

(1965) 09 P&H CK 0017
In the Punjab And Haryana At Chandigarh
Case No : First Appeal No. 94-C of 1955

Eastern Traders (I) Ltd.

APPELLANT

Vs

Punjab National Bank Ltd. and Another

RESPONDENT

Date of Decision : 15-09-1965

Acts Referred:

Contract Act, 1872 — Section 194 , 212
Limitation Act, 1908 — Article 115, 24

Citation : AIR 1966 P&H 303

Hon'ble Judges : Shamsheer Bahadur, J; S.S. Dulat, J

Bench : Division Bench

Advocate : S.N. Chopra and N.D. Bali, for the Appellant; Radhey Lal Aggarwal and J.L. Bhatia for No. 1 and S.N. Shanker and S. Daljit Singh for No. 2, for the Respondent

Final Decision : Dismissed

Judgement

1. This is an appeal of the plaintiff company, the Eastern Traders (India) Limited, from the judgment and decree of the Commercial subordinate Judge. Delhi, dismissing its suit for recovery of a sum of Rs. 29,581-5-2 against the defendants, the Punjab National Bank Ltd., Delhi (hereinafter referred to as the first defendant) and the National City Bank of New York through its principal office at Bombay (hereinafter referred to as the second defendant) The claim in this appeal is restricted to the recovery of Rs. 16,664-5-4 though originally in the suit itself a larger amount was claimed.

2. The plaintiff as an importer of 5000 free wheels for cycles from British Bicycle and Motor Company Inc. New York, approached the first defendant for opening and establishing a letter of credit for 5000 for payment to the exporter by negotiating the draft of the American company without recourse to it. Through the first defendant, this letter of credit was opened with the second defendant by agreement Exhibit D-14 of 1st of September, 1947 The essential terms of this agreement which purports to be an application by Vidya Sagar on behalf of the

plaintiff-company, addressed to the National City Bank of New York. Bombay, through the Punjab National Bank Ltd Chawri Bazar. Delhi, are these. The plaintiff undertook to pay upon presentation all drafts drawn in pursuance of the agreement and to pay on maturity the amounts drawn by the exporting firm and accepted by the second defendant. In the words of the agreement, the second defendant Bank was instructed at its discretion to

" negotiate the drafts of British Bicycle and Motor Co. Inc., U.S.A. without recourse to them to the extent of 5000 to be drawn on M/s. Eastern Traders India Ltd. New Delhi, at sight for full invoice cost of shipments purporting to be 5000 free wheels for cycles from U. S. A Ports to Indian ports in one or more shipments Drafts negotiated under this credit are to be accompanied by shipping documents satisfactory to your said officer"

The stipulation with regard to the port of destination being " Indian Ports " assumed great significance as a result of the partition of the country on 15th of August, 1947. The bills under the letter of credit were received by the defendants and it was indicated that the port of destination was Karachi. The plaintiff protested and in the first instance refused to accept the bill being in contravention of an essential term of the letter of credit. The first defendant asked their clearing agents Messrs. Khimji Poonja and Co. on 1st of January, 1948, to clear the consignment from Karachi and have it booked to Bombay. The plaintiff eventually got the goods cleared at Karachi through Messrs. Kaikobad Pestanjee Kakalia and a sum of 4105 was expended for payment of customs duty by their agents. It took some time to have these goods cleared from Karachi as permission had to be taken from the Pakistan Government for their re-shipment to Bombay. Finally, the goods were received in Delhi between 26th of October and 10th of November, 1948, and were found short by 448 free-wheels. A sum of Rs. 5,948 8-9 was spent for their clearance from Bombay and transport to Delhi. According to the plaintiff, the price of goods had depreciated between January and November, 1948 and in spite of its best efforts were disposed of for only Rs. 10,730.

