

THE INDIAN LAW REPORTS

PUNJAB SERIES

CIVIL APPELLATE

Before Harnam Singh and Dulat, JJ.

UNION OF INDIA,—*Petitioner.*

versus

AMAR SINGH, ETC.—*Respondents*

Regular Civil Appeal No. 76 of 1952.

Code of Civil Procedure (V of 1908)—Section 80— 1954
Notice—Requirements of—Goods delivered by one Railway
Administration to the other Railway Administration—Posi- August, 17th
tion of the latter Railway Administration, whether that of
bailee—Indian Contract Act—Section 161 and Indian Rail-
ways Act, section 72(1)—Indian Limitation Act, Section 19
and Articles 30 and 31—Suit for compensation for non-de-
livery—Whether suit governed by Article 30 or 31—Expres-
sion “when the goods ought to be delivered” in Article 31,
interpretation of—Acknowledgment—Requirements of.

Held, that notice under section 80, Civil Procedure Code, should not be strictly construed as if it were a pleading and it need not set out all the details and facts of the case. Notice under section 80 of the Code of Civil Procedure, must substantially fulfil its object in informing the parties concerned generally of the nature of the suit intended to be filed.

Held, that when the North Western Railway Administration delivered the goods to the Eastern Punjab Railway Administration at Khem Karan with the authority of

the Plaintiff, then according to the original intention of the parties the Eastern Punjab Railway Administration became the immediate bailee of the plaintiff.

Held, that in Article 31 as it stood prior to 1899, the words "non-delivery of, or" were not to be found. By section 3 of Act X of 1899, the Legislature amended Article 31, by inserting the words "non-delivery of or" in Article 31 before the words "delay in delivering goods". By this amendment the Legislature clearly indicated its intention that Article 31 should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort.

Held, that the time "*when the goods ought to be delivered*" within the meaning of column III of Article 31 is not the time when the goods should have been delivered in the normal course, at least in a case where there is no time fixed for delivery, but the time when *they ought to be delivered* having regard to the consideration of circumstances which all reason would require to be taken into account. The onus is on the carrier of proving when goods consigned for carriage ought to be delivered. The carrier is to deliver the goods within reasonable time. In the expression "reasonable time" the word "reasonable" cannot mean a definite and fixed time for it will not be "reasonable" if it were not sufficiently elastic to allow the consideration of all circumstances which all reason would require to be taken into consideration.

Held, that acknowledgment in section 19 of the Limitation Act may be in any form and may be expressed or implied. All that is required is that the document stated to contain the acknowledgment of liability must clearly contain within itself the meaning that the party is admitting its liability.

Babu Lal alias Babu Ram v. The Dominion of India (1), *Union of India v. Adam Hajee Peer Mohamad Essack and another* (2), *The Governor-General in Council v. Kasiram*

(1) 54 P.L.R. 398 F.B.

(2) A.I.R. 1954 Travancore Cochin 362

Marwari (1), *Jugal Kishore v. G.I.P. Railway* (2), *Palanichami Nadar v. Governor-General of India in Council* (3), *Jai Narain v. Governor-General of India* (4), *Dominion of India v. Khurana Brothers* (5), *Radhe Sham Basack v. Secretary of State* (6), referred to.

Regular First Appeal from the decree of Shri Chetan Dass Jain, P.C.S., Subordinate Judge, 1st Class, Delhi, dated the 15th day of December, 1951, passing a decree in favour of plaintiff for Rs. 80,000 with proportionate costs.

K. L. GOSAIN and NANAK CHAND, for Petitioner.

GURBACHAN SINGH and G. L. SETH, for Respondent.

JUDGMENT

HARNAM SINGH, J. By this order, I dispose of Regular First Appeal No. 76 of 1952 and Civil Miscellaneous No. 181-D of 1954.

Harnam Singh,
J.

In Civil Suit No. 169 of 1949, *Shri Chetan Das*, Sub-Judge, 1st Class, Delhi, has decreed the claim of the plaintiff against the defendant for rupees 80,000 with proportionate costs.

From the decree passed in Civil Suit No. 169 of 1949, the Union of India appeals under section 96 of the Code of Civil Procedure.

Briefly summarised the facts giving rise to Civil Suit No. 169 of 1949, are these: On the night of the 20th of August, 1947, disturbances broke out in the town of Quetta. On that the authorities fixed up two Refugee Camps in the town of Quetta,

