

(1963) 07 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Ref. No. 26 of 1962 in Second Appeal No. 33 of 1957

Nannah

APPELLANT

Vs

Union of India (UOI)

RESPONDENT

Date of Decision : 26-07-1963

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 80
Railways Act, 1890 — Section 77

Citation : AIR 1964 Raj 40 : (1963) RLW 536

Hon'ble Judges : P.N. Shinghal, J; I.N. Modi, J

Bench : Division Bench

Advocate : Hastimal, for the Appellant; Magraj, for the Respondent

Final Decision : Allowed

Judgement

Modi, J.—This is a plaintiff's second appeal in a suit for damages and has been placed before this Bench on a reference by one of us sitting singly. The suit has been dismissed by both Courts below on a preliminary point relating to the invalidity of notice u/s 80 of the Code of Civil Procedure.

2. It is unnecessary to state the facts of the case at any length as the suit has been thrown out by both Courts below on the afore-mentioned preliminary point only. Suffice it to say that on the 12th April, 1949, the plaintiff delivered 150 goats and sheep to what was then the B. B. and C. I. Railway at the Sojat Road Railway Station for being transported to the Railway Station Bandra (Bombay) of the same Railway. The animals were booked in three wagons in lots of fifty each. One of these caught fire on the way with the result that thirty-two of them were burnt to death in the wagon itself and ten died later and the remaining eight out of this wagon were delivered to the plaintiff at the destination. The plaintiff's case was that he had been put to a loss of Rs. 1497/8/- on account of the negligence and misconduct of the servants of the railway.

It was further alleged that he had given a notice to the Secretary to the

Government of India in the Department of Railway Transport, New Delhi, and to the General Manager of the B. B. and C. I. Railway u/s 80 of the CPC and u/s 77 of the Indian Railways Act respectively on the 23rd May 1949, but without any avail. These are Exs. P-3 and P-2 respectively on the record. This suit was instituted on the 1st July, 1950, in the Court of the Munsiff Sojat. The suit as originally brought was against the President, Indian Republic, through the General Manager, B. B. and C. I. Railway but was subsequently allowed to be amended and the Union of India was impleaded as defendant on the nth July, 1951.

3. The defendant resisted the suit on a number of grounds but the plea with which we are concerned for the purposes of this appeal (as contained in paragraph five of the written statement) was that neither a notice u/s 77 of the Indian Railways Act nor a notice u/s So CPC had been served, and, therefore, the suit was bad for want of these notices.

4. In the replication filed by the plaintiff on the 8th May, 1951, it was alleged that notices had been served on the Railways according to law. The issue raised on this part of the case in the trial Court was as follows: -

"Were the notices Exs. 2 and 3 not in accordance with law?"

It is in this manner that the issue of the legality of the notices came to be raised though such a plea does not seem to have been raised by the defendant in the written statement. Be that as it may, the trial Court held that the notice Ext. 3 which was avowedly given to the Secretary to the Government of India in the Department of Railway Transport, New Delhi, was bad inasmuch as according to Section 80 Civil Procedure Code, which was mandatory, the notice should have been given to the General Manager of the Railway concerned. As for the notice Ex. P-2, it was held that it was a good notice u/s 77 of the Railways Act but as no valid notice u/s 80 had been given by the plaintiff, the suit was dismissed without trying the case on the merits. The plaintiff then went up in appeal to the District Judge, Pali, who upheld the decision of the trial Court.

5. It appears that the position taken up on behalf of the plaintiff before the District Judge was somewhat different from what he had adopted in the trial Court, and it was contended in appeal that Ex. P-2 was a good notice for the purposes of both Section 77 of the Railways Act and Section 80 CPC inasmuch as both were required, according to the law as it stood at the relevant time, to be given to the General Manager of the Railway concerned, and, consequently, it was contended that even if Ex. P-3 were entirely left out of account, the notice given to the General Manager of the B. B. and C. I. Railway on the 23rd May, 1949, notwithstanding that it was stated to be u/s 77 of the Indian Railways Act was a good notice both for purposes of Section 77 of the Railways Act and Section 80 Civil Procedure Code, and, therefore, the plaintiff's suit could not be thrown out on the ground of want of notice u/s 80 Civil Procedure Code.

