

(1968) 02 BOM CK 0022
In the Bombay High Court
Case No : Appeal No. 33 of 1961

Union of India and another

APPELLANT

Vs

Kalinga Textiles Private Ltd. and another

RESPONDENT

Date of Decision : 26-02-1968

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 79, 80
Contract Act, 1872 — Section 151, 152, 161
Evidence Act, 1872 — Section 114

Citation : (1968) MhLj 797

Hon'ble Judges : M.N. Chandurkar, J; B.N. Deshmukh, J

Bench : Division Bench

Advocate : K.V. Tambe and W.K. Sheoray, for the Appellant; P.D. Thakar for Respondent No. 2 and Respondent No. 1 was not represented, for the Respondent

Final Decision : Dismissed

Judgement

B.N. Deshmukh, J.—This is an appeal by the Union of India owning and administering the Central Railway as well as the South-Eastern Railway. A large part of the facts is not in dispute. The plaintiff No. 1 Messrs Kaling Textiles Private Limited, a company registered under the Indian Companies Act having their office at Rajgangpur, admittedly booked 100 bales of cotton from Akola on the Central Railway for being delivered at Rajgangpur on the South-Eastern Railway. The railway receipt in that behalf was No. 9208/11 dated 2-6-1957. A complete wagon was hired and allotted for that purpose and it started with the goods train on the same day. The evidence in the case shows, and it is not now in dispute, that fire took place first at Khapri station on 4-6-1957 and the wagon in which the plaintiff No. 1 a cotton bales were loaded was set on fire. After some half-hearted attempts to find out the cause of the fire and to try to extinguish it, a decision was taken by the Assistant Station Master, Khapri, to allow the wagon to travel upto Ajani which was about six miles from Khapri. The wagon with the fire was then allowed to travel and at Ajani, the railway staff extinguished the fire. This was on 5-6-1957. Whatever goods were saved were forwarded to the

destination and delivery was given to the plaintiff No. 1. As they found that the goods were damaged by fire, they brought that fact to the notice of the railway officials at the destination station on the South-Eastern Railway. The Inspector of Claims actually assessed the damage and issued a certificate. It is this claim which is the subject-matter of the suit. According to the plaintiff, the damages suffered were Rs. 11,693.80 P. However, the plaintiff No. 1 had insured the goods with the plaintiff No. 2, and according to the terms of the insurance policy, the amount payable to the plaintiff No. 1 was found to be Rs. 11,634.67 P. The plaintiffs have claimed in this suit only this amount as that was the amount paid by the plaintiff No. 2 to the plaintiff No. 1 in full discharge of the insurance under the policy.

2. The plaintiffs have pointed out that after the joint Survey and assessment of the damages, the plaintiff No. 2 reimbursed the plaintiff No. 1 and as per terms of the policy, obtained a letter of subrogation. That letter is dated 18-9-1957. After the payment of the amount by the plaintiff No. 2 to the plaintiff No. 1 a notice u/s 77 of the Indian Railways Act (XI of 1890) was issued on behalf of the plaintiff No. 1 alone through an advocate. That notice was produced before the Commissioner who examined evidence at Bombay and is marked as Exh. A in the commission papers. That was a notice addressed by Advocate Mirohandani to the General Manager, South-Eastern Railway, Calcutta, and the General Manager, Central Railway, Bombay. Copies of this letter were addressed to the Chief Commercial superintendent, South-Eastern Railway, Calcutta, and the Superintendent of Claims, Central Railway, Bombay, for necessary action and information. It may be noted that though the notice was so addressed to the General Managers of the two Railways, in fact it is admitted that the notice was dispatched to the General Manager, South-Eastern Railway, Calcutta, alone. Copies were however forwarded to the two Claims Superintendents as the endorsement on the notice shows. There was Borne correspondence and the only letter that is brought on record is Ex. P-4 by which the South-Eastern Railway repudiated the claim. After that letter dated 12-12-1957 was received, a notice to the Union of India was addressed by another Advocate Mr. I.N. Dwivedi, on behalf of both the plaintiffs as his clients. As the claim was not settled, nor any damages were offered by the Union of India or any of the Railways, the plaintiff have filed this suit for recovering Rs. 11634.67P.