(1) A.I.R. 1949 Pat. 268

(2) A.I.R. 1923 All. 22

(3) A.I.R. 1946 Mad. 133

(4) A.I.R. 1951 Cal. 462

(5) A.I.R. 1951 Pb. 254

(6) I.L.R. 44 Cal. 116

Union of India *one in the Gurdwara and the other in the Arya
v. Samaj Mandir. In the Gurdwara Camp Sardar
Amar Singh, Sárup Singh, Sardar Teja Singh, Shri Vishwa
etc Nath, Shri Chuni Lal, Shri Sat Dev Sawhney, Rai
Harnam Singh, Sahib Hari Chand, Shri Jagat Ram, Shri Girdhari
J. Lal, Shri Krishan Dev, Shri S. S. Arora, Shri Des
Raj, Sardar Gurbakhsh Singh, Shri Gurmukh
Das Chopra, Shri Dina Nath and Sardar Gurbakhsh
Singh asked Sardar Amar Singh alias Mr. A. L.
Arora to arrange for a wagon for the transport of
their goods out of Quetta. Sardar Amar Singh, P.W.
22, requested Assistant Station Master Anup Singh
P.W. 21, to get him a wagon. On the 3rd of
September, 1947, Sardar Anup Singh informed
Sardar Amar Singh on the phone that one wagon
was available. On the 4th of September, 1947,
Sardar Amar Singh and others went to the railway
station and loaded their household goods in
Wagon No. G.I.P. 26659 for carriage to Delhi
under Parcel Way Bill No. 317909. Copy of that
Parcel Way Bill, Exhibit P. 50, shows Mr. A. L.
Arora to be the consignor and the consignee of the
goods.*

On the 6th of September, 1947, *Sardar Amar Singh P.W. 22, left Quetta for New Delhi, reach-
ing Delhi on the 15th of September, 1947.*

On the second or the third day of his arrival
at Delhi *Sardar Amar Singh commenced enquiry
about the arrival of the wagon. Finding that
G.I.P. Wagon No. 26659 had not reached Delhi,
he wrote letter, Exhibit D. 2, to the Divisional
Superintendent, E.P.R., Delhi on the 15th of
November, 1947, complaining about the non-
delivery of goods loaded in Wagon No. 26659
G.I.P. under Parcel Way Bill No. 317909, dated
the 4th of September, 1947. In reply the Divi-
sional Superintendent wrote letter, Exhibit P. 21,*

asking the plaintiff to correspond with the Chief Administrative Officer E.P.R. on the subject. On that the plaintiff requested his friends to prepare lists of goods loaded in wagon No. 26659 G.I.P. giving prices of the goods for submission to the E.P.R. On the 23rd of February, 1948, plaintiff wrote to the Chief Administrative Officer letter, Exhibit P. 22. In that letter lists supplied by the owners of the goods covered by Parcel Way Bill No. 317909 were sent. In submitting the claim the value of the goods of *Shri Krishan Dev P.W. 19*, amounting to rupees 2,535 was not included.

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On the 2nd of December, 1948, plaintiff gave notice, Exhibit P. 30, to the Dominion of India through the General Manager E.P.R., Delhi. In that notice plaintiff claimed rupees 1,62,123 with interest stating that if the sum of rupees 1,62,123 was not paid within two months from the date of the service of the notice he would institute civil suit for the recovery of that amount.

In the investigation that followed *Shri Bodh Raj D.W. 10* sent telegram, Exhibit D. 5, to the Station Master, Quetta. In that telegram enquiries were made about goods loaded in wagon No. 26659 G.I.P. under P.W.B. No. 317909 on the 4th of September, 1947. Copies of that telegram were sent by *Shri Bodh Raj* telegraphically to Station Master, Rohri, Station Master, Samasata, Yard Supervisor, Samasata, Station Master, Bhatinda, Station Master, New Delhi, and Divisional Superintendent, New Delhi.

On the 7th of June, 1948, the Chief Administrative Officer E.P.R., Delhi, wrote to the plaintiff letter, Exhibit P. 24. That letter reads:—

“Quetta to New Delhi P.W. Bill No. 317909,
dated 4th September, 1947.

Union of India Your letter, dated 24th May, 1948.

v. Dear Sir,
Amar Singh,
etc

_____ Will you please arrange to effect delivery
Harnam Singh, of the packages lying at New Delhi, in presence of
J. the Assistant Claims Inspector who is being asked
to facilitate delivery of packages.”

On receipt of letter, Exhibit P. 24, plaintiff went to the railway station, but the Assistant Station Master on duty made endorsement on letter, Exhibit P. 24, stating that the goods were '*Not traceable*'. On the 3rd of August, 1948, plaintiff received letter, Exhibit P. 26, directing him to obtain delivery of goods booked at Quetta under P.W.B. No. 317909 on the 4th of September, 1947, from Assistant Claims Inspector, Krishan Lal D.W. 5.

Shri Krishan Lal D.W. 5 offered delivery of the goods unloaded from the wagon to the plaintiff on the 18th of August, 1948, but the plaintiff declined to take delivery on payment of rupees 1,067-8-0 on account of freight. In this connection document, Exhibit P. 28, may be seen.