It was stated that even if there had been no shortage of 448 free-wheels the price fetched would not have exceeded Rs. 12,074 at the rates then prevailing. According to the averments made in the plaint, the estimated profits on sale of free-wheels would have been Rs. 15,000 if these had arrived in time at an Indian Port. On 22nd of January, 1948, the plaintiff, who had deposited the full amount for which the letter of credit had been opened was intimated that it had been debited with Rs. 15,982-5-5. The loss sustained by the plaintiff was assessed by it at Rs. 10,055-5-2, this being the difference between Rs. 22,129-5-2 as the cost price (Rs. 15,982-5-5) is the amount for which it was debited and Rs. 5,948-9-8 paid to Thomas Cook & Sons for clearing the goods at Bombay together with some other expenses and Rs. 12,074 which was the price of the free-wheels at the prevailing rates. A suit was brought for recovery of Rs. 29,581-5-2 on 30th of August, 1950, and it may be mentioned that the Punjab

National Bank was the only defendant impleaded in this plaint. The break-up of the amount claimed is as follows :--

- (1) Rs. 15,000 on account of expected profits
- (2) Rs. 4,106 paid to clearing agents at Karachi
- (3) Rs. 190 spent by the plaintiff
- (4) Rs. 231 interest charged by the defendant
- (5) Rs. 10,055-6-2 as losses sustained.

3. In the written statement of the first defendant, a plea was taken that there was no privity of contract between it and the plaintiff and the National City Bank of New York was the principal agents of the plaintiff in the transaction. As a result of this plea, an amended plaint was filed on 23rd of August, 1951, in which the second defendant was also made a party. On behalf of both the defendants, the pleas raised were numerous. On merits, each of the two defendants held the other liable if at all there was any question of liability. To show the range of pleas, it would be sufficient to observe that the status of the plaintiff was challenged, the jurisdiction of the Court was questioned and the verification of the plaint was regarded as defective. For purposes of this appeal, it becomes necessary only to refer to four questions which survive for decision of this Court. The first one relates to the plea of the second defendant that reference to " Indian Ports " in the letter of credit envisaged geographic India and Karachi was as much an Indian Port as Bombay.

There was according to this defendant, no breach of agreement on this score. The second point on which it is impossible to reconcile the pleas of the two defendants, relates to the question of liability. While the position of the first defendant has been that the contract embodied in the letter of credit was between the plaintiff as principal and the second defendant as agent, that of the second defendant is that it acted only as a sub-agent and was accountable only to the first defendant. On behalf of the second defendant, the question of limitation was also pleaded. With regard to the amount of damages, the position of both the defendants is that no satisfactory evidence has been adduced to establish the loss which can give rise to a claim for damages. Finally, it was pleaded that the defendants in any event were saved by the indemnity embodied in clause 6 of Exhibit D.-14.

4. According to the findings of the trial Judge, Karachi was not the port of destination and there was a breach of agreement for which the second defendant is liable. On the second point it has been held by the Court below that "the agent for the plaintiff was the National City Bank of New York, defendant 2, and not the Punjab National Bank defendant 1 ". The damages have been assessed by the Court at Rs. 16,664-5-4. In the view of the trial Court, the claim against the second defendant is barred by time only with regard to the item of Rs. 4,105 out of this amount. The suit, however, has been dismissed because the second

defendant is exonerated by the second part of the indemnity clause.

5. On the first question which has been decided in favour of the plaintiff and against the defendants, it is necessary to emphasise, as slated in Halsbury's Laws of England (Simonds edition) Volume 2, page 213, that " a letter of credit is in principle an undertaking by a banker to meet drafts drawn under the credit by the beneficiary of the credit in accordance with the conditions laid down therein". To defeat a claim based on a letter of credit, the defendant must act strictly within the terms and limitations of the letter. In other words, a banker must comply rigidly with the instructions and this applies as much to a paying banker as to an intermediary banker, the latter being indemnified only if he complies strictly with the instructions. It cannot be seriously contested in the context of events following the partition of the country on 15th of August, 1947, that an Indian Port" could not conceivably include Karachi.

