APPELLATE CIVIL

Before Falshaw and Kapur JJ.

M/s RAJMAL PAHAR CHAND,—*Appellant*

versus

THE DOMINION OF INDIA (NOW UNION OF INDIA),—*Respondent.*

Civil Regular Second Appeal No. 465 of 1951

Indian Limitation Act (IX of 1908) Article 31—Terminus a quo—Correspondence between Railway and claimant whether relevant to determine the Terminus a quo—.

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Held, that as a result of the amendment made in the year 1899 by section 3 of Act X introducing the words "non-delivery of, or", under Article 31 a suit for compensation for non-delivery of or delay in delivering the goods stands on the same footing. In the various cases in which the period of time taken in correspondence between the Railway and the claimant have been taken to be relevant factors, the necessary result would be that the terminus a quo in the case of non-delivery will be different from that where delay is alleged because in all those cases there was delay and if in a suit on account of delay in delivering the goods the time begins to run when the goods ought to be delivered or would normally reach their destination, then necessarily the same would be the terminus a quo in the case of non-delivery of goods. There is no warrant for the proposition that a claimant by starting into correspondence with the defendant can enlarge the period of limitation. "Ought to be delivered" 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.

Case Law discussed:—

Governor-General in Council v. *Kasiram Marwari* (1), *Mutsaddi Lal* v. *Governor-General in Council* (2), *Jugal Kishore* v. *The Great Indian Peninsula Railway* (3), *Madras and Southern Maharatta Railway Co.* v. *Bhimappa* (4), *Mutsaddi Lal* v. *Bombay, Baroda and Central India Railway Co.* (5), *Great Indian Peninsula Railway Company* v. *Ganpat Rai* (6), *Dominion of India* v. *Messrs. Khurana*

(1) A.I.R. 1949 Pat. 268.
(2) I.L.R. (1953) 2 All. 534
(3) I.L.R. 45 All. 43
(4) 17 I.C. 419
(5) I.L.R, 42 All, 390
(6) I.L.R. 33 All. 544

Bros. (1), *Seetarama Sastri* v. *Hyderabad State* (2), *Palanichmai Nadar* v. *Governor-General in Council* (3), *Balli Mal* v. *Dominion of India* (4), *Gopi Ram's case* (5), *Union of India* v. *Amar Singh* (6), *Bhagat Ram* v. *Governor-General in Council* (7), *Secretary of State* v. *The Dunlop Rubber Co. Ltd.* (8), *Haryana Cotton Mills Company Ltd.* v. *B. B. and C. I. Railway Co. Bombay* (9), *Radha Shyam Basak* v. *The Secretary of State for India* (10), *Raigarh Jute Mills* v. *Commissioners for the Port of Calcutta* (11), referred to.

Regular Second Appeal from the decree of Shri Tek Chand Sethi, District Judge, Amritsar, dated the 12th February, 1951, affirming that of Shri Mani Ram Sub-Judge, 1st Class, Amritsar, dated the 16th February, 1950, dismissing the plaintiff's suit with costs.

K. L. GOSAIN, for Appellant.

N. L. SALOOJA, S. L. PURI AND RANBIR SAWHNEY, for respondents.

JUDGMENT

Kapur, J.

KAPUR, J. These are four appeals brought by the plaintiff against appellate decrees of District Judge, T. C. Sethi, confirming the decrees of the trial Court dismissing the various suits for recovery of money on account of compensation for non-delivery of goods.

Eleven suits were brought by the plaintiff firm against the Railway claiming various sums of money as compensation for non-delivery of goods sent from Karachi to Khasa on various dates from the months of March, 1947, to July, 1947. All the suits were dismissed, but the plaintiffs have only brought second appeals in four suits which are suit No. 366 of 1949, in which the

(1) A.I.R. 1951 Simla 254
(2) A.I.R. 1950 Mad. 30
(3) A.I.R. 1946 Mad. 133
(4) A.I.R. 1954 Punjab 44
(5) A.I.R. 1927 Pat. 335
(6) R.F.A. 76 of 1952
(7) C.R. No. 216 of 1948
(8) I.L.R. 6 Lah. 301
(9) A.I.R. 1927 Lah. 471
(10) I.L.R. 44 Cal. 16
(11) A.I.R. 1947 Cal. 98

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goods were despatched from Karachi on the 30th of July, 1947, suit No. 366 of 1949, and suit No. 365 of 1949, in both of which the goods were despatched on the 31st of July, 1947, and suit No. 372 of 1949, in which the goods were sent on the 30th of July, 1947. The goods were sent by various Railway Receipts, the consignor and consignee was the Punjab National Bank Limited, and the Railway Receipts were endorsed in favour of the plaintiffs. In the Courts below a question as to the *locus standi* of the plaintiffs was raised but that has not been agitated before us.