From the evidence given by Goods Clerk Ram Chandra D. W. 4, Head Watchman Ramji Lal D.W. 7, Assistant Trains Clerk, Krishan Lal D.W. 8 and Foot Constable Niranjan Singh D.W. 16, it is plain that wagon No. 26659 G.I.P. arrived at New Delhi on the 13th of February, 1948. On the 20th of February, 1948, Goods Clerk Ram Chandra unloaded the goods in the presence of Head Watchman Ramji Lal and Foot Constable Niranjan Singh. From wagon No. 26659 G.I.P. articles specified hereunder were recovered:—

1. Packages belonging to *Sardar* Amar Singh.

(a) Three frames iron with *niwar* for beds.

(b) Two packing cases empty.

2. Packages belonging to *Sardar Gur-Union of India*
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 - (a) One large steel trunk, white, empty.
3. Packages belonging to *Sardar SarupHarnam Singh,*
Singh
J.
 - (a) One large steel trunk black empty.
4. Packages belonging to *Sardar Teja*
Singh.
 - (a) Two iron bed frames in one bundle.
 - (b) One iron bed spring complete.
 - (c) One stone jar empty.
 - (d) Two wooden *bahies*.
5. Packages belonging to *Shri Jagat Ram.*
 - (a) One small trunk empty.
 - (b) Two wooden packing cases, one containing angithi and one ice-box in damaged condition.

In all fifteen packages were unloaded from wagon No. 26659 G.I.P. weighing six maunds thirteen seers. In this connection list of articles, Exhibit P. 27, prepared by Assistant Claims Inspector Krishan Lal D.W. 5, may be seen. From the list, Exhibit P. 27, it is plain that the goods of Extra Assistant Commissioner *Sardar Sarup Singh P.W. 2*, Sub-Divisional Officer, *Sardar Gurbakhsh Singh P.W. 4*, *Sardar Teja Singh* of the Posts and Telegraphs Department P.W. 5, *Shri Jagat Ram* of the Postal Department P.W. 17 and *Sardar Amar Singh*, Inspector, Post Offices P.W. 22, *inter alia* were sent by rail in wagon No. 26659 G.I.P. on the 4th of September, 1947.

Union of India On the 4th of August, 1949, *Sardar Amar*
v. Singh P.W. 22, instituted Civil Suit No. 169 of
Amar Singh, 1949, for the recovery of rupees 1,62,123 from the
etc defendant.

Harnam Singh, In resisting the suit the defendant raised pleas
J. on which the following issues were fixed:—

1. Whether the suit is within time ?
2. Whether no notice under section 77 of the Indian Railways Act was necessary?
3. Whether the plaintiff served the defendant with a valid notice of claim under section 77 of the Indian Railways Act?
4. Whether the plaintiff served the defendant with a valid notice under section 80, Civil Procedure Code?
5. Whether the plaintiff has a *locus standi* to sue for compensation in respect of the alleged goods which were entrusted to him by others?
6. Does the plaint not disclose any cause of action against the defendant?
7. Has the plaintiff any cause of action against the defendant?
8. Whether the provisions of section 75 of the Indian Railways Act have been complied with? If not, what is its effect?
9. Whether the plaintiff can claim more than rupees 13,940 the alleged value of his goods that have been lost?
10. Whether the goods in suit were booked with Pakistan Railway as alleged?

11. Whether the consignment in suit was delivered intact to the E. P. Railway? Union of India
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12. What is the effect of the refusal of the plaintiff to take delivery of whatever goods were offered to him? Harnam Singh,
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13. What is the effect of the defendant's offering part of the goods to the plaintiff and offering rupees 15,000 as compensation per C.A.O.'s letters No. 1003Q/C4/47, dated 23rd June, 1949, to *Shri Amar Singh*?
14. To what amount of compensation, if any, is the plaintiff entitled?
15. Relief.

In support of the claim *Shri Thakar Das P.W. 1, Sardar Sarup Singh P.W. 2, Shri Vishwa Nath P.W. 3, Sardar Gurbakhsh Singh P.W. 4, Sardar Teja Singh P.W. 5, Shri S. S. Arora P.W. 6, Shri Girdhari Lal P.W. 7, Rai Sahib Hari Chand P.W. 8, Shri Des Raj Datt P.W. 9, Shri Sat Dev Sawhney P.W. 10; Shri Dina Nath P.W. 11, Shri Gurmukh Das P.W. 12, Sardar Sardar Singh P.W. 13, Shri Jagdish Chandar P.W. 14, Shri Chuni Lal P.W. 15, Rai Sahib Parma Nand P.W. 16, Shri Jagat Ram P.W. 17, Doctor Sewa Ram P.W. 18, Shri Krishan Dev P.W. 19, Shri Jagdish Chand P.W. 20, Sardar Anup Singh P.W. 21 and Sardar Amar Singh P.W. 22, gave evidence.*

In Civil Suit No. 169 of 1949, *Shri Suram Singh D.W. 1, Shri Bua Das D.W. 2, Shri Ved Parkash D.W. 3, Shri Ram Chandra D.W. 4, Shri Krishan Lal D.W. 5, Shri Bohan Singh D.W. 6, Shri Ramji Lal D.W. 7, Shri Krishan Lal D.W. 8, Shri K. L. Joshi D.W. 9, Shri Bodh Raj D.W. 10,*

Union of India *Shri* Dewan Chand D.W. 11, *Shri* Gopal Das D.W.
v. 12, *Shri* Indar Singh D.W. 13, *Sardar* Sher Singh
 Amar Singh, D.W. 14, *Sardar* Harbans Singh D.W. 15 and
 etc *Sardar* Niranjn Singh D.W. 16 gave evidence for
 Harnam Singh, the defendant.
 J.