It is the concern of the accepting banker that documents conformed precisely with the terms of the credit, these terms having been mutually settled between the parties. To say that Karachi was still a port of geographic India is a hopeless plea to take in such circumstances and the exporters were bound to see that shipping document was in conformity with the agreement on which the letter of credit was issued Equally bound was the second defendant when it accepted the draft drawn by the exporters against the plaintiff. Mr. Chopra, for the appellant, has rightly relied upon the decision of the Court of appeal in Rayner & Co. Ltd v. Hambros Bank Ltd. (1942) 2 All ER 694, where the bankers' refusal to pay against a bill of lading covering "machine shelled groundnuts kernals" under a credit calling for " coromandel groundnuts " was upheld As pointed out by Lord Justice Goddard at page 703 the custom or trade practice in such contracts is this:--

" There are three peoples concerned where a bankers credit is in question there is the person who requests the bank to establish the credit, there is the bank who establishes it, and there is the beneficiary who has the opportunity of drawing on the credit. The person who requires the bank to establish the credit can impose what terms he likes. "

The bank, in other words, is bound to accept the mandate which in the instant case was that the shipment should be made to an Indian port. In this judgment, the following statement of law by Bailhaeche, J. in English Scottish and Australian Bank, Ltd. v. Bank of South Africa (1922) 13 L LR 21 was approved :--

" It is elementary to say that a person who ships in reliance on a letter of credit must do so in exact compliance with its terms. It is also elementary to say that a bank is not bound or indeed entitled to honour drafts presented to it under a letter of credit unless those drafts with the accompanying documents are in strict accord with the credit as opened."

Reference may also be made to the statement of law enunciated by Lord Sumner in Equitable Trust Co. of New York v. Dawson Partners Ltd (1926) 27 L LR 49,

cited in the decision of Mackinnon LJ in Rayner's case 1942 2 All ER 694 :--

" It is both common ground and common sense that in such a transaction the accepting bank can only claim indemnity if the conditions on which it is authorised to accept are in the matter of the accompanying documents strictly observed. There is no room for documents which are almost the same, or which will do just as well. Business could not proceed securely on any other lines. The bank's branch abroad, which knows nothing officially of the details of the transaction thus financed, cannot take upon itself to decide what will do well enough and what will not. If it does as it is told, it is safe; if it declines to do anything else, it is safe, if it departs from the conditions laid down it acts at its own risk."

On a matter of principles, therefore, it seems clear that it was the responsibility of the shippers as also the bankers which honoured the drafts to see that the bill of lading was in conformity with the terms of the letter of credit. The shipment not being on Indian Ports, it became the duty of the second defendant to whom the documents were in the first instance presented for acceptance to see that these were in strict conformity with the letter of credit. The Manager of the second defendant has deposed that at the relevant time Indian ports were considered to be all ports on the Indian sub-continent including Pakistan. He has further stated that it was understood at that time that the term " Indian Ports " had reference to ports in geographical India. Some support is sought also from a monthly letter issued by the defendant-Bank in September 1947, in which it is said that.

" no immediate drastic changes in American trade with India seemed likely to occur as the economic controls now in force will remain identical in the two dominions until 1st March, 1948, when the present stand-still agreement expires.

In face of the clear duty that the goods were to be shipped to " Indian Ports ", these considerations cannot possibly affect the liability of the accepting banker to act in conformity with the mandate contained in the agreement of 1st of September, 1947. The decision of the learned trial Judge on this issue is correct and is accordingly upheld.

