

(1980) 04 MAD CK 0042
In the Madras High Court

Loyd Bituman Products (P.) Ltd.

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 02-04-1980

Acts Referred:

Citation : (1980) 93 LW 588 : (1980) 2 MLJ 363

Hon'ble Judges : S. Natarajan, J

Bench : Division Bench

Judgement

S. Natarajan, J.—This is a plaintiff's appeal against the judgment and decree of the XII Assistant Judge in O.S. No 6718 of 1973 on the file of the City Civil Court, Madras. The suit, which was an action for recovery of the value of goods short-delivered by the Southern Railways came to be filed in the following circumstances:

2. A consignment of 15 bales of Hessian cloth was booked by the plaintiffs from Shalimar on 22nd August, 1972, and the consignment reached Salt Cottours at Madras and was unloaded on 12th September, 1972. On 1st November, 1972, the plaintiffs' representative went to take delivery of the consignment. The goods agent of the defendants informed that only 5 bales were available and the balance, 10 bales, were not traceable. Giving time to the goods agent till the next day to trace the missing bales, the plaintiff's representative returned and went to the good shed once again on 2nd November, 1972. On that day, the defendants' agent, delivered 4 bales and retained the 5th bale with him for the purpose of identifying the 10 bales which were missing. On the subsequent days also, the plaintiffs' agent made further visits, but to no avail and hence the plaintiffs filed a claim on 10th November, 1972 to the Chief Commercial Superintendent of the Southern Railways, for a sum of a Rs 23, 506. 41 P. being the cost of the undelivered 11 bales Thereafter, on 12th November, 1973, the one bale that was retained for identification purposes was also delivered, but the 10 bales remained undelivered. The claim statement filed by the plaintiffs was not accepted on the ground that the liability of the Railways was limited u/s

77(2) of the Indian Railways Act (hereinafter referred to as the Act) to a period of thirty days after the termination of the transit, and since the claim had been made beyond the period of liability the Railways stood absolved of their liability. It was thereafter, the plaintiffs came forward with their suit for recovery of a sum of Rs. 21,416 being the value of the 10 bales together with interest and costs. The plaintiffs alleged in their plaintiff that if the Railways had taken proper care of the goods they would not have been lost and further-more, the Railways, as bailees and carriers, are in law bound to return the goods or pay the value thereof and are not entitled to invoke Section 77(2) of the Act to their aid. According to the plaintiffs, Section 77(2) was not applicable to the present case as the Railways had admitted that the goods were in their possession even on 29th October, 1972. Further according to the plaintiffs, the Railways had to take care of the goods till the date of delivery and they are only entitled to collect wharfage and demurrage charges from the plaintiffs for their failure to take the goods in time, and not to deny their liability to account for the goods.

3. The principal defence set out by the defendants, viz., the Railways in their written statement was that since the 15 bales were unloaded on 12th September, 1972, their liability to deliver the goods subsisted only for a period of thirty days therefrom as provided in Section 77(2) of the Act and they cannot be held liable for the non-delivery of 12 bales beyond the prescribed period of thirty days. They stated that the plaintiffs applied for delivery of the goods only on 1st November, 1972, i. e., after a period of 48 days and on the day the delivery of the goods was sought for, only 5 bales were available and the remaining 10 bales were found missing. All the 15 bales were available till 29th October, 1972, as per their records. As the loss of the 10 bales had occurred after the period of thirty days provided u/s 77(2) of the Act, they stood absolved of their statutory liability. Since the liability of the Railways had been made more stringent u/s 73 of the Act by taking the liability as that of a carrier, the liability was strictly conditioned by the terms of Section 77 of the Act and hence the railways were freed of their obligation to take reasonable care of diligence in the preservation of the goods after the expiry of the thirty-days period. The defendant, therefore, refuted their liability for non-delivery of the 10 bales that were missing.