In deciding Civil Suit No. 169 of 1949, the Court found:—

- (1) that the suit was within time;
- (2) that notice under section 77 of the Indian Railways Act was necessary;
- (3) that notice, Exhibit P. 22, was a valid notice under section 77 of the Indian Railways Act;
- (4) that the plaintiff had served the defendant with a valid notice under section 80 of the Code of Civil Procedure before the institution of the suit;
- (5) that the plaintiff had *locus standi* to sue for compensation in respect of the goods which were entrusted to him by others;
- (6) that the plaint disclosed cause of action against the defendant;
- (7) that the defendant was liable to the plaintiff for the non-delivery of the goods booked;
- (8) that the case did not fall within the mischief of section 75 of the Indian Railways Act;
- (9) that the plaintiff could maintain Civil Suit No. 169 of 1949, for the non-delivery of the goods;

- (10) that the goods in suit were booked with Union of India the North-Western Railway on the 4th of September, 1947; v.
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- (11) that wagon No. 26659 G.I.P. was delivered intact to the E. P. Railway at Khem Karan Railway Station; Harnam Singh,
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- (12) that the refusal of the plaintiff to take delivery of the goods has no bearing on the suit;
- (13) that the offer of rupees 15,000 by the defendant to the plaintiff has no bearing on the decision of Civil Suit No. 169 of 1949, and
- (14) that the consignment in question contained articles worth rupees 80,000.

In appeal the correctness of the decision given by the Court of first instance on issues Nos. 1, 2, 3, 4, 5, 6, 7, 9, 11 and 14 is challenged. In other words it is conceded that the decision of the Court on issues Nos. 8, 10, 12 and 13 is not open to challenge.

In arguments it is said that notice under section 77 of the Indian Railways Act was necessary and that no such notice was given.

For the reasons given by me in *Babu Lal alias Babu Ram v. The Dominion of India* (1), I find that both on principle and authority no notice was necessary to entitle the plaintiff to claim compensation for non-delivery of the goods delivered by him to the Railway Administration for carriage for the reason that non-delivery was not the result of loss, destruction or deterioration.

(1) 54 P.L.R. 398 (F.B.)

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In Civil Suit No. 169 of 1949, it was proved that the plaintiff gave notice, Exhibit D. 1, under section 77 of the Indian Railways Act to the Chief Administrative Officer, E. P. Railway, Delhi, on the 2nd of December, 1948. No evidence in rebuttal was examined. If so, the decision given by the Court of first instance on issues No. 3 is not open to challenge.

Sardar Amar Singh P.W. 22, gave evidence that he served notice, Exhibit P. 30, on the Dominion of India on the 2nd of December, 1948. In support of the evidence given by him *Sardar* Amar Singh produced postal acknowledgment receipt, Exhibit P. 31, showing that he sent one registered letter on the 2nd of December, 1948, to the Dominion of India. No evidence in rebuttal was examined. In my judgment, the Court of first instance was right in finding that notice, Exhibit P. 30, was served on the General Manager, E. P. Railway, Delhi, in December, 1948.

But it is said that notice, Exhibit P. 30, does not satisfy the requirements of section 80 of the Code of Civil Procedure.

From an examination of section 80 of the Code of Civil Procedure, it is plain that notice must state the cause of action, the name, the description and the place of residence of the plaintiff and the relief that plaintiff claims.

In arguments it is said that notice, Exhibit P. 30, does not state the cause of action against the Dominion of India and does not state the place of residence of the plaintiff.

In notice, Exhibit P. 30, it is stated that the plaintiff's claim for rupees 1,62,123 was based on non-delivery of household goods booked in wagon

No. 26659 G.I.P. from Quetta to New Delhi under P.W.B. No. 317909. In that notice interest was claimed and it was stated that if within the statutory period of two months the sum of rupees 1,62,123 is not paid the plaintiff would institute civil suit for the recovery of that amount with costs of the suit.

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In numerous cases it has been said that notice under section 80 of the Code of Civil Procedure, should not be strictly construed as if it were a pleading and it need not set out all the details and facts of the case. Indeed, there is ample authority for the proposition that notice under section 80 of the Code of Civil Procedure, must substantially fulfil its object in informing the parties concerned generally of the nature of the suit intended to be filed. In my judgment, notice, Exhibit P. 30, states the cause of action for it informs the defendant substantially of the ground of complaint.