The learned District Judge seems to have held the view, although he has not said

so clearly as he should have, that a combined notice u/s 80 CPC and Section 77 of the Railways Act, if so given, would be perfectly valid, and he also seems to have held that the notice Ex. P-2 which was addressed to the General Manager fulfilled most of the conditions of Section 80 CPC inasmuch as the cause of action was clearly stated and the description and address of the plaintiff was properly given and an intimation was also sent that a suit would be filed. But his view was that it failed to mention the relief as required u/s 80 in so far as legal steps were threatened against the "Railway Administration" and it was not stated that a suit would be brought against the Union of India and consequently it was not a valid notice. In this view of the matter, the learned Judge maintained the dismissal of the suit by the trial Court.

Aggrieved by this decision, the plaintiff came up in second appeal to this Court and in the first instance the appeal was placed before one of us sitting singly. As stated by me in the order of reference:

"There is a fairly large volume of authority on the point that a combined notice u/s 77 of the Railways Act and Section 80 CPC can be given to satisfy the requirements of law in this respect. But the question with which we are here concerned is whether a notice which has been expressly given u/s 77 of the Railways Act could also be considered as a good notice for the purposes of Section 80 CPC where the other requirements of Section 80 are fulfilled by such notice."

That is the question which arises in the forefront of this case and to this we shall address ourselves presently.

6. Now it has not been seriously contested before us that a combined notice u/s 77 of the Railways Act and Section 80 CPC can legitimately be given. If it is necessary to refer to any decision in favour of this view, we would invite reference to *Moolji Bhai Maneklal and Co. v. Dominion of India*, AIR 1952 Nag 22 in which it was held that such a notice could be validly given; but all that was necessary was that the notice must fulfil the requirements of both the provisions, that is, of Section 77 of the Railways Act as well as of Section 80 Civil Procedure Code. It was further pointed out in this case that in the case of a suit against the Central Government, if it relates to a railway, the notice of suit must, according to the law as amended, be served on the General Manager of that railway and the notice of claim against a railway u/s 77 has also to be served on the same officer, and that being so it is obvious that a combined notice may well be given. A similar view seems to have been taken in *Dharamsi Liladhar Vora Vs. Union of India (UOI)*, and both these cases were followed with approval in *Union of India (UOI) Vs. Lakshmi Narain*,

7. The position, therefore, may be taken to be fairly well-settled at this date that where a notice specifically states that it is a notice both u/s 77 of the Railways Act and Section 80 CPC and complies with all the requirements of both these provisions, such a notice is perfectly valid as both these notices have now to go

to the same person or authority namely the General Manager of the Railway concerned and the earlier decisions to the contrary seem to us to be clearly otiose and cannot be accepted as laying down the correct law. Learned counsel for the respondent argues, however, that even if we come to the conclusion to which we have, the notice in the present case was expressly confined to Section 77 only and it contains no reference to Section 80 whatever, and, therefore, it cannot be held in the circumstances of the present case that a combined notice was at all given or that the notice which was given u/s 77 was also a good notice for the purposes of Section 80 Civil Procedure Code.

8. Now, it is correct that the notice Ex. P-2 inter alia stated in its last paragraph that it was u/s 77 of the Railways Act. This paragraph reads as follows : --

"You are hereby given notice u/s 77 of the Indian Railways Act to arrange the payment of Rs. 1497/8/- as compensation otherwise legal steps will be taken against the railway administration, after the expiry of 2 months from the date you receive this notice, and the railway will also be held responsible for all the cost incurred in the legal proceedings."

Earlier, the notice sets out all the facts how the consignment in question was booked from Sojat Road and the loss was caused and the particulars of damage sustained by the plaintiff.

The contention on the side of the plaintiff is that even if this notice contained a reference to Section 77 of the Railways Act only, it fulfilled all the requirements of a notice u/s 80 CPC also inasmuch as it stated that legal steps would be taken against the railway administration in case compensation was not paid, and that such a suit would be brought after the expiry of two months from the date of the receipt of the notice. It is further pointed out that this notice fulfils the other requirements of Section 80 such as the name, description and place of residence of the plaintiff and the cause of action on which he relied and the relief which he claimed, and, therefore, even if the notice may not have carried the correct label, it could have deceived or misled no intelligent person that it was a notice which fulfilled the requirements of Section 77 of the Railways Act as well as of Section 80 of the Code of Civil Procedure.