3. In this suit, the plaintiff No. 1 is the original consignor Messrs Kalinga Textiles Private Limited. The plaintiff No. 2 is the Indian Globe Insurance Company Limited with whom the goods in transit were insured by the plaintiff No. 1 and who ultimately reimbursed the plaintiff No. 1 by paying the amount which is claimed in the suit. The plaint points out why the two plaintiffs appear as party plaintiffs. The fact of insurance and the reimbursement thereafter and the subrogation as a result of the terms of the policy are recited in the plaint. It is however pointed out that a decree may be passed in favour of either of the plaintiffs. The party defendants are two; the first is the Union of India owning and administering the Central Railway and the second is the Union of India

owning and administering the South-Eastern Railway.

4. Only one written statement has been filed on behalf of both the defendants. It purports to have been signed and verified by one V. S. Kulkarni, who is described as "A D. C. I. Akola". We are told that this is the short form of "Assistant District Commercial Inspector" which is the designation of that officer. There is a general denial of facts about the price of the cotton bales as also about the amount of insurance for which they were insured. It is admitted in terms that a fire did take place and that the goods were transshipped at Ajani from the original wagon to some other wagon. It is also admitted that there was a request made for assessment of damages of goods and an assessment was in fact made. It is however added that the assessment was without prejudice to the rights of the parties and was only a formal estimate of the damage caused to the plaintiff's goods. The extent of the damage, as also the price thereof, is denied. It is then pointed out that though damage has taken place by fire, it was not the result of the misconduct, negligence or any fault on behalf of the servants of the defendant Railway Administration. On the contrary, when the fire was detected, all efforts were made to extinguish it. In paragraph 6 of the written statement, it is dated that the defendants did not dispute that the plaintiff No. 1 is paid the claim. They however denied that the plaintiff No. 2 is subrogated in place of the plaintiff No. 1 for making a claim against the defendants. It is then stated that the plaintiff No. 2 has no concern and they have no contract with the defendants. The plaintiff No. 2 could not claim anything from the defendants. In paragraph 7 follows an important statement which would be the subject-matter of considerable discussion in the further part of this judgment. It is stated that the notices u/s 77 of the Indian Railways Act referred to in paragraph, 7 of the plaint are not traceable. The defendants therefore deny the same. It is further stated in the paragraph: "The plff. is put to the proof of the same." So far as the notice u/s 80 of the CPC is concerned, it is admitted to have been received by the addressees. It is however submitted that the notice was not legal and the suit was not maintainable. We will point out here only that this appears to be a formal plea as no issue was ever pressed and in the arguments before us it was admitted that the notice appears to be legal. A plea of the suit being premature was also taken but it was also not pressed at any stage. Some account of how the fire took place and what efforts were made to extinguish it is then given in paragraphs 17 and 18 of the written statement. It is alleged that the wagon was water-tight having no leakages or holes, nor had it hot-axles. The engine that was attached to that train was provided with a full plate type of spark arrester and a brick arch. It is then alleged generally that all possible care as bailee was taken and no part of the damage could be attributed to the negligence, misconduct or carelessness of the railway employees.

5. On these pleadings, the parties entered upon the trial. The learned Civil Judge has framed several issues. He found that the bales of the plaintiff No. 1 got damaged due to fire at Khapri and Ajani railway stations on the Central Railway. He also found that the damage caused amounted to Rs. 11,693-80P. and that

this was the result of the negligence and misconduct of the defendants railway servants So far the notice of claim u/s 77 of the Railways Act is concerned, the learned Judge held that a notice addressed to the Superintendent of Claims, Central Railway, as also to the Chief Commercial Superintendent, South Eastern Railway was good notice in view of the rules made by the Central Railway. By these rules, the Central Railway have asked all the members of the public to prefer their claims to the Superintendent of Claims, Central Railway, Byculla. On this footing, the notice that is issued is accepted as good notice. He also found that the notice u/s 80 of the CPC was a valid notice and the suit was neither premature nor barred by limitation Having come to these conclusions, he also found that there was evidence that the plaintiff No. 1's claim was fully satisfied by the plaintiff No. 2 and subrogation obtained. Under the circumstances, a decree for the suit came to be passed in favour of the plaintiff No. 2 against both the defendants. Being aggrieved both the defendants have filed this appeal.