In the notice, Exhibit P. 30, the plaintiff is stated to be residing at 4824, Qutab Road, Delhi (India). In that notice it was stated that correspondence with *Sardar* Amar Singh should be care of Reliable Traders, Limited (Claims Department), Hamilton Road, Delhi. That being the position of matters, the plea raised that the notice does not give the residence of the plaintiff fails. In these circumstances I have no doubt that the plaintiff served the defendant with a valid notice under section 80 of the Code of Civil Procedure, before the institution of the suit.

In the present case goods were booked at Quetta for carriage by rail for a part of the journey on the Eastern Punjab Railway. In other words the consignor *authorised* the North-Western Railway Administration to deliver the goods to the

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 Eastern Punjab Railway Administration to be carried by rail to Delhi. On the delivery of the goods by the North-Western Railway to the Eastern Punjab Railway at Khem Karan Railway Station, the Eastern Punjab Railway became bailee for the goods in suit. In *Bailment in the Common Law* by George W. Paton at page 42 the law on the subject is stated to be in these words:—

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“Pollock and Wright suggest that if a bailee of a *res sub-bails it by authority*, then according to the intention of the parties, the third person may become the immediate bailee of the owner, or he may become a sub-bailee of the original bailee.”

Explaining sub-bailment George W. Paton, observes at page 44 of the book ‘*Bailment in the Common Law*’:—

“A carrier of goods may need to entrust them to another carrier for part of the journey.”

In accepting delivery of the goods at Khem Karan Railway Station to be carried by rail the Eastern Punjab Railway Administration accepted the position of the bailee for the plaintiff.

In *Babu Lal alias Babu Ram v. The Dominion of India* (1), the law on the subject was stated to be in these words:—

“The obligation to return or deliver the goods is implied in the contract of carriage for reward. Section 161 of the Contract Act read with section 72(1) of the Act provides that if by default of

the railway administration, the goods are not returned, delivered or tendered at the proper "time, the administration is responsible to the consignor for any loss, destruction or deterioration of the goods as from that time."

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Section 72(1) of the Act provides:—

"The responsibility of a railway administration for the loss, destruction or deterioration of animals or goods delivered to the administration to be carried by railway shall, subject to the other provisions of this Act, be that of a bailee under sections 151, 152 and 161 of the Indian Contract Act, 1872; (IX of 1872)."

In my judgment, there is no escape from the conclusion that when the North-Western Railway Administration delivered the goods to the Eastern Punjab Railway Administration at Khem Karan *with the authority of the plaintiff*, then according to the original intention of the parties the Eastern Punjab Railway Administration became the immediate bailee of the plaintiff. That being the position of law, I affirm the findings given by the Court of first instance on issues Nos. 5, 6 and 7.

In arguments, it was said that there was no proof on the record that the consignment in suit was delivered intact to the Eastern Punjab Railway at Khem Karan.

Shri Suram Singh D.W. 1, gave evidence that three Goods Trains arrived from Kasur, Pakistan, to Khem Karan during his stay at Khem Karan between September, 1947, and June, 1948, and that Wagon No. 26659 G.I.P. arrived attached to the train which came from Kasur. Indeed, *Shri Suram*

Union of India Singh gave evidence that he received from the
 v. Guard of that train 'inward summary'. On check-
 Amar Singh, ing the train with the aid of that summary *Shri*
 etc Suram Singh found that Wagon No. 26659 G.I.P.
 Harnam Singh, was intact according to the summary. Indeed,
 J. *Shri* Suram Singh gave evidence that seals and
 labels of all the wagons were intact and that the
 entries in the 'inward summary' tallied with the
 entries on the labels. On the 1st of November,
 1947, Up-Pay Special was run from Khem Karan
 to Amritsar. For that train 'inward summary',
 Exhibit P.W. 1/3, was prepared by *Shri* Suram
 Singh and given to the Guard of the train for deli-
 very at Amritsar.

Shri Thakar Das P.W. 1, gave evidence that
 Wagon No. 26659 G.I.P. arrived at Amritsar, at-
 tached to UP-Pay Special train on the 1st of Nov-
 ember, 1947, at 16-35. That wagon was bound for
 New Delhi Railway Station from Quetta. On
 the 2nd of November, 1947, Wagon No. 26659 G.I.P.
 was attached to Down Special Goods going to
 Ludhiana. In giving evidence *Shri* Thakar Das
 maintained that there was no note on the Index
 Card or on the vehicle summary in respect of any
 difference between the labels and the vehicle sum-
 mary relating to Wagon No. 26659 G.I.P. Indeed,
 he maintained that there was no record suggesting
 that the seals of Wagon No. 26659 G.I.P. were
 tampered with when the wagon arrived at
 Amritsar.