There are two sets of defendants (1) the Railway and (2) the Insurance Company who are defendant No. 2 with whom the goods were insured. The Railway pleaded bar of time and that has been given effect to by the Courts below. Defendant No. 2, the Insurance Company, pleaded that they were not liable on the policy and I shall deal with their written statement a little later.

I shall first take up the case of the Railway. There is proof on the record that goods which were sent on the 14th of July, from Karachi reached Khasa on the 3rd August, 1947. Thus it took twenty days for the goods to reach. A witness for the Railway, D. W. 1, Daya Ram, has stated that ordinarily it takes the goods to reach Khasa about ten or twelve days and that goods should have been received in that period. There is no dispute between the parties that the Article applicable is 31 of the Indian Limitation Act, which reads—

Against a carrier for compensation for non-delivery of, or delay in delivering, goods.	One year	When the goods ought to be delivered.

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The only question which arises on the submission made is whether the correspondence which the plaintiffs had with the Railway is a factor to be taken into consideration in determining the *terminus a quo.*

Notices were given under section 80 of the Civil Procedure Code by the plaintiffs to the Railway Administration. The plaintiffs contended that they could not institute the suits earlier because the Railway had not refused their claim but had written to them that the matter was receiving their consideration. On the 15th January, 1948,—*vide* Exhibit P. 13, the Railway wrote to the plaintiffs in reply to their letter of the 13th December, 1947, Exhibit D. 1, saying that enquiries were being made in regard to the complaint made by the plaintiffs and that they would be informed as soon as the enquiry was complete. Even when the notice dated the 30th of April, 1948, under section 80 of the Civil Procedure Code was received, the Railway Administration replied—

> "The matter is receiving attention and you would be addressed further in due course."

This is Ex. P. 12.

In their letter of the 13th December, 1947, Exhibit D. 1, the plaintiffs had complained that the goods had not reached them up to that date and that their impression was that the goods had either been lost or stolen, and they requested the Administration to make enquiries and inform the plaintiffs of the result and if no definite intimation was received by the firm they would hold the Railway responsible for the cost of the goods.

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Merely because the Railway writes 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". Under the Act of 1877, the period of limitation in Article 31 was two years and it was reduced to one year and the words "non-delivery of, or" which were not in Article 31 as it stood were inserted by section 3 of Act X of 1899. Therefore the conflict which had arisen under the previous Act as to whether non-delivery or short delivery was within Article 30 or not came to an end, and it is now clear that the present Article applies to all suits for compensation for non-delivery irrespective of the question whether the suit is laid in contract or tort, and also that according to the Legislature whenever a suit is brought for compensation against a carrier for non-delivery or for delay the period of limitation of one year should be applicable.

Counsel for the appellant has relied on several cases which seem to lay down a different *terminus a quo* in suits under Article 31. He firstly relied on a Division Bench Judgment of the Patna High Court, *Governor-General in Council* v. *Kasiram Marwari* (1), where it was held that "when the goods ought to be delivered" is essentially a question of fact and 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 but in that case the correspondence between the parties showed that the consignor had received a reply from the railway authorities that the matter was being investigated, and the plaintiff had filed his suit for damages for non-delivery within one year from the Railway's refusal to deliver the consignment, and this was held to be within time. The

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

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goods were consigned on the 11th August, 1942, and the goods never reached their destination, and it was on the 1st of February, 1947, after correspondence between the Railway and the plaintiffs that the Railway Administration informed the plaintiff that the consignment had been destroyed. A suit was brought within one year from "the defendant's refusal to deliver the consignment". This was held to be within time, and I would say with very great respect that the learned Judges took the *terminus a quo* to be the refusal to deliver the consignment, whereas in the Article the *terminus a quo* is "when the goods ought to be delivered" and not "ought to have been delivered" as the learned Judges have put it, and still less refusal to deliver.