6. On the next question relating to privity of contract, the plaintiff and the second defendant are at one in saying that the responsibility is that of the first defendant as the principal agent, while, according to Mr. Radhe Lal, the learned counsel for the first defendant, the liability for the breach, if any, devolves on the second defendant. It is natural that all the three parties rely on Exhibit D.-14 which is an, " application and agreement for irrevocable letter of credit " It is to be borne in mind that the document is signed by Vidya Sagar on behalf of the plaintiff and is addressed to the second defendant. This application was forwarded by the first defendant with an endorsement to the second defendant which accepted it on 10th September, 1947. Originally, the bills of lading were to be dated and negotiated not later than 30th of September, 1947, but this was extended by the second defendant upto 31st of December, 1947, in an

application sent by the plaintiff to the first defendant.

The gist of Ex D. 14 is that the drafts of the exporting firm were to be accepted by the second defendant if they accorded with the conditions and the plaintiff held itself bound to meet these obligations through the first defendant. Reliance on behalf of the plaintiff has been placed on certain correspondence which passed between the parties. There is a letter Exhibit P 117 of 13th of November, 1947 where the second defendant is mentioned by the Punjab National Bank as "our foreign Agents " Mr. Chopra also points out that a letter was written by the plaintiff to the Punjab National Bank (Exhibit D. 7) on 4th of November, 1947, in which instructions were given about the letters of credit which were really intended for the second defendant. For extension of credit the plaintiff first moved the Punjab National Bank which wrote back on 17th of December, 1947 (Exhibit P. 123) that "we beg to advise you that as far as we know there is no procedure at all for extending the date for negotiation for a part amount of any letter of credit."

When it transpired towards the end of December that the goods had been shipped for Karachi it was the first defendant which wrote to Khimji Poonja and Co. on 1st of January, 1948 (Exhibit P. 81) that the consignments were being landed at Karachi "in contravention of our instructions" and the addressee was directed to arrange for their re-booking to Bombay. It is sought to be inferred from this that the first defendant was the agent of the plaintiff and not the American Bank. Two days before on 30th of December, 1947, it was the first defendant which wrote to the second defendant (vide Exhibit D. 2) that the shipment having been booked to Karachi, the plaintiff had expressed reluctance to accept the same unless goods "are landed at some Indian port" according to the instructions. It is sought to be proved that if the first defendant was not an agent of the plaintiff there was no occasion for them to write this letter to the American Bank. The Chawri Bazar Branch of the Punjab National Bank through whom the letter of credit has been opened, wrote to the District Manager of the Delhi Circular on 26th of January, 1948 (Exhibit D. 10) detailing the position about the shipment to Karachi and asking for their advice. It was added for the information of the Delhi circle that "we hold 100 per cent margin in the above credit."

7. The two bills of 2983.35 and 1776.46 appear to have been honoured by the second defendant sometime in the end of December, 1947, and when the bills have been forwarded to the first defendant it was pointed out by them to the second defendant in the letter marked Exhibit P. B. of 2nd of April, 1948, that the consignment to Karachi instead of an Indian port may result in loss to the plaintiff and in these circumstances it was said that

"we would remit you that amount on the same conditions as we have received from M/s Eastern Traders (India) Ltd. namely if a Court of Justice find the case against us and we have to refund the amount or a portion thereof, you would make good the same to us. The amount of loss decreed against us shall be

payable by you."

There are also some communications which lend to show that the Punjab National Bank accepted the position of being the principal agents. For instance, they wrote to the plaintiff on 15th of May, 1947, that.

"our correspondents Messrs National City Bank of New York have complained of your direct communication with them while you have opened your letter of credit through us. Please note that you are not authorised to correspond with them direct in respect of the credits which you have opened through us."

It is worth mentioning that this letter was written long before the present letter of credit was opened and cannot be of any assistance in determining the point in issue. The question really turns on the interpretation of Exhibit D. 14 As pointed by Mr. Radhe Lal, this was addressed directly to the second defendant which look the responsibility of accepting the shipping documents from the exporting firm. Wide powers were given under Clause 4 to the second defendant in these words:

"....the undersigned hereby give you full power and authority at your discretion by yourselves or through agents at any time to have, and take possession thereof and all policies or certificates of insurance thereon and proceeds of such policies and certificates, and to hold and/or collect the same or under the terms expressed below, to dispose thereof at any time, and irrespective of the maturity of the drafts or acceptance under the said credit."