From the evidence given by *Shri* Thakar Das
 P.W. 1, and *Shri* Suram Singh D.W. 1, the conclu-
 sion is irresistible that the consignment in suit was
 delivered intact to the Eastern Punjab Railway at
 Khem Karan.

In regard to the evidence examined on issue
 No. 14 a double-barrelled objection was urged.

Firstly, it was said that the witnesses have not preserved the original lists prepared by them at Quetta. Extra Assistant Commissioner Sarup Singh P.W. 2, gave evidence that on search he may be able to produce the lists that he prepared at Quetta if desired by Court.

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Professor Vishwa Nath P.W. 3, gave evidence that the list he had prepared at Quetta was destroyed when he gave the list, Exhibit P. 3, to the plaintiff.

Sardar Gurbakhsh Singh P.W. 4, maintained that he had prepared list of articles that he had put in Wagon No. 26659 G.I.P. One empty large steel trunk of *Sardar Gurbakhsh Singh*, S.D.O. was recovered at Delhi from Wagon No. 26659 G.I.P. *Sardar Gurbakhsh Singh* swore to the correctness of the list, Exhibit P. 4, adding that he took no steps to preserve the list prepared at Quetta. In cross-examination no question was put to *Sardar Gurbakhsh Singh* on the point raised in arguments.

From the record it is plain that the persons whose goods were loaded in Wagon No. 26659 G.I.P. were men of position. From the fact that the lists prepared by them at Quetta had not been preserved it does not follow that the evidence given by them was false.

Secondly, it is said that though the Divisional Superintendent by letter, Exhibit P. 21, dated the 11th of December, 1947, had asked the plaintiff to correspond with the Chief Administrative Officer, E. P. Railway, Delhi, the plaintiff had supplied the lists on the 23rd of February, 1948. In this connection letters, Exhibits P. 21 and P. 22 may be seen.

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In giving evidence *Sardar* Amar Singh P.W. 22, maintained that on receipt of letter, Exhibit P. 21, he wrote to his friends to prepare lists of the goods stating the prices for submission to the E. P. Railway. In those days Professor Vishwa Nath P.W. 3, was at Muradabad, *Sardar* Gurbakhsh Singh, S.D.O. at Gorakhpur, *Shri* Girdhari Lal P.W. 7, at Jullundur, *Shri* Dina Nath P.W. 11, at Dehra Dun, *Shri* Gurmukh Das P.W. 12, at Jamshedpur, *Sardar* Sardar Singh P.W. 13, at Dehra Dun, *Shri* Jagdish Chandar P.W. 14, at Ambala Cantonment and *Shri* Kishan Dev P.W. 19, at Bandikui, Jaipur. Plainly, ample time was required to contact the various people at different places for the submission of the lists to the Chief Administrative Officer, E. P. Railway. Again, there is no evidence on the record to show that the plaintiff had information that Wagon No. 26659 G.I.P. had reached Delhi Railway Station on the 13th of February, 1948. For the first time by letter, Exhibit P. 24, the Chief Administrative Officer informed the plaintiff that he should arrange to take delivery of the packages lying at New Delhi from the Assistant Claims Inspector. In cross-examination no suggestion was made to any of the witnesses that they had information when they prepared the lists that Wagon No. 26659 G.I.P. had reached Delhi on the 13th of February, 1948.

In arguments no other suggestion is shown to exist on the record justifying the rejection of the evidence given by the witnesses for the plaintiff on the point of the value of the goods not delivered. If so, I see no reason to disturb the finding given by the Court of first instance on issue No.14.

Mr. Kundan Lal *Gosain* in concluding arguments urges that Civil Suit No. 169 of 1949, being governed by Article 30 of the Indian Limitation Act, was barred by time.

Articles 30 and 31 of the Indian Limitation Act read:—

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<i>Description of suit</i>	<i>Period of limitation</i>	<i>Time from which period begins to run</i>
30 Against a carrier for compensation for losing or injuring goods.	One year	When the loss or injury occurs.
31 Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year	When the goods ought to be delivered.

In Article 31, as it stood prior to 1899, the words "non-delivery of, or" were not to be found. By section 3 of Act X of 1899, the Legislature amended Article 31 by inserting the words "non-delivery of, or" in Article 31 before the words "*delay in delivering goods.*" By this amendment the Legislature clearly indicated its intention that Article 31 should apply to a claim against a carrier for compensation for non-delivery of goods irrespective of the question whether the suit was laid in contract or in tort. On a perusal of the plaint in Civil Suit No. 169 of 1949, it is plain that the suit being a suit for compensation for non-delivery, falls within Article 31. For authority on this point *Union of India v. Adam Hajee Peer Mohammad Essack and another* (1), may be seen.

(1) A.I.R. 1954 Travancore-Cochin 362

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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. On this point *The Governor-General in Council v. Kasiram Marwari* (1), may be seen.