9. On the other hand, learned counsel for the Union of India strenuously maintained that the notice in question was specifically given u/s 77 of the Railways Act and that was how it was sought to be taken in spite of all that it contained and further that the plaintiff himself had sent another notice u/s 80 to a wrong person, namely, the Secretary to the Government in the Department of Railway Transport on that very day that is, the 23rd May, 1949, and all that being so, the notice in question should not be considered to be one that was given or was intended to be given u/s 80 CPC and therefore, there was a complete want of notice under that section and that defect was fatal to the plaintiff's suit and the Courts below were, therefore, perfectly justified in throwing out his claim.

10. Now before we proceed further, we may state that we are fully alive to the

legal position that Section 80 is mandatory and that its requirements must be properly fulfilled and if they are not, the Courts must throw out the plaintiff's suit on that ground alone. Such a notice must be given to the competent authority which in this case was the General Manager of the Railway and the other requirements as to what the notice is about and from whom and that the plaintiff intends to bring a suit in the matter must be clearly stated. But the further question is whether such a notice without a proper label would be bad merely because it does not carry that label on the face of it.

11. Now we have no hesitation in saying that it is desirable for a party giving such a notice to mention the section under which he is giving it. But suppose, he does not, we think that it would be going too far to hold that the notice is bad on that ground alone. Much of the difficulty that has arisen in this case is due to the fact that the plaintiff gave another notice u/s 80 which has been held to be invalid and rightly so. And secondly because he wants the only other notice which he gave to serve the purposes of a notice u/s 80 which, as We have already stated, was expressly mentioned to have been given u/s 77 of the Railways Act.

12. Now so far as the first circumstance referred to above is concerned, it should not be enough to non-suit the plaintiff if the second notice may be accepted as a good notice both for purposes of Section 77 of the Railways Act and Section 80 Civil Procedure Code.

13. Then as to the second difficulty: it seems to us that after all is said and done, we must look to the substance of the matter and not to the mere label thereof. The label may not have been there at all. Or, it may have been wrongly put. But if the notice in its substance, in the hard core of it, fulfils all the requirements of Section 77 of the one enactment as well as Section 80 of the other, and was given to the competent authority who in both the cases was one and the same officer, namely, the Manager of the Railway concerned who, we cannot but presume, knows his business reasonably well, we fail to see why a notice bearing even an imperfect label should necessarily be thrown out as invalid on the ground that it was stated to have been given u/s 77 of the Railways Act only, when its terms could deceive no reasonable person that it could serve equally well as a notice u/s 80, understood in its totality and should it become necessary to do so.

To give effect to any other view, in our opinion, would be to sacrifice the interests of substantial justice at the altar of what, with all respect, seems to us to be just a superficial view of the matter. We, therefore, hold that there can be no insuperable impediment in the way of the acceptance of the notice Ex. P-2 as a good notice, both for purposes of Section 77 of the Railways Act and Section 80 CPC in spite of the imperfect label it carried on the face of it that it was being given u/s 77 of the Railways Act. This is, however, clearly subject to the paramount requirement that such a notice must fulfil all the necessary conditions of Section 80 because as we have pointed out above, that section is mandatory

and does not admit of deviations.

14. But before we address ourselves further to the aspect of the case last-mentioned, we should like to refer to the decision of Roxburgh, J., in *Dharamsi Liladhar Vora Vs. Union of India (UOI)*, as the facts of that case seem to us to be more or less parallel to the case before us. That was also a suit for damages against the Governor-General of the Dominion of India on account of loss in connection with certain goods which were despatched from a station on the B. B. and C. I. Railway to Calcutta to be delivered by Bengal Nagpur Railway. Both Courts dismissed the suit on the ground that no notice u/s 80 CPC had been served. Notices were sent by the plaintiff to the General Managers of the two railways and besides these, another notice was sent to the Governor-General-of-India in Council through the Secretary to the Government of India, Railway Department. The last notice was rejected as not being a valid notice u/s 80 because it should have been sent to the General Manager of each of the Railways.

In these circumstances it was urged as in the present case that the other notice which was served on both the General Managers u/s 77 should be accepted as a good notice not only u/s 77 of the Railways Act but also u/s 80 Civil Procedure Code, it having been further submitted that all the other conditions of both the provisions were fulfilled. The Courts below had held that that could not be allowed. On a revision to the High Court, the decision of the Courts below was set aside and the plaintiff's submission was accepted that it was a good notice under both the sections. Said the learned Judge:

"The only question then that remains is whether it is essential that notices u/s 77 of the Railways Act, and Section 80 of the CPC must be written on separate pieces of paper and must be specifically labelled with their descriptions. I do not think that this is essential if the contents of the paper giving notice fulfil the requirements of both sections as is the case here and are correctly delivered, I consider that due notice has been given thereby under both the sections."