On 10th of September, 1947, the second defendant directly accepted the obligations which had been earlier communicated in the cable of 6th September, 1947, vide Exhibit P. 127. Even in the application for extension of time sent directly to the second defendant the first defendant is only mentioned as a guarantor. On a consideration of this evidence, it seems to us that on the suggestion of the first defendant the second defendant had been appointed a substituted agent of the plaintiff and its liability is governed by Section 194 of the Indian Contract Act which says that:

"Where an agent holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub agent, but an agent of the principal for such part of the business of the agency as is entrusted to him."

The principle of law governing in such cases has been well settled in *De Bussche v. Alt* (1878) 8 Ch. D. 286 As stated by Thesiger L. J. at p. 310:

"As a general rule, no doubt, the maxim "*delegatus non potest delegare*" applies so as to prevent an agent from establishing the relationship of principal and agent between his own principal and a third person; but this maxim when analyzed merely imports that an agent cannot, without authority from his principal, devolve upon another obligations to the principal which he has himself undertaken to personally fulfil; and that, inasmuch as confidence in the particular person employed is at the root of the contract of agency, such authority cannot

be implied as an ordinary incident in the contract. But the exigencies of business do from time to time render necessary the carrying out of the instructions of a principal by a person other than the agent originally instructed for the purpose, and where that is the case, the reason of the thing requires that the rule should be relaxed, so as, on the one hand, to enable the agent to appoint what has been termed a sub-agent" or "substitute" (the latter of which designations, although it does not exactly denote the legal relationship of the parties, we adopt for want of a better, and for the sake of brevity); and on the other hand, to constitute, in the interests and for the protection of the principal, a direct privity of contract between him and such substitute."

8. We are of the opinion that the compulsions of the situation required in the present case that the Punjab National Bank which was undoubtedly the agent of the principal should employ another banker to effectuate the transaction of import and this is an essential incident of the letter of credit which was issued and the second defendant assumed the position of an agent with whom privity of contract was established by the plaintiff. As pointed out by Page J. in *Chowdhury T.C. and Bros. Vs. Girindra Mohan Neogi*,

"The true test to determine whether the person appointed by the agent authorised in that behalf to perform part of the business of agency is a substitute agent of the principal or the sub-agent of the agent is to see if there is a privity of contract between the principal and the person so appointed, and the test to be applied is the same whether the case falls within Section 194 or whether the person so appointed is nominee of the principal, although there is difference in the obligation undertaken by the agent "

The two bills which had been sent by the second defendant to the first defendant on 23rd of December 1947, vide Exhibit D 2/7, were in reality in pursuance of a transaction which had been entered into directly with the plaintiff though through the good offices and intervention of the first defendant. It is true that the first defendant eventually was to honour these bills which had been accepted by the second defendant. That the documents had to be made in conformity with the letter of credit is even admitted by the second defendant in its communication to the first defendant on 8th of January, 1948 (Exhibit P 82) wherein the Punjab National Bank was told that it was obligatory on its clients "and yourselves to liquidate the subject bills" though they added that the "letter of credit having been opened under your responsibility we expect you to forward us the advice of payment irrespective of the drawee's attitude". It is well to add that the acceptance of the second defendant of the documents submitted by the exporting company and making payments of 2983.35 and 1776.46 harmonises with the position that the American Bank was acting as the agent of the plaintiff. The first defendant on presentation of the documents debited the account of the plaintiff with Rs. 15,982/5/5 on 22nd of January, 1948, and this action was really consequential to the one which had earlier been taken by the second defendant. Indeed, according to the letter of credit, the first defendant was bound to honour

the obligation which had been incurred by the second defendant on behalf of the principal