In *The Governor-General in Council v. Kasiram Marwari* (1), Ramaswami, J. (Sinha, J. concurring), said:—

“Now the question ‘when the goods ought to be delivered’ is essentially a question of fact. We cannot recognize any universal or inflexible rule that time must begin to run from the expiry of the ordinary period of transit. If no particular date is specified for delivery, it must be determined as a matter of what is reasonable having regard to the circumstances of the contract and the conduct of the parties.”

For other cases on the subject reference may be made to *Jugal Kishore v. G.I.P. Railway* (2), *Palanichami Nadar v. Governor-General of India in Council* (3), *Jai Narain v. Governor-General of India* (4), *Dominion of India v. Khurana Brothers* (5), and *Union of India v. Adam Hajee Peer Mohammad Essack and another* (6).

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- (1) A.I.R. 1949 Pat. 268
 (2) A.I.R. 1923 All. 22
 (3) A.I.R. 1945 Mad. 133
 (4) A.I.R. 1951 Cal. 462
 (5) A.I.R. 1951 Punjab 254
 (6) A.I.R. 1954 Tra-Cochin 362

From the authorities cited above it is plain that the time "*when the goods ought to be delivered*" within the meaning of column III of Article 31 is not the time when the goods should have been delivered in the normal course, at least in a case where there is no time fixed for delivery, but the time when *they ought to be delivered* having regard to the consideration of circumstances which all reason would require to be taken into account.

In Civil Suit No. 169 of 1949, the facts bearing on the question of limitation are these: On the 4th of September, 1947, the goods were loaded in Wagon No. 26659 G. I. P. under P.W.B. No. 317909. On the 1st of November, 1947, Wagon No. 26659 G.I.P. arrived at Amritsar from Khem Karan: On the 2nd of November, 1947, Down Special Goods was run from Amritsar to Ludhiana. *Shri Ved Parkash D.W. 3* gave evidence that Wagon No. 26659 G.I.P. remained in the yard at Ludhiana, between the 2nd of November, 1947, and the 14th of January, 1948, *Shri Ram Chandar D.W. 4* gave evidence that Wagon No. 26659 G.I.P. arrived in unloading shed, New Delhi, on the 20th of February, 1948. On the last-mentioned date Wagon No. 26659 G.I.P. was unloaded by *Shri Ram Chandar D.W. 4* in the presence of *Shri Ramji Lal D.W. 7* and Foot constable *Niranjan Singh D.W. 16*. No information was given to the plaintiff about the arrival at Delhi of Wagon No. 26659 G.I.P. On the 23rd of February, 1948, *Sardar Amar Singh* plaintiff wrote to the Chief Administrative Officer, Eastern Punjab Railway, Delhi, letter, Exhibit P. 22. In that letter *Sardar Amar Singh* complained that the Railway Administration had failed to *locate* Wagon No. 26659 G.I.P. which had left Quetta for New Delhi on the 4th of September, 1947. On the 25th of February, 1948, the Chief Administrative Officer wrote letter, Exhibit P. 44 to the plaintiff. In that

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Union of India letter the Chief Administrative Officer; New
Amar Singh, Delhi, said :—
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“The receipt of your letter No. *nil*, dated 23rd February, 1948, with enclosure is hereby acknowledged. *Such action as may be called for will be taken and you will be addressed again on the subject.*”

Till the 9th of April, 1948, no information was received from the Chief Administration Officer with the result that on that date *Sardar Amar Singh* wrote to the Chief Administrative Officer letter, Exhibit P. 46 *requesting him to intimate how the matter stood.* On the 7th of June, 1948, the Chief Administrative Officer wrote letter, Exhibit P. 24, to the plaintiff reading:—

“Will you please arrange to effect delivery of the packages lying at New Delhi in presence of the Assistant Claims Inspector who is being asked to facilitate delivery of packages.”

On receipt of letter, Exhibit P. 24 *Sardar Amar Singh*, plaintiff went to the Railway Station to take delivery but no goods were to be found. In giving evidence *Sardar Amar Singh* stated—

“In June, 1948, I received the letter, Exhibit P. 24, offering me the delivery of the goods. I went to the Railway Station several times for delivery and the Assistant Station Master on duty endorsed on Exhibit P. 24 ‘not traceable here’.”

On the 30th of June, 1948, plaintiff wrote to the Chief Administrative Officer, Delhi, letter, Exhibit P. 25. In that letter the plaintiff said:—

“I visited New Delhi Railway Station on various occasions but could find no

trace of our packages. The official in charge of the luggage godown at New Delhi Railway Station has also given in writing to this effect.

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2. It is not understood how in your No. 1003-Q/C 3/47, dated 7th June, 1948, we have been asked to take delivery of our packages said to be lying at the Railway Station. It is requested that you will kindly settle the claim at a very early date and earn the gratitude of the sufferers who are very hard hit."

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From the correspondence that passed between the plaintiff and the Chief Administrative Officer it is plain that on the 7th of June, 1948, the Railway Administration was not in a position to give delivery of the consignment.

