date fixed implidly or expressly by agreement between the parties and failing that the date on which the carrier should have reasonably delivered the goods to the consignee. In cases of non-delivery of part of the consignment also there is a conflict of opinion as to the time which should be

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considered reasonable for the purposes of Article 31 of the Indian Limitation Act. As far as this Court is concerned, it was held in *Secretary of State* v. *The Dunlop Rubber Company Limited, Delhi* (1), that the limitation starts from the time part of the consignment was delivered as the time within which the other part was delivered must be held to be reasonable time. This was accepted to be correct in *Dominion of India* v. *Messrs. Khurana Brothers* (2), by Khosla, J. On the other hand contrary view has been taken by a Division Bench of this Court consisting of Kapur and Soni, JJ., in an unprinted judgment. [*The Governor-General in Council* v. *Firm Balas Rai-Badri Das* (3)]. In that case the main judgment was written by Kapur, J., who held that there is no presumption that part of the consignment not delivered should have been delivered on the same date that the other part was delivered. In *Messrs. Brij Mohan-Rameshwar Das* v. *Union of India* (4), Kapur, J., sitting single, however, took a slightly different view of the matter and came to the conclusion following *Gopi Ram Gouri Shankar* v. *G. I. P. Railway Company* (5), that where part of a consignment has been delivered on a certain date the time when the consignment as a whole ought to have been delivered is manifestly the time when the greater part of the consignment arrived at its destination. The learned Judge fully discussed the case law in that judgment and observed that merely because the railway keep on saying that they are making enquiries does not enlarge the period of limitation under Article 31 of the Limitation Act. In *Gopi Ram's case* (5), and *Union of India* v. *Bansidhar Modi* (6), the view taken in Secre-

(1) I.L.R. 6 Lah. 301.
(2) A.I.R. 1951 Simla 254.
(3) R.F.A. No. 38 of 1949.
(4) R.S.A. 256 of 1951.
(5) A.I.R. 1927 Pat. 335.
(6) A.I.R. 1954 Pat. 548.

tary of State v. *The Dunlop Rubber Company, Limited, Delhi* (1), was adopted, while in *Union of India* v. *Adam Hajee* (2), the other view was accepted. In *Palanichami Nadar* v. *Governor-General of India in Council* (3), it was held that limitation starts from the date of the refusal to deliver the goods and the same view was taken in *Government of Mysore* v. *Kapurchand and Brothers* (4), *Governor-General in Council* v. *S. G. Ahmed* (5), *Raigarh Jute Mills* v. *Commissioners, Calcutta Port* (6), and other cases.

Now when goods are handed over to a carrier there is no stipulation that the entire consignment will be carried in the same wagon. The consignment may be carried in different wagons. Even, if the goods are loaded at the starting station in one wagon they may be split up *en route* in view of traffic conditions. It is also possible that in case of accident, for example, floods, fire or collision, etc., part of the goods salvaged may be delivered earlier than the remaining portion and yet both the portions may be delivered within reasonable time. It appears to me that the carrier is under an obligation to deliver the whole of the consignment as well as part of the consignment within reasonable time and this time must be computed according to the circumstances of each case. It may be and it can be said that generally it is that in many cases the fact that part of the consignment was delivered within certain time has ample bearing in deciding this matter, but it cannot follow as a matter of law that that time must be held to be resonable time also for the undelivered part. I am, therefore, of the opinion that in cases of partial non-delivery or partial late delivery of the

(1) I.L.R. 6 Lah. 301.
(2) A.I.R. 1954 Tra. Co. 362.
(3) A.I.R. 1946 Mad. 133.
(4) A.I.R. 1953 Mysore 16.
(5) A.I.R. 1952 Nag. 77.
(6) A.I.R. 1947 Cal. 98.

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consignment also limitation under Article 31 starts on the expiry of reasonable time when the goods ought to have been delivered and I say so with due respect to the Judges who have come to different conclusions in this matter.

For these reasons I would answer the question referred to this Bench thus:—

> "The limitation in such cases starts on the expiry of the time fixed between the parties and in the absence of any such agreement the limitation starts on the expiry of reasonable time which is to be decided according to the circumstances of each case."

Bhandari, C. J. BHANDARI, C.J.—I agree.

Falshaw, J. FALSHAW, J.—I agree.

B. R. T.

CIVIL MISCELLANEOUS.

Before Bishan Narain, J.

M/S. MUKANDLAL-MADANLAL,—*Petitioners.*

versus

THE DIRECTOR OF INDUSTRIES, PEPSU GOVERNMENT, PATIALA AND OTHERS,—*Respondents.*

Civil Miscellaneous No. 159/P of 1955.

1957

March, 26th

Constitution of India (1950)—Article 226—Order cancelling licence—When can be interfered with—Article 19(1)(g)—Reasonableness of restrictions—How to be determined—Control orders—Whether must lay down tests for cancelling licences—Authority cancelling the licence—Whether acts judicially and is under obligation to hear the licencee whose licence is cancelled—Opportunity to be heard—Scope of.

Held, that ordinarily the High Court will not interfere with an order cancelling the licence but when it becomes clear that the order has been made by the authority