9. It is also necessary to discuss the ancillary matter relating to indemnity clause in the letter of credit. It is the case of both the defendants that clause 6 of Exhibit D. 14 exonerates the bankers from any liability. Under this clause, Vidya Sagar, on behalf of the plaintiff assumed

"all risks of acts of the users of said creditstogether with all responsibility for the character, kind, quality, quantity, delivery, or existence of the merchandise purporting to be represented by any documents....shipped under this credit....or for the validity, genuineness, sufficiency, form or correctness of any documents, even if such documents should in fact, prove to be in any or all respects incorrect, defective irregular, fraudulent or forgedor for any delay, default, fraud or deviation from instructions of the shipper or any one else in connection with said merchandise or the shipping or other documents with respect thereto.. ..or for any breach of contract between the shippers of vendors and the undersigned; and the undersigned will hold you harmless from all loss of damage in respect of any such matters, and from any and all damage and loss, whatsoever suffered by you by reason of any and all action taken by you and your said branch in good faith in furtherance of our above request or due to errors, omissions, interruptions or delays in transmission or delivery of any and all messages, by mail, cable telegraph or wireless, whether or not the same be in cypher."

On a close scrutiny of this indemnity clause it is manifest that what the bankers have been saved from are the losses which have resulted from the neglect of the shippers. The exemption does not cover the case where the bankers have made the payments by acceptance of documents whose defect was apparent; not being in conformity with the mandate of the letter of credit As rightly observed by the trial judge, the plaintiff holds the defendants liable not because of the mistake of the shippers in shipping the goods to Karachi nor for delay in the arrival of the goods at the port of destination, but for wrongful acceptance of shipping documents. The plain fact of the matter is that indemnity clause does not empower the bankers to accept shipping documents for any port anywhere. The bank no doubt is indemnified for loss resulting to it for anything done in good faith but it is incomprehensible how the trial judge has reached the conclusion in favour of the second defendant on this point in face of the finding that the shipping document was not in conformity with the mandate contained in the letter of credit The learned judge had already found that the destination of the consignment had to be an Indian Port and Karachi was not a geographic part of India as contended for by the second defendant. How could it then be held that the second defendant acted bona fide?

The plain fact of the matter, and really the kernal of the case, is that the shipping document not being in strict conformity with the mandate contained in the letter of credit, the second defendant acted negligently in honouring the drafts against

defective documents. The question of good faith, therefore, does not arise and the finding of the learned judge does not harmonise with the realities of the situation or with its own earlier finding with regard to Karachi not being an Indian Port. The learned Judge appears to have been influenced by the fact that the bank could have contracted itself out of liability imposed upon it u/s 212 of the Contract Act. This may well be so, and it is also to be accepted that the bank, under the second portion of Clause 6 of Exhibit D. 14 is indemnified for any loss resulting to it for anything done in good faith. It cannot, however, be deduced from the circumstances of the case that the bank had acted actually in good faith in furtherance of the plaintiff's request contained in Exhibit D. 14. In my opinion, therefore, the conclusion of the trial Court with regard to the effect of the second portion of Clause 6 of the indemnity contained in Exhibit D. 14 is unwarrantable.

10. As regards the actual damages, the principle laid down by the learned trial judge in assessment of the amount appears to be correct. If the consignment had been shipped to an Indian Port it would have arrived at its destination somewhere in the middle of January, 1948. Judging from the fact that it arrived in Karachi on the 12th of January, 1948. It would have taken another week or so for the goods to reach Delhi and it may be safely assumed that if the goods had arrived in time the plaintiff would have been able to dispose them of by the end of January, 1948. The goods actually arrived in Delhi sometime between 26th of October and 10th of November, 1948, and what has to be seen, therefore, is whether there was any difference in the prices which prevailed in January, 1948. and November, 1948. There is no satisfactory evidence adduced by the plaintiff. The plaintiff produced certain cash memos but no purchaser came forward to give evidence that he had actually bought the goods from the plaintiff. No person in the trade has appeared to give evidence about the prevailing rate's of free-wheels in Delhi in November, 1948.