On the 4th of August, 1949, the plaintiff instituted Civil Suit No. 169 of 1949, for the recovery of rupees 1,62,123 on account of compensation for non-delivery of goods.

In *Radha Shyam Basack v. Secretary of State* (1), it was said that Article 31 of the Indian Limitation Act, casts upon the carrier the onus of proving 'when goods consigned for carriage ought to be delivered.'

In an earlier part of this judgment I have said that in such cases the duty of the Railway Administration is to deliver the goods within 'reasonable' time. In the expression 'reasonable time' the word 'reasonable' cannot mean a definite and fixed time for it will not be 'reasonable' if it were not sufficiently elastic to allow the consideration of all

Union of India circumstances which all reason would require to
 v. be taken into consideration.

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On the facts of the present case it cannot be sustained that the goods ought to have been delivered prior to the 7th of June, 1948.

In computing the period of limitation prescribed for the suit out of which this appeal has arisen the period of notice under section 80 of the Code of Civil Procedure has to be excluded. That being the position of matters, I have no doubt that the Court of first instance was right in finding that the suit was within time.

In deciding the point of limitation the Court of first instance has used letters, Exhibits P. 24, P. 26, P. 35 and P. 41, to be acknowledgments of liability within section 19 of the Indian Limitation Act.

In the letter, Exhibit P. 35, written by the Chief Administration Officer to the plaintiff on the 22nd of March, 1949, clarification was sought as regards the fabric of which the *sarees* in the packages of *Sardar* Teja Singh and Mr. Vishwa Nath were made. In my opinion, the letter, Exhibit P. 35, does not contain within itself the meaning that the Railway Administration was admitting their liability for the non-delivery of goods consigned.

In the letter, Exhibit P. 41, written on the 1st of July, 1949, Chief Administrative Officer offered rupees 15,000 in full and final settlement of the plaintiff's claim.

Mr. Kundan Lal Gosain urges that the letter, Exhibit P. 41, should be regarded to be marked 'without prejudice.' To exclude letter, Exhibit P. 41, from evidence it would be necessary to hold

that the admission in the letter, Exhibit P. 41, was made upon an *express* condition that evidence of it was not to be given or that the admission was made under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given. Finding that letters, Exhibits P. 24 and P. 26, contain within themselves the meaning that the Railway Administration was admitting their liability for the non-delivery of the goods consigned, I express no opinion in regard to the admission contained in letter, Exhibit P. 41, or the relevancy of that admission under section 23 of the Indian Evidence Act.

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On the 7th of June, 1948, the Chief Administrative Officer wrote letter, Exhibit P. 24, asking the plaintiff to arrange to obtain delivery of the packages lying at New Delhi.

In the letter, Exhibit P. 26, the Chief Administrative Officer informed the plaintiff on the 24th of July, 1948, that Mr. Krishan Lal, Assistant Claims Inspector, had been deputed to deliver to the plaintiff the packages lying at New Delhi.

In the letter, Exhibit P. 24, plaintiff was asked to take delivery of the packages booked under P.W.B. No. 317909, dated the 4th of September, 1947. In letter, Exhibit P. 26, the Chief Administrative Officer informed the plaintiff that Mr. Krishan Lal, Assistant Claims Inspector, Railway Quarters, Delhi Kishanganj, had been deputed to deliver packages lying at New Delhi, to the plaintiff. In that letter it is stated that the goods were booked for carriage from Quetta to New Delhi, under P.W.B. No. 317909, dated the 4th of September, 1947.

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From a perusal of section 19 of the Indian Limitation Act, it is plain that the acknowledgment of liability may be in any form and may be express or implied. In other words all that is required is that the document stated to contain an acknowledgment of liability must clearly contain within itself the meaning that the party is admitting its liability. Section 20 of the Indian Limitation Act, 1871, provided that the promise or acknowledgment within that section must amount to an express undertaking to pay or deliver the debt or legacy or to an unqualified admission of the liability as subsisting. That provision was omitted in section 19 of the Indian Limitation Act, 1877. In my opinion letters, Exhibits P. 24 and P. 26, are acknowledgments of liability within section 19 of the Indian Limitation Act, 1908. On this point *Jai Narain v. Governor-General of India* (1), may be seen.

For the foregoing reasons, I uphold the finding of the Court of first instance that the suit is not barred by limitation.

No other point arises in Regular First Appeal No. 76 of 1952.

In the result, I dismiss with costs Regular First Appeal No. 76 of 1952.

In Civil Miscellaneous No. 181-D of 1954, Khosla, J., ordered *interim* stay of execution of the decree under appeal on the 1st of April, 1954. On the dismissal of Regular First Appeal No. 76 of 1952, the order passed in Civil Miscellaneous Application No. 181-D of 1954, is discharged.

Dulat, J.

DULAT, J.—I agree.

(1) A.I.R. 1951 Cal. 462