Counsel next relied on a Full Bench judgment of the Allahabad High Court *Mutsaddi Lal* v. *Governor-General in Council* (1), where it was held that the time of one year provided in Article 31 cannot be said to start when the goods should have reached the destination in the normal course but events which affect the means of transport or the way in which the consignment itself has been dealt with after its being handed over to the carrier for transit have to be considered and where there has been no definite refusal by the railway authorities to deliver the consignment the suit brought within one year of such a letter of the railway authorities is well within time. In this case the goods were consigned on the 30th of January, 1943, at Agra, for carriage to the railway station at Chola. Some correspondence ensued between the Railway Administration and the claimant and the last letter of the Railway was the 7th of February, 1944,

(1) I.L.R. (1953) 2 All. 534

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saying that the matter was receiving their best consideration, and at page 660 Bind Basni Prasad, J., delivering the judgment of the Full Bench said—

> "It cannot be said that if in the normal course the consignment was to reach Chola on or about the 7th February, 1943, then that was the date on which it 'ought to be delivered', specially when we find from the correspondence mentioned above that the railway administration did not refuse delivery to the plaintiff at any point of time, but always kept the plaintiff on hopes."

Again at page 663 the learned Judge said—

> "There has been no definite refusal so far by the railway administration to deliver the consignment. The suit was brought well within one year from this last letter. It was, therefore, within time."

In this case also no definite date from which the time is run was laid down by the learned Judges and it appears to me that they have taken the limitation to start from the date of refusal by the Railway. In this case reliance was placed on a Division Bench judgment of that Court, *Jugal Kishore* v. *The Great Indian Peninsula Railway* (1), where on the 28th of August, 1918, certain goods were made over to the Great Indian Peninsula Railway at Bombay for being sent to Chunar. The goods did not reach Chunar and the plaintiff started making enquiries from the G. I. P. Railway as well as from the East Indian Railway, and the Railway kept on saying that the matter was being enquired into,

(1) I.L.R. 45 All. 43

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and although the suit was brought after more than a year, it was held that the suit was not barred by limitation under Article 31 of the Indian Limitation Act.

The learned Judges observed—

> "Article 31 fixes one year from the date when the goods ought to have been delivered and applies to suits to recover compensation for non-delivery. It is to be noted that in the present case no time was fixed for the delivery of goods, and the correspondence between the parties shows that the matter was being inquired into and that there was no refusal to deliver, up to well within a year of the suit. In the circumstances of the case we are unable to hold that the suit was instituted more than a year from the expiry of a reasonable time within which the goods should have been delivered."

and they relied on a judgment of the Madras Court in *the Madras and Southern Maharatta Railway Co.* v. *Bhimappa* (1), and distinguished the two cases *Mutsaddi Lal* v. *Bombay Baroda and Central India Railway Co.* (2) and *Great Indian Peninsula Railway Company* v. *Ganpat Rai* (3). In the latter case in the normal course the period within which the goods ought to have been delivered was a fortnight or three weeks at the outset, and it was held that the suit was barred by time under Article 31.

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(1) 17 I.C. 419
(2) I.L.R. 42 All. 390
(3) I.L.R. 33 All. 544

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In this Court Khosla, J., *in Dominion of India* v. *Messrs. Khurana Bros.* (1), held that the time does not begin to run if the consignee is vigilant and makes frequent enquiries from the Railway who do not give him a definite reply in regard to the consignment on the ground that he may still assume that the goods will be received and the time begins to run from a definite refusal. The learned Judge referred to the cases which I have mentioned above and to *Seetharama Sastri* v. *Hyderabad State* (2), and *Palanichmai Nadar* v. *Governor-General in Council* (3).

Sitting alone in R. S. A. No. 256 of 1951, I held that correspondence entered into between the Railway and the claimant is not relevant to determine the *terminus a quo* nor is it a ground which would govern the words "ought to be delivered", and that merely because the Railway kept on saying that they are making enquiries does not enlarge the period of limitation under Article 31. In an earlier case *Balli Mal* v. *Dominion of India* (4), I held that the words "ought to be delivered" cannot mean the date when the railway finally refuses to deliver the goods. I there referred with respectful approval to the judgment of the Patna High Court in *Gopi Ram's case* (5).