4. On the pleadings, the following issues were raised by the learned trial Judge:

1. Whether the defendants are absolved of all liabilities u/s 77(2) of the Railways Act ?

2. Whether the loss and non-delivery of the consignment occurred after the period provided u/s 77(2) of the Railways Act ? and

3. To what relief?

5. In support of their case, the plaintiffs have examined their agent, V.Y. Nesan as P. W. No. 1 and filed Exhibits A-1 to A-18. By way of counter-evidence, the defendants have examined their unloading clerk and the head goods-clerk as D. Ws. 1 and 2 and filed Exhibits B-1 to B-8. The learned trial Judge, after

considering the evidence adduced in the case and the scope of Section 77 of the Act, held that inasmuch as the loss of the 10 bales had occurred after the expiry of thirty days, the Railways were not bound to account for the loss and consequently, they stood absolved of their liability to make good the cost of the missing bales. Accordingly, he rendered findings against, the plaintiffs under issues 1 and 2 and dismissed the suit with costs. It is as against that judgment and decree, the plaintiffs have preferred the present appeal.

6. The plaintiffs have filed a civil miscellaneous petition and prayed that the gate-pass issued to P. W. 1 on 1st November, 1972 was failed to be exhibited in the trial Court by oversight and the said gate-pass may be received as additional evidence in the appeal. The petition is allowed and the gate-pass is marked as Exhibit A-19.

7. Mr. Haridoss, learned Counsel for the plaintiff-appellants, contended that the learned trial Judge has taken an unduly narrow view of the matter by holding that Section 77(2) of the Act is categorical in that after thirty days from the termination of the transit the railway administration is not responsible for any loss and it is not bound to account for the goods and explain the care taken by it. Learned Counsel conceded that the trial Judge has followed the ratio laid down by this Court in an up-reported case *Pasupathy Textiles by its Partner R. Muthuswamy v. Union of India* owning the Southern Railway by its General Manager, and Anr. G.R.P. No. 1354 of 1969 of this Court; order dated 30th June, 1971...but, however argued that the dictum contained therein required re-consideration. According to the learned Counsel, the period of liability of the respondents is, no doubt, restricted u/s 77(2) of the Act to a period of thirty days (the period has now been restricted to seven days by the Amendment Act LXXI of 1972) after the termination of the transit, but the provision would not absolve or exonerate the respondents totally of their duty to account for the goods after the expiry of thirty days. His argument proceeded on the basis that for the period of thirty days referred to in Section 77(2) the appellants stood in the position of bailor and were entitled to enforce their right as such, but after the expiry of thirty days, the appellants were entitled to fall back on their common law right to ask for the return of the goods and, in the event of the goods not being available, to ask for their value. In the course of his argument, the learned Counsel raised a question whether the respondents can take umbrage u/s 77(2) of the Act and refuse to deliver the goods to the consignee after a period of thirty days even if the goods were available with them. The counsel submitted that the respondents were only entitled to collect demurrage and wharfage charges even beyond the period of thirty days, but they had no right to take shelter u/s 77(2) of the Act and that they were completely freed of their obligation to deliver the goods or account for the same merely because the appellants had failed to claim delivery of the goods within a period of thirty days from the termination of transit. Another submission made by the counsel was that when, according to the respondents, the entire consignment of 15 bales were found intact as late as 29th October, 1972, a duty was cast upon the respondents to explain as to how

the 10 bales disappeared within the two days Interval before 1st November, 1972 when P. W. No. 1 went and asked for the delivery of the consignment.