It seems that the trend of prices has throughout been upward and not downward and it was for the plaintiff to prove affirmatively that the price level of free wheels had gone down to the extent claimed by him between January and November, 1948. The learned Judge has relied on the evidence of M. D. Parekh, who was examined on interrogatories on behalf of the second defendant. This witness is a partner of Messrs Bombay Cycle and Trading Company, Bombay, and according to his evidence which is supported by the voucher of 24th of January, 1948, the rate of freewheels in the month of January, 1948, was Rs. 58/8/ per dozen, that is to say Rs. 4/14/- per piece. It is not disputed that the rate in Delhi would have been a little higher than the one which prevailed at that time in Bombay. The learned Judge, however, has relied for determining the rate in November, 1948, on the evidence of Shri Kishan Gupta P. W. 6 who said that the rate was Rs. 26/- per dozen. It is well to remember that this witness used to be a clerk of the plaintiff's company and on that score his evidence cannot be regarded as trustworthy. M. D. Parekh whose testimony has been accepted by the trial judge with regard to the rate prevailing in January, 1948, should also have been believed for the rate which prevailed in November, 1948. In answer to

question No. 6, this witness gave the rates prevailing at different times from November, 1947 till December, 1948. According to him, the rate in November, 1948, was Rs. 54/- per dozen.

According to this evidence, there would hardly be any difference in the two rates and the amount of damages would be negligible. In our opinion, therefore, the ground for reaching the figure of Rs 12,328/5/4 as the loss incurred by the plaintiff is very tenuous and cannot be accepted. The second item which has been allowed by the trial judge is of the sum of Rs. 4,105/- paid to the clearing agents at Karachi. In the view which we take second item is clearly barred by time as the cause of action actually arose in the end of 1947 when the goods were cleared. In our view, therefore, the proof of damages sustained by the plaintiff is lacking and we would decide this issue in favour of the second defendant and against the plaintiff.

11. This brings us to the last question of limitation. Our view being that the second defendant had become a substituted agent of the plaintiff for the transaction becomes necessary to discuss this question. It is conceded that the time would run against the second defendant from the date when the amended plaint was filed and this was on 23rd of August, 1951. According to Mr. Shankar, the learned Counsel for the second defendant, the provision in the Limitation Act applicable in the case is Article 115 which says that the period of limitation of three years for compensation for the breach of any contract is to be reckoned from the date when the contract is broken, and it is argued that the breach having taken place in December, 1947, the action should have been brought within three years from that date. It is no doubt true, as admitted by the plaintiff himself, that he came to know of the breach on 30th of December, 1947, when Exhibit D. 2 was written in his presence. This is a letter written by the first defendant to the second in which it was pointed out that the plaintiff was reluctant to accept the goods unless they are landed at some Indian Port. In our opinion, this argument does not take sufficient account of Section 24 of the Indian Limitation Act which says that:

"In the case of a suit for compensation for an act which does not give rise to a cause of action unless some specific injury actually results therefrom, the period of limitation shall be computed from the time when the injury results."

A breach in the abstract would not be sufficient, in our opinion, to provide a foothold for the plaintiff to file a suit for compensation against the second defendant. It was only when the goods had been disposed of in November, 1948, when the injury was actually sustained and time must run from that date. In this view of the matter, though the item of Rs. 4,105/- would be barred by time, the amount of damages, if proved, could have been recovered from the second defendant against whom the suit must be deemed to have been filed on 23rd of August, 1951.

12. We are, therefore, of the opinion that no decree for damages can be passed

against either of the two defendants and in this view of the matter this appeal must stand dismissed. As there has been divided success on the questions in issue in this appeal, we would leave the parties to bear their own costs.