Counsel for the appellant relied on another judgment of this Court in *Union of India* v. *Amar Singh* (6), decided by a Division Bench of this Court on 17th August, 1954. The learned Judges in that case were of the opinion that there was no contract, that the period of one year should be calculated from the expiry of reasonable time within

(1) A.I.R. 1951 Simla 254
(2) A.I.R. 1950 Mad. 30
(3) A.I.R. 1946 Mad. 133
(4) A.I.R. 1954 Punjab 44
(5) A.I.R. 1927 Pat. 335
(6) R.F.A. 76 of 1952

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which the goods ought to have been delivered having regard to the circumstances of the case and conduct of the parties, that no time was fixed for delivery and it could not be held on the facts that the goods ought to have been delivered at any time prior to the 7th of June, 1948. If the opinion of the learned Judges was that correspondence which may follow the non-delivery of goods within a reasonable time between the claimant and the Railway Administration affects the period of limitation, I am, with very great respect, unable to agree, but if the case was decided on the facts then it would be inapplicable to the facts in the present case, and even in that case the learned Judges were of the opinion that it is the duty of the Railway Administration to deliver the goods within " a reasonable time ", but it was the interpretation of the word " reasonable " on which a different interpretation was put by the learned Judges.

In another case decided by this Court by my learned brother Falshaw, J., in *Bhagat Ram* v. *Governor-General in Council* (1), it was observed—

> "The words 'when the goods ought to be delivered' in Article 31 has however been interpreted in a number of decisions as meaning a reasonable period after the date of booking within which the goods might be expected to arrive at their destination."

A Division Bench of the Lahore High Court in *the Secretary of State* v. *The Dunlop Rubber Co., Ltd.,* (2), had occasion to interpret the words "ought to be delivered" in Article 31. It was there held that the question as to when the recovery of plaintiff's goods becomes hopeless

(1) C.R. No. 216 of 1948
(2) I.L.R. 6 Lah. 301

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was immaterial under Article 31 and that time begins to run from the date on which the goods ought to be delivered. In another case of the Lahore High Court, *Haryana Cotton Mills Company Ltd.* v. *B. B. and C. I. Ry. Co., Bombay* (1), it was held that the cause of action in a suit for conversion arises when the Railway refuses after reasonable time to deliver the goods. The most part of the judgment deals with the effect of section 77 of the Indian Railways Act and it does not appear that the question of Article 31 was raised before the learned Judges.

Two cases of the Calcutta High Court were then referred to, *Radha Shyam Basak* v. *The Secretary of State for India* (2). The case was decided on the ground that there was a breach of a written contract and therefore Article 115 was applicable, but it was observed, and in my opinion it is *obiter*, that if Article 31 applied, it would be for the company to show when the goods ought to have been delivered and it was hardly for the plaintiff to prove when the goods should have been delivered. The other Calcutta case is *Raigarh Jute Mills Ltd.* v. *Commissioner for the Port of Calcutta* (3). Gentle, J., there held that even where a part of the goods arrived on a particular date that could not be the date which is covered by the words "ought to be delivered." With very great respect I am unable to agree with this opinion.

Two cases of the Madras High Court were then referred to, *Palanichmai Nadar* v. *the Governor-General in Council* (4), where part of the goods were received on an earlier date and in regard to the rest the Railway Company after

(1) A.I.R. 1927 Lah. 471
(2) I.L.R. 44 Cal. 16
(3) A.I.R. 1947 Cal. 98
(4) A.I.R. 1946 Mad. 133

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making enquiries finally informed the consignee that the articles were not traceable, and time was held to run from after the definite refusal or declaration of inability to deliver. This judgment also I am unable to follow for a similar reason as the judgment of Gentle, J., and in this matter I would prefer to follow the opinion of the Lahore High Court in the *Dunlop Rubber Company's case* (1), and in *Gopi Ram's case* (2). The other Madras judgment is by Happall, J., in *Salem Dayal Bagh Stores Ltd.* v. *the Governor-General in Council* (3), which only deals with section 77 of the Railways Act and is inapplicable to the facts of the present case.

The amendment made in the year 1899, by section 3 of Act X, introduced the words "non-delivery of, or." Thus under Article 31 a suit for compensation for non-delivery of or delay in delivering the goods stands on the same footing. In the various cases which I have mentioned above and in which the period of time taken in correspondence between the Railway and the claimant have been taken to be relevant factors, the necessary result would be that the *terminus a quo* in the case of non-delivery will be different from that where delay is alleged, because in all those cases there was delay, and if in a suit on account of delay in delivering the goods the time begins to run when the goods ought to be delivered or would normally reach their destination, then necessarily the same would be the *terminus a quo* in the case of non-delivery of goods. Besides I find no warrant, and I say so with the greatest respect, for the proposition that a claimant by starting

(1) I.L.R. 6 Lah. 301
(2) A.I.R. 1927 Pat. 335
(3) A.I.R. 1947 Mad. 362

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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.