8. Before we refer to the relevant provisions of law for dealing with the contentions of Mr. Haridoss, we may briefly refer to the evidence that has been adduced in the case, P. W. 1 is the Secretary to the Director of the appellant-company. He has stated that he went on 1st November 1972 to take delivery of the 15 bales and, on being informed that some of bales were missing he went on the next day and got delivery of only 4 bales, the other available bale being retained for tracing the rest of the bales He has admitted that the unloading of the bales had taken place on 12th September, 1972 as per the statement contained in Exhibit A-9. He has tried to explain the delay in taking delivery of the bales by stating that it was only on 1st November, 1972 they were able to clear the railway receipt from the bank. D. W. 1 who was working as unloading clerk at the relevant time, has stated chat inclusive of the 15 bales concerned in this case a total of 46 bales were unloaded on 12th November, 1972. He has thus proved the unloading of the 15 bales D .W. 2 the head goods-clerk, has stated that he used to check the unloaded goods on every Sunday and he noticed the 15 bales intended for the appellants to be lying in the goods-yard on 24th September, 1972, 8th October, 1972, 15th October, 1972, 23rd October, 1972, and 29th October, 1972 and the entries made by him in the check-registers are Exhibits B4 to B-8.

9. For appreciating the questions of law raised by the appellants' counsel, it is necessary to refer to the relevant provisions of the Act, viz., the Indian Railways Act, 1890 and some of the amendments that were made by the Indian Railways (Amendment) Act, 1961(XXXIX of 1961). Originally, the responsibility of the railways in India as carriers of animals and goods was that of a bailee. In 1961 it was felt by Parliament that the responsibility of the railways should be changed to that of a common carrier since there was public demand for such a change. Consequently, a Bill was introduced in Parliament and the Amendment Act, XXXIX of 1961, earns to be passed. By reason of the amendment, the general responsibility of a railway administration as a earlier of animals and goods u/s 73 of the Act was altered from that of a bailee 10 that of a common carrier. The change imposed greater duties and obligations on the part of the railway in that it was placed in the position of insurer and held responsible for the loss, destruction, damage, deterioration or non-delivery, in transit, of animals or goods entrusted to the administration to be carried by rail, arising from any cause except act of God, act of war, act of public enemies etc. etc. Even in respect of loss, destruction, damage etc , arising from any of the excepted causes, it was provided that the railway administration will not be relieved of its responsibility for the loss, destruction damage, deterioration or nondelivery unless the administration further proves that it had shown reasonable foresight and care in the carriage of the animals or goods Thus, by reason of the change, the burden which was originally cast upon the claimant to prove misconduct on the part of the railway administration had been shifted to the administration and

it has to prove exercise of due diligence and care in the carriage of the animals or goods. In the scheme of change brought about by the Amendment Act, XXXIX of 1961, it was also considered necessary and desirable to amend Section 77 of the Act and fix the period of liability of the railway administration as a bailee for the loss, destruction, damage, deterioration or non-delivery of goods carried by it, after the termination of transit.

10. The Statement of Objects and Reason contained in the Bill of 1961, introduced in Parliament for making the changes, reads as follows:

The Railway Freight Structure Enquiry Committee (1956-57) had recommended that the responsibility of the railways in India as carriers of animals and goods, which is at present that of a bailee, should be changed to that of a common carrier. There is also a public demand for such a change. After a careful and detailed examination of the question, the Government have decided to accept the Committee's recommendation. The Government have also decided--

(a) that in respect of articles which are not removed from railway premises at destination within the free time allowed therefor, the railways should assume responsibility of a bailee for a period of thirty days thereafter...

... (the rest omitted as not relevant).

The Financial Memorandum prepared in connection with the Bill states as follows:

Under new Section 73 proposed to be inserted by clause 13 of the Bill, the basic responsibility of railways, which is at present that of a bailee, is proposed to be changed to that of a common carrier, the railways will be undertaking greater responsibilities and will be liable for loss of or injury to consignments in all cases arising when they are in the course of transit unless such loss or injury is caused by an act of God or other excepted perils specified in that section, it is also proposed:

(a) Under new Section 77(1), proposed to be inserted by clause 13 of the Bill, that a railway administration shall be responsible as a bailee in respect of loss or injury to goods which are not removed from railway premises at destination within the free time allowed therefore, for a period of thirty days thereafter..."