We are in respectful agreement with these observations. We may further point out that this case has been cited with approval in *Union of India (UOI) Vs. Lakshmi Narain*, though the facts of the last-mentioned case were slightly different inasmuch as there a combined notice had avowedly been given unlike the case before Roxburgh, J., or the case before us.

15. This brings us to a consideration of the only other remaining point in the case namely whether the notice such as it was given fulfils all the essential requirements of Section 80 Civil Procedure Code. For if it does not, then even on the view we have accepted above and which is to the effect that (1) a combined notice u/s 80 CPC and Section 77 of the Railways Act can validly be given (such a combined notice is to be given within six months from the date of delivery of the goods by the railway and the plaintiff will have to wait for two months after the delivery of the notice for filing the suit) and (2) that such notices need not be specifically labelled and may be considered in their substance in spite of the

imperfect label that they may carry, the notice E. P-2 will have to be rejected as bad. It is admitted before us that, in all respects, this notice fulfils the requirements of Section 80 save that it does not mention the name of the authority against whom the suit is to be brought correctly, and it will be recollected that the authority mentioned in this connection in the notice is the railway administration. The contention on the side of the defendant is that a suit in the matter could only be filed against the Dominion of India at the time the notice was given, and, therefore, a notice that a suit would be filed against the railway administration in the event of compensation not being paid was not a good notice and does not fulfil the requirement of Section 80 under the head "relief". Let us examine this contention now.

16. The relevant portion of Section 80 reads as follows : -

"No suit shall be instituted against the Government until the expiration of two months next after notice in writing has been delivered to, or left at the office of --

(a)

(b) in the case of a suit against the Central Government where it relates to a railway, the General Manager of that railway;

(c)

stating the cause of action, the name, description and place of residence of the plaintiff and the relief which he claims; and the plaint shall contain a statement that such notice has been so delivered or left."

It is clear from the plain language of the section that the following are required to be stated in the notice: -

(1) the cause of action. "

(2) the name, description and place, of residence of the plaintiff and

(3) the relief which he claims.

There is no dispute about the first two requirements in the present case as they are amply fulfilled by the notice. It is, however, contended that under the third requirement, namely, the relief, the plaintiff must clearly and precisely mention the person or party whom he wishes to sue. In other words, the contention is that the name of the defendant must be correctly mentioned in the notice and if that is not done, then such a defect would be fatal and lead to the dismissal of the plaintiff's suit.

17. Now it is well settled that Section 80 is mandatory and its terms must be strictly complied with if a suit against the Government or against a public officer in respect of any act purporting to be done by such public officer in his official capacity is to be maintained. In this connection, it is significant that the section does not require that the name, description and place of residence of the

defendant shall also be given just as that requirement has been prescribed in the case of the plaintiff. There was nothing to prevent the Legislature from saying so if that was one of the indispensable requirements of the section. But that it has not done. That being so, it is a question whether there can be any sound justification for reading Section 80 in a manner that it peremptorily calls for the mention of the name of the defendant in the notice and that too with precision.

It seems to us, with all respect, to be going too far to read any such requirement in the section itself. For, that would amount to reading something in it which on its plain language it does not contain. We also wish in this connection to draw pointed attention to the precise wording of Section 80 in so far as it relates to the head "relief". The expression used is "and the relief which he claims". In the context in which these words are used, it clearly seems to us that the plaintiff must frame his notice in such a manner that he states therein the cause of action, his own name, description and place of residence and the relief, that is, say, damages or compensation or possession which he claims. The further question as to against whom he claims the relief has not been made a matter of definite requirement in this section. Possibly because Section 80 is concerned with just two classes of defendants, either the Government or a public officer under the employ of the Government, and, therefore, the Legislature does not seem to have considered it necessary to incorporate any definite provision in this behalf in the section itself beyond saying that the notice must be delivered to the authority mentioned in the section.