It was then submitted by the appellant that the suit is within time because of acknowledgment on behalf of the Railway under section 19 of the Indian Limitation Act. No such plea was taken by the plaintiffs and I find no acknowledgment in writing by a person authorised on behalf of the Railway which would fall under section 19 of the Indian Limitation Act and I would therefore repel this contention.

I am, therefore, of the opinion that these suits were rightly held to be barred by time and I would dismiss the appeals of the plaintiffs but leave the parties to bear their own costs throughout.

It is necessary to refer in some detail to the written statement of defendant No. 2, the Insurance Company. In paragraph 6 of the plaint the plaintiffs alleged that the goods were insured with the defendant company " against all risks of loss, non-delivery and short delivery as per open insurance policy No. 47/11449 ". Necessary information was sent to defendant No. 2 and demands were made. * * ". In reply to this paragraph the defendants said with reference to paragraph 6 of the plaint—

> " These defendants admit that the said goods were insured with these defendants under open policy No. 47/11449 ".

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They denied their liability under the terms of the policy against all risks as alleged. They further stated that by their letters the defendants had again and again called upon the plaintiffs to produce satisfactory proof of non-delivery which had not been done, and therefore the defendants pleaded that they were not liable without proof of non-delivery of these goods, although they admitted that intimation was sent to them in respect of non-delivery, but intimation was not accompanied by necessary documents, and that the plaintiffs had failed to produce the certificates of insurance as required by these defendants. These defendants deny that they are liable to make any payment or to indemnify the plaintiffs as alleged or at all".

In paragraph No. 7 of the written statement the defendants relied upon a warranty that no liability was to attach unless a claim was made within six months of the date of issue of the railway receipt and also that in the event of damage immediate notice of such damage should be given to and a survey report obtained and that as the plaintiffs had failed to lodge their claim and give notice as required by the terms of the warranty the defendants were not liable. In paragraph 8 exemption from liability was claimed on the ground that the goods were transported in open wagons. The rest of the pleadings were not necessary for the purposes of this appeal.

Upon this the following issues were framed—

9. Is the plaintiff not entitled to the contract of insurance entered into with defendant No. 2?

10. Did the liability of defendant No. 2 lapse after the period of policy? If so, when did the lapse occur?

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11. Was the survey of goods necessary in this case?

12. To what compensation is the plaintiff entitled and against whom?

The trial Court held that the liability of the Insurance Company ceased as the plaintiff had failed to give notice to the Railway Administration within six months in accordance with the warranty as given in paragraph 7 of the written statement, and that "breach of different warranties of the policy has occurred on the part of the plaintiff and defendant No. 2 company is not liable under this policy for the price of these goods."

When the matter went to the District Judge it appears that a different contention was raised and different view taken. The following conditions of the policy seem to have been relied upon before him—

"On Cotton Piece-goods and/or Yarn of every description to be forwarded by Rail from time to time, particulars of which to be sent to our Lahore Office within 48 hours of the issue of the Railway Receipt. Declaration Certificates will be issued as and when the particulars are declared.

It is a condition of this insurance that until completion of the contract, the Assured is bound to declare hereunder each and every consignment without exception whether arrived or not. Underwriters being bound to accept same up to but not exceeding Rs. 1,00,000 per any one sending."

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and the District Judge found that it was necessary for the plaintiffs to send particulars of the consignments to the Lahore office of the company within 48 hours and obtain declaration certificates, and as these certificates had not been proved to have been obtained, one of the essential conditions of the policy had not been complied with and therefore no liability arose as against the defendants. The learned Judge, however, did not accept the plea of the defendants in regard to the want of notice of six months on the ground, and in my opinion wrongly, that this matter was not pleaded.

On the pleadings as I read them the defendant No. 2 admitted that the goods were covered by the policy. He raised certain objections to the attachment of any liability and they did not include the plea that the plaintiffs had not sent the particulars of the consignment within 48 hours of the issue of the Railway Receipt and obtained declaration certificates. On the other hand the pleadings seem to show that the certificates had been obtained but had not been produced by the plaintiffs as required by the defendants because I cannot interpret the words " the plaintiffs have failed to produce the certificates of insurance as required by these defendants " read with the previous words " that although the intimation was received by the defendants it was not accompanied by necessary documents" to mean what the learned District Judge has held it to mean. The plea of the defendants therefore was not that within 48 hours the certificates were not obtained or no declaration was made but that declaration certificates were not sent. I find no plea that within 48 hours particulars of the goods sent by rail were not sent to the Lahore Office of the company and it seems to be admitted by the defendants that intimation was given to them of the

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non-arrival of the consignment and therefore on this plea, i.e., the want of sending of certificates of insurance, the suit of the plaintiffs could not be dismissed.