.... (the rest omitted as not relevant).

Parliament, having accepted the proposed changes, passed the Amendment Act, XXXIX of 1961 and, with effect from 1st January, 1962, Section 77 of the Principal Act stood as follows :-

77. (1) A railway administration shall be responsible as a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872, for the loss, destruction, damage, deterioration or non-delivery of goods, carried by railway within a period of thirty days after the termination of transit:

Provided that where the goods are carried at owner's risk rate, the railway

administration shall not be responsible for such loss, destruction, damage, deterioration or non-delivery except on proof of negligence or misconduct on the part of the railway administration or of any of its servants.

(2) The railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or nondelivery of goods carried by railway, arising after the expiry of the period of thirty days after the termination of transit.

(3) Notwithstanding anything contained in the foregoing provisions of this section, a railway administration shall not be responsible for the loss, destruction, damage, deterioration or non-delivery of the goods mentioned in the Second Schedule, animals and explosives and other dangerous goods carried by railway, after the termination of transit.

(4) Nothing in the foregoing provisions of this section shall relieve the owner of animals or goods from liability to any demurrage, or wharfage for so long as the animals or goods are not unloaded from the railway wagons or removed from the railway premises.

(5) For the purposes of this Chapter--

(a) unless otherwise previously determined, transit terminates on the expiry of the free time allowed (after the arrival of the animals or goods at destination) for their unloading from railway wagons without payment of demurrage, and where such unloading has been completed within the free time allowed, transit terminates on the expiry of the free time allowed for the removal of the animals or goods from railway premises without payment of wharfage;

(b) "demurrage" and "wharfage" have the meanings respectively assigned to them in Clause (d) and Clause (h) of Section 45-C.

11. From a reading of the several sub-sections of Section 17, it may be seen that under Sub-section (1), the responsibility of the railway administration for the loss, destruction damage, deterioration or non-delivery of goods carried by rail, within a period of thirty days after the termination of transit, shall be that of a bailee under Sections 151, 152 and 161 of the Indian Contract Act, 1872. There is a proviso to Sub-section (1) which deals with goods carried at owner's risk but we are not concerned with that aspect of the matter in this appeal. Sub-section (2) is a very important provision because it lays down in clear terms that the railway administration shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods carried by it, occurring after the expiry of the period of thirty days after the termination of transit. It is the scope and effect of this provision we have to consider in a detailed manner in the course of our judgment. Sub-section (3) is a non obstante provision for Sub-section (2) in that it places a lighter burden on the railways in the case of certain specified items of goods, the keeping of which would create problems for the railway or expose it to certain dangers., These items have been categorised in the sub-section as "goods mentioned in the Second Schedule,

animals and explosives and other dangerous goods". Sub-section (4) is an enabling provision which entitles the railway administration, de hors the earlier provisions, to claim from the consignees demurrage and wharfage for so long as the animals or goods are not unloaded from the railway wagons or removed after unloading from the railway premises. Sub-section (5) defines how the time of termination of transit has to be reckoned.

12. Section 77(1) refers to the responsibility of the railway administration as a bailee under Sections 151, 152 and 161 of the Indian Contract Act. The relevant sections in the Contract Act, viz , Sections 151, 152 and 161, read as follows:

Section 151. - Care to be taken by bailee : - In all cases of bailment the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods or the same bulk, quality and value of the goods bailed".

"Section 152 ,--Bailee when not liable for loss etc. of thing bailed:

The bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in Section 151.

"Section 161.--Bailee"s responsibility when goods are not duly returned:

If, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

From these sections, it can be seen that they provide for (i) the amount of care the bailee has to take of the goods bailed, (ii) the non-responsibility of the bailee for the loss, destruction or deterioration of the thing bailed if he had taken the amount of care described by Section 151, and (iii) the bailee"s responsibility for any loss, destruction or deterioration of the goods occurring due to his default in returning the goods at the proper time. The meaning of "bailment, has been given in Halsbury"s Laws of England (Fourth Edition), at page 688(para 1501) as follows:

A bailment, properly so called, is a delivery of personnel chattels on trust usually on a con tract, express or implied, that the trust shall be duly executed, and the chattels redelivered in either their original or an altered form, as soon as the time or use for, or condition on, which they were bailed shall have elapsed or been performed.