Apart from this, it may perhaps be permissible to add that whether a suit happens to be brought against a correct party or not, is a matter with which Section 80 does not seem to us to be primarily concerned, and that is essentially a separate requirement. See Section 79 CPC in this connection. So far as Section 80 is concerned in relation to this particular branch of its requirements, what the plaintiff is called upon to mention is the kind and the quantum of relief that he seeks; and should he fail to mention the defendant or commit some mistake in the description of the defendant from whom he wishes to seek it, that, in our opinion, is an essentially different matter which does not and cannot amount to a violation of the terms of Section 80 as such. We would further point out that if the intention of the Legislature was different from what we think it is, then it could have easily used appropriate and indeed more specific language in connection with the head "relief" so as not merely to require the mentioning of the relief which the plaintiff claims but also from whom. All that the section seems to us to lay down in this connection is that the notice should be properly delivered to the officer to whom it is given.

18. On this reading of Section 80, we feel disposed to hold the view that if a notice fails to mention the defendant whom the plaintiff wishes to sue correctly or does not mention him at all except in a general manner, then his suit cannot be rejected on the ground that he has not complied with the requirements of Section 80 so long as he states the cause of action which is the foundation of his

suit and gives his own name, description and address and states the relief which he claims, and so long as the party whom he subsequently sues is the party from whom he is entitled to that relief. But if he sues a wrong party, his suit may fail on that ground but not on the ground that he has failed to comply with the requirements of Section 80. We hold accordingly.

19. We now propose to deal in this connection with a few cases on which learned counsel for the defendant relied. The first case to be taken note of in this connection is *S.N. Dutt Vs. Union of India (UOI)*, In this case it was held that according to Section 80, there should be identity of the person who issues the notice with the person who brings the suit and, therefore; where the notice u/s 80 was given by Messrs. S. N. Dutt and Company and the suit was filed by S. N. Dutt sole proprietor of a business carried on under the name and style of S. N. Dutt and Co., it was held that the person giving the notice was not the same as the person suing, and therefore Section 80 was not complied with. With all respect, this case deals with a requirement regarding the plaintiff and is, therefore, entirely distinguishable.

Referring to two earlier cases of the Supreme Court in *Dhian Singh Sobha Singh and Another Vs. The Union of India (UOI)*, and *The State of Madras Vs. C.P. Agencies and Another*, in which it was in effect laid down that though the terms of Section 80 are to be strictly complied with, it does not mean that the terms of the notice should be scrutinized in a pedantic manner or in a manner completely divorced from common-sense and that some commonsense must be imported in the notices u/s 80, it was pointed out that where the matter (for example) concerned the relief or the cause of action, it might be necessary to use common-sense to find out whether Section 80 had been complied with; but where it was a question of the name of the plaintiff there was no scope for the use of common-sense, for either the name of the person suing was there in the notice or it was not. With all respect, this case does not apply to the case before us, and, therefore, it can be of no assistance to the respondent.

20. The next case to which we were referred is *The Governor-General in Council Vs. T.M. Krishnaswami Pillai*, In this case a suit was brought against the Governor-General-in-Council. In the notice u/s 80, it was stated that the suit would be instituted against the "Secretary of State". On an objection to the frame of the suit, the plaint was amended by substituting the Governor-General-in-Council in place of the Secretary of State as defendant. It was held that as the notice did not contain any reference to the Governor-General-in-Council, it could not be read as claiming any relief against him, and, therefore, the notice was not proper. This was a case of a person who having been dismissed from service brought a suit for a declaration that his dismissal was wrongful, inasmuch as no opportunity of showing cause against his dismissal had been given to him u/s 240(3) of the Government of India Act, 1935.

It was held by the learned Judges that the statutory obligation laid down u/s 240 had been fulfilled and consequently the plaintiff's suit was rightly dismissed. The

learned Judges then further went on to hold that the notice u/s 80 CPC was also bad because it was stated therein that a suit would be instituted against the Secretary of State but actually it was brought against the Governor-General-in-Council. With all respect, there is very little discussion on this point in the judgment and the finding thereon seems to us to be in the nature of obiter dicta as having regard to the conclusion on the merits to which the learned Judges came, it was unnecessary for them to express any opinion on this point.

21. Learned counsel then referred us to *Ram Ranbijaya Prasad Singh Vs. The State of Bihar and Others*, But this case apparently followed the decision in *The Governor-General in Council Vs. T.M. Krishnaswami Pillai*, which has already been noticed by us above. With all respect, these cases seem to us to read far more in Section 80 than its wording really warrants.