It is then submitted that in accordance with the warranty pleaded in paragraph 7 of the written statement a claim should have been made within six months of the date of issue of the Railway Receipt, and it is sought to be interpreted that this should have been made to the Railway as well as to the Insurance Company. In the first place a claim was made to the Railway as to the loss of the goods in December, 1947, and it cannot be said that no claim was made to the Railway, but even if it was not as I read this term it only means that the claim has to be made to the Insurance company and not to the Railway.

The plea in regard to the goods not having been sent in closed wagons does not seem to have been pressed either in the Court of first instance or in the first appellate Court and was rightly not pressed before us. The main reliance of the defendants was on the want of declaration certificates which as I have said was neither pleaded nor was any specific issue raised on the point nor is there any specific mention of this in the judgment of the trial Court.

It is significant that certain warranties are specifically pleaded in paragraphs 7 and 8 and even the words of those warranties are reproduced, but the question of declaration certificates was neither specifically pleaded nor were the words specifically put into the written statement, and the evidence of the defendants also seems to show that this was not a question which was present to the minds of the parties in the trial Court. For this defendant, Balbir Sawhney C. W. 1, Manager,

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of the Insurance Company, was examined on commission. He has stated that in the case of insurance of a particular consignment under the policy the insured had to give declaration to the company giving the particulars of the consignment within 48 hours and a certificate of insurance obtained and in case of a claim the insurance certificate together with proof of loss was to be sent by the claimant and that in the present case the plaintiff only informed the company of the loss of the consignment but never sent "any proof of the loss and other particulars of the loss" and also that he did not send the original insurance certificate though called for. As I read the statement of this witness I do not find that he definitely stated that the particulars were not sent as required under the policy. All that he says is that these details were required because the company could only then make independent enquiry or appoint assessors to ascertain the truth or otherwise of the allegation made by the plaintiffs in regard to their loss. He also stated that this policy was cancelled but of this there is no proof. Thus from the pleadings as well as from the issues as also from the statement of the defendant's witness it cannot be said that it was the case of this defendant that declaration certificates as they have been termed by the District Judge were not obtained under the policy and therefore there was no contract of insurance in regard to these various consignments. In my opinion the learned District Judge was in error in dismissing the plaintff's claim against this defendant No. 2.

It was admitted that the consignments in question were covered by the policy of insurance. The defendant could not then say in the same breath that they were not covered by the policy of insurance. This is not a case of merely inconsistent pleadings but it seems to be a case of contradictory pleadings which may be termed both

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inconsistent and embarrassing defences which is not allowed under the Civil Procedure Code (*See* page 579 of Mulla's Code of Civil Procedure). If contradictory pleadings were to be allowed and that is what it comes to when a defendant pleads that the goods were insured with him but goods were not insured because of a certain reason, this would be covered by what Lindley, L. J., said *In re Morgan* (1). The learned Lord Justice said—

> "I quite see that that power may be very much abused. It may be abused to such an extent as to be embarrassing and unfair and oppressive to the other side."

and it appears to me for that reason that the issues were framed as they have been framed, and even if such a plea was open to defendant No. 2 it was his duty to get a specific issue raised and then the parties could have led evidence on that issue.

I would therefore allow these appeals against defendant No. 2 and decree the plaintiff's suits with costs throughout.

Falshaw, J.

FALSHAW, J. I agree.

CIVIL REFERENCE

Before Falshaw and Kapur, JJ.

M/s TELU RAM JAIN AND CO.,—*Petitioner*

versus

THE COMMISSIONER OF INCOME-TAX, PUNJAB, SIMLA,—*Respondent*

Civil Reference No. 20 of 1953

1954

Sept., 29th

Excess Profits Tax Act (XV of 1940)—Sections 13, 15 and 16—Whether the assessment to Excess Profits Tax in respect of chargeable accounting period 1st April, 1941 to 31st March, 1942, which proceeding commenced with the issue of a notice under section 13 of the Excess Profits Tax Act, 1940, in March, 1950 was barred by time—Interpretation of Statutes—Words "deemed to have came into force"—Meaning of.

(1) (1882) 35 Ch. D. 492 at p. 500