13. If in the light of these provisions, subsections (1) and (2) of Section 77 are construed, it may be seen that a statutory bailment is created in respect of goods entrusted to the railways , for carriage during the interregnum after the termination of transit and before the clearance of the goods. Since the railway administration has been placed in the position of a bailee, the legislature, in its wisdom, has deemed it fit to restrict, u/s 77(2), the period of liability of the

railway administration. The terms of the sub-section are clear and unambiguous and delineate the rights of parties with precision and finality. The words used are, "shall not be responsible in any case for the loss, destruction, damage, deterioration or non-delivery of goods" (Italics supplied) "arising after expiry of the period of thirty days after the termination of transit." In the instant case, the termination of transit clearly occurred on 12th September, 1972 on the expiry of the free time allowed for clearing the goods. Therefore, the liability of the railways under Sub-sections (1) and (2) of Section 77 subsisted only for a period of thirty days from that date, i.e. till 11th October, 1972. It is common ground it was only on 1st November, 1972 P. W. 1 made a demand for delivery of the goods. The question for consideration is whether, in spite of the cessation of its liability u/s 77(1) and (2) the railway administration continued to be liable in law to the appellants to account for the loss of the goods.

14. The scope and effect of Section 77(2) has been construed by two learned Judges of this Court in two cases. The first case is *Pasupathi Textiles by its partner R. Muthuswamy v. Union of India* owning the Southern Railway by its General Manager and Anr. C.R.P. No. 1354 of 1969 Order dated 30th June, 1971. The petitioner firm in that case despatched a bale of cotton bed-sheets from Karur in Tiruchirappalli District to Bikaner in Rajasthan on 30th January, 1964. On 26th May, 1964 the petitioner firm wrote to the Station Master, Bikaner, to rebook the consignment to Karur, but was informed that the goods had already been transferred to the Lost Property Office, Delhi- Krishnaganj. When the petitioner firm contacted the Lost Property Office, it was told that the goods had been destroyed in a fire accident on 4th June, 1964. The petitioner firm then filed a small cause suit for recovery of a sum of Rs. 466-64 being the cost of the bed-sheets. The suit was dismissed and in the revision preferred to this Court, two questions arose for consideration. The first was whether the petitioner firm had preferred the claim within the period of six months prescribed by Section 78-B of the Act. The second was whether the railway administration stood exonerated of its responsibility for the loss of the goods u/s 77(2) of the Act. Answering the second question, Maharajan, J., held as follows:

It is true that before the incorporation of Section 77 by the Amendment Act XXXIX of 1961, the position was that the railway administration continued to be liable as a warehouseman, even after the termination of the transit. But, after the incorporation of Section 77 in the Indian Railways Act, the railway administration cannot be held responsible as a bailee or a warehouseman for the loss, destruction, damage, deterioration or non-delivery of the goods arising after the expiry of the period of thirty days after the termination of transit.

The second case that has been decided is *Himalayan Handlooms, Madurai v. The Union of India*, owning the South Central Railway, and Anr. C.R.P. No. 2385 of 1975 Order dated 15th March, 1978. In this case, the plaintiff booked a consignment of handloom and ready-made goods from Madurai Railway Station to Jejuri Railway Station. The goods reached Jejuri station on 1st April, 1971, but

till 25th July, 1971 when the goods were sent to the Lost Property Office, no one came to take delivery of the goods. The goods were sold in auction by the Lost Property Office on 23rd September, 1971 and a sum of Rs. 250 was realised by the sale. On 20th September, 1971 the plaintiff addressed the railway administration for re-booking of the goods. But, on being informed about the sale of the goods, he filed a suit for recovery of the cost of the goods. On the suit being dismissed by the trial Court, the plaintiff came to this Court by way of revision. Suryamurthy, J. dismissed the revision holding as follows:

This section (section 77) has been introduced into the Railways Act by the Legislature in its wisdom evidently with a view to remove commercial traffic bottle-necks. If consignments received at a station or goodsyard are not removed in time by the consignee, there would be no space to unload subsequent consignments received at the station and store them. Therefore, instead of leaving it to conjecture and speculation as to what would be a reasonable time, the Legislature has enacted Section 77 fixing the time-limit during which the railway administration would be responsible as a bailee so that there may be an incentive for the consignees to remove the goods before the responsibility of the railway administration ceases. In fact, such a provision in the Indian Railways Act was rendered absolutely necessary by the behaviour of some consignees who found it cheaper to pay demurrage and allow the consignments to lie in the the goods-yard than pay the rent for private godowns. This action is now a bar to the claim put forward by the plaintiff for compensation for non-delivery of the goods for which the suit has been filed. Hence, the judgment of the trial Court is confirmed....

Before a learned single Judge of the Allahabad High Court, the scope and effect of Section 77(2) of the Act arose for determination in Firm Naraindas Pitamchand Vs. Firm Shanker Lal Mohandas and Others, In the course of his judgment the learned Judge has observed:

Sub-section (2) of Section 77 of the Railways Act specifies that the railway administration shall not be responsible for any such loss, destruction, damage, deterioration or non-delivery of the goods after the period of thirty days from the termination of the transit. It is, therefore apparent that the protection of the railways u/s 77(2) can only arise in a case where loss occurs after the expiry of the period of thirty days. Therefore, where the goods are lost, or damaged or deteriorate after a period of thirty days from the date of the termination of the transit, the railways can take a plea successfully that they are not liable under the law.

15. With respect, we may say that the ratio uniformly laid down in all the three cases referred to above sets out the position of law correctly. We have already referred to the unambiguous terms in which Sub-section (2) of Section 77 has been worded. The liability of the railway for a period of thirty days from the termination of the transit being absolute, in character it stands to reason that the absolvment of the liability must also be an unqualified and unrestricted one. The

appellants cannot be heard to say that the railway administration is burdened with two types of liability, one as a bailee for a period of thirty days and the other as a mere custodian of goods after the period of thirty days. The argument of the appellants' counsel that the liability of the railway administration does not cease after the period of bailment is over on the expiry of thirty days, is not based on any specific provision of law. We are not persuaded by the contention that too rigid an interpretation of Section 77(2) may even lead to the railway administration appropriating the goods for itself and refusing to deliver the same. The facts of the case do not lend support for the advancement of this extreme contention. It is not the case of the appellants, nor is there any evidence to that effect, that the missing 10 bales of Hessian cloth were actually in the custody of the railway administration on 1st November, 1972 and the subsequent days noted in Exhibit A-19 when P. W. 1 went to Salt Cotaurs to take delivery of them and in spite of the bales being physically available for delivery the administration refused to deliver the goods in exercise of its rights u/s 77(2) of the Act.