22. We may now notice a few cases on the other side of the line. In *Chekka Subrahmanyam Vs. The Union of India (UOI)*, it was not mentioned that the suit would be filed against the Governor-General-in-Council. The last para of the notice read as follows:-

"Please therefore take notice that if the said amount of Rs. 419/2/- with interest at 6 per cent be not paid to my client within 2 months of the receipt of this notice, a suit will be filed in due course for the recovery thereof." It was held that the view that unless the notice expressly stated in itself that the suit would be against the Governor-General-in-Council Section 80 was not complied with, was not warranted by the phraseology of that section. It was further pointed out that

"Any person who reads this notice can have no doubt that it is a suit proposed to be filed against the Crown or the Government."

23. In *A. Sankunni Menon Vs. South Indian Railway and Others*, the notice to the Secretary for Railways, Central Government, New Delhi, was in these terms :-

"Please therefore take notice that unless you make good the loss I have sustained by reason of your gross negligence I intend instituting a suit against your railway for such loss as mentioned above."

Similar notices were given to the Agents of the Railways concerned. It was not stated in the notice that the proposed suit would be brought against the Governor-General-in-Council. It was held that any person who received that notice and read it would understand that that was a claim against the Government and the suit would be against the owner of the Railway, the Governor-General-in-Council and it could not have been the intention, nor could it have been understood that a suit was contemplated against an individual official. It was, therefore, held that on a fair leading of this notice it should be accepted as an intimation which would satisfy the requirements of Section 80.

We pause here for a moment to point out that the present case is almost on all fours with this case. Here also the plaintiff has stated that he would file a suit against the railway administration without mentioning in so many words that the

suit would be filed against the Central Government or the Dominion of India who was the owner of the railway. But it seems to us that anybody reading the notice in the position of the Manager of the railway concerned would have at once known that the suit would be filed not against him personally but against the Government.

24. In *Governor-General in Council Vs. Gujrathi Sankarappa* being minor by next friend and paternal uncle Moroji, it was again held that once the essential requirements of Section 80 were fulfilled, namely, that the addressee should be identified and must have received the communication and that there should be no vagueness or indefiniteness about the person giving the notices, and who must also be the person filing the suit and the notice must also give the particulars which are specified in the section and further that two months' time allowed must expire before the suit is filed, then minor details like the misdescription of the person to whom the communication is addressed will not make it an improper notice for the purposes of Section 80.

25. The last case to which we should like to refer in this connection is *Rambramma Chabri Vs. The Dominion of India at present Union of India (UOI) and Others*, In this case the name of the proposed defendant was mentioned as the "Governor-General of Indian Dominion as representing the B.N. Railway" instead of the Dominion of India. The notice u/s 80 was, however, properly delivered to the General Manager of the B. N. Railway. An objection was raised that the notice was invalid. It was held that Section 80 does not require that the name or any other particulars of the defendant should be furnished, and all it requires, so far as the defendant is concerned, is that the notice should be delivered to the proper authority or person mentioned in the section, and that any person reading the notice could hardly get the impression that any relief was claimed against the Governor-General personally apart from his position as the executive head of the Indian Dominion as representing the B. N. Railway, and, therefore, the misdescription of the defendant in the plaint could never have misled the Government, and in this view of the matter, it was held that it was a good notice in spite of misdescription of the name of the proposed defendant.

26. To sum up the position on this aspect of the case, we conclude that fully accepting that the provisions of Section 80 are mandatory and have to be strictly complied with before a suit can be entertained against the Government or a public servant falling within the scope of this section, the provisions of this section should not be read so as to prescribe a requirement which is not warranted on its plain phraseology, and that being so, we are unable to hold that the notice which the plaintiff gave in this case and which is admittedly good enough otherwise is bad merely because it stated that the plaintiff in the event of the failure of payment of compensation to him would take legal steps against the railway administration and did not in so many words name the defendant against whom the suit was to be brought.

It is nobody's case before us at this stage that this notice was not property

delivered to the General Manager of the B.B. and C.I. Railway although this was denied in the written statement filed on behalf of the defendant. We further think that anybody receiving this notice could not but have understood that this was a notice with respect to a suit which was contemplated to be brought against the owner of the railway, namely, the Dominion of India as it then existed and therefore we are of the opinion that this notice was good enough and that any irregularity that may be found therein in this respect is not a sufficient warrant for us to hold that the notice is illegal and that we should dismiss the plaintiff's suit on that ground.

27. For the reasons mentioned above, we allow this appeal, set aside the judgments and decrees of the two Courts below and send the case back to the trial Court for being tried and disposed of on the merits. Having regard to all the circumstances of the case, we would leave the parties to bear their own costs of the appeal here and of the Court below, but other costs will abide the result.