16. In support of his contention that Sub-section (2) of Section 77 must be construed liberally, the appellant's counsel cited for our consideration *Union of India (UOI) Vs. Amar Singh*, , and *Jetmull Bhojraj Vs. The Darjeeling Himalayan Railway Co. Ltd. and Others*, , On going through the decisions, we do not find the dicta contained therein to lend support to the submission of Mr. Haridoss. In the former case, the question for consideration was whether E. P. Railway belonging to the Indian Railways could be held liable for loss of goods inasmuch as the goods had been delivered to the N.W. Railway belonging to the Pakistan Railways for transport and, in the course of transport the N. W. Railway had entrusted the carriage of the goods to E. P. Railway over that portion of the route where they were operating. It was held in that case that there was an implied contract of bailment between the owner of the goods and the E. P. Railway, and the N. W. Railway had constituted the E. P. Railway as an immediate bailee in exercise of its authority to create sub-bailment. In the second case, the point at issue was whether a letter sent by the owner of the goods complaining of non-delivery of goods would constitute valid notice u/s 77 of the Indian Railways Act so as to bring his action against the railway within the period of limitation, It was this question which was answered in favour of the claimant by pointing out that the intention of the Legislature in enacting Section 77 must have been to afford protection to the railway administration against fraud and not to provide a means for depriving the consignors of their legitimate claims for compensation for the loss of or damage caused to their consignments during the course of transit by railway. On a reading of Sub-section (2) of Section 77, there is no scope whatever for construing the crucial words in the sub-section to mean that the responsibility of the railway for loss, destruction, damage, deterioration of or non-delivery of goods extends even beyond the bailment period of thirty days fixed under the sub-section. To accept the contention of the appellants' counsel would mean that the railway will be under a legal obligation even after the expiry of the period of bailment to continue to take care of the goods as bailee and account for

any loss, destruction, damage, "etc., occurring to the goods even after the statutory period of bailment is over. We do not find any basis at all in the provisions of the Act foil such an expansive view being taken of the matter.

17. As regards the submission of the appellants' counsel that to limit the period of vulnerability of the railway in respect of claim regarding loss, destruction, damage, deterioration or non-delivery of goods to thirty days after the termination of transit, would confer such a premium on the railway that they can even refuse to deliver the goods which are physically available for delivery by taking umbrage u/s 77(2), we are unable to countenance the proposition because of a fallacy contained in it. Section 77(2) has no application where goods are actually available for delivery after a period of thirty days is over and where the goods have not suffered any loss, destruction damage, deterioration etc. In the instant action, it his not the grievance of the appellant that the ten bales of Hessian cloth were available for delivery and were also in good condition and, in spite of it, the respondents were refusing to deliver the same solely on the ground that a demand for delivery of the goods had not been made within the prescribed period. On the other hand, the suit proceeded on the basis that the respondents pleaded inability to deliver the ten bales on account of their disappearance and hence they should be held responsible for the loss of the bales. When, under a statute, the respondents are obligated to take care of the goods only for a period of thirty days from the termination of transit, it goes without saying that the railway administration cannot be saddled with liability for the loss that had occurred after its duty to keep vigil over the goods had statutorily come to a close. The mere fact that the uncleared goods remained in the premises of the respondents beyond the period of thirty days could not have the effect of extending the period of bailment or creating a statutory liability of any other kind for the respondents to take care of the goods. After the expiry of the statutory period the goods can only be construed to be kept in the premises of the respondent at the risk of the owners. Viewed in that light, it logically follows that the respondents cannot be called upon to account for any loss, destruction, damage etc., that may have occurred to the goods after the period of bailment was over. The evidence in this case clearly establishes that the loss of the bales had occurred after the expiry of thirty days from the termination of transit. The appellants have only to blame themselves for the loss and they cannot accuse the respondents of dereliction of duty and call upon them to account for the goods.

18. In view of our conclusion, we are of opinion that the appeal is without merits. We therefore affirm the judgment and decree of the trial Court and direct the appeal to stand dismissed. However, taking into consideration the loss already suffered by the appellants, we do not wish to make any order regarding costs.

18. Learned Counsel for the appellants makes an oral application for leave being granted for preferring an appeal to the Supreme Court. Our judgment has been rendered solely in accordance with the terms contained in Section 77(2) of the

Indian Railways Act and the point raised in the appeal does not involve any important question of law. We are, therefore, of opinion, that no question of law of general importance which needs determination by the Supreme Court arises in the case. Leave is accordingly refused.

Exhibit marked in the High Court.

Exhibit A-19 of 1st November, 1972. Gate pass.