6. Mr. Tambe, Learned Counsel for the appellants has challenged the decree on several grounds. Before we go to the technical challenges that are held out, we will dispose of the factual aspect of the cause of damage and the amount of damage. The responsibility of the railways as carriers is that of bailee under the provisions of sections 151, 152 and 161 of the Indian Contract Act, subject to the provisions of the Indian Railways Act. An entire wagon was hired in this case, and undoubtedly fire has taken place. In the circumstances, it is for the Railway Administration to lead evidence about the transit of this wagon from place to place and to disclose the entire information about the care taken in the handling of these goods. The learned Judge found that the evidence led by the defendants in that behalf does not properly explain either the origin of the fire or the steps taken for extinguishing that fire. When the wagon it found to have caught fire, it would have been appropriate for the defendants to lead evidence of the Train Examiner who examined the wagon before it was allotted and also of the Train Examiner who is supposed to examine it after the fire took place. These two reports would have given the Court some idea about the condition of the wagon and the probable cause why the wagon should catch fire. No such effort at all is made. So far as the steps that were taken after the goods caught fire is concerned, the evidence of Kisanlal (D. W. 2), Assistant Station Master, Khapri, shows that nothing much was done at the Khapri station to extinguish the fire. His explanation is that there was hardly any water available at the station. If he had exhausted the water in the engine for the purpose of extinguishing the fire, he was afraid that the train might get stuck up. A decision was therefore taken that the train should travel ahead six miles up to Ajani station. At that station, arrangements were sought 802 Union of India v. Kalinga TEx. Pvt. Ltd. 1968 Mh.LJ. to be made to extinguish the fire. Even at Ajani, though the message sent was that the train would go to the downward, arrangements for extinguishing the fire were made at the upward. It is true that ultimately the goods were taken out and the fire was extinguished at Ajani. The wagon was then changed and such of the goods as were saved were loaded in another wagon and that wagon was

attached to the goods train.

7. This is all the evidence that has been led on behalf of the railways-From this evidence, we are satisfied that the Railway Administration have not rationally explained how the fire took place, nor have the railway servants taken; proper steps for extinguishing the fire immediately with a view to minimise the damage to the goods. In the circumstances, negligence of the servants of the defendants will have to be presumed as the cause which caused the fire. So far as the attempts to minimise the damage is concerned, there is direct proof that nothing was immediately done. On the contrary, the wagon with the fire was allowed to travel about six miles ahead. The learned Judge refers to the existence of a well at Khapri. No attempt seems to have been made to utilize that facility for the purpose of extinguishing the fire. Agreeing with the learned Judge, we would hold that the loss caused to the plaintiff in this case is due to the negligence of the defendants' servants. So far as the quantum is concerned, there could hardly be any dispute in this case, because the claim of damages is based upon the certificate issued by the Railway Inspector. An assessment was immediately made at the Ajani railway station and there was a joint survey by the Railway Inspector and the Insurance Company's Surveyor. Since an agreed figure has been given in the joint survey, we would hold that in case the decree of the trial Court is to be confirmed, it would have to be confirmed for the amount for which it is passed.

8. Mr. Tambe, Learned Counsel for the appellants, has raised several technical defences and they will have to be considered now. The first defence which he seeks to raise is the defence which was not taken up in the trial Court. He says that the plaintiff No. 1 is the consignor. He is however paid the entire amount of damages by the plaintiff No. 2 on 18-9-1957. A letter of subrogation has been produced when evidence was led before the Commissioner at Calcutta. In the written statement, the defence taken is that the plaintiff No. 1 might have been paid by the plaintiff No. 2 but it was denied that the plaintiff No. 2 was subrogated. Mr. Tambe now wants to argue on behalf of the defendants-appellants that the plaintiffs have proved subrogation. That may be: accepted as a fact proved. On the proved facts, he wants to raise a question of law. That question of law, according to him, is that the plaintiff No. 1 had no title on 18-10-1957 when the notice u/s 77 of the Railways Act was given. He had received damages and had executed the letter of subrogation. There was no subsisting right in the plaintiff No. 1 on that day. A notice by such a person u/s 77 is a notice by an unauthorised person. It can be ignored. It is not a valid notice by a claimant who is impliedly conceived of by that section as it is a notification of claim. Section 77 therefore required, that the notification of claim must be by a claimant or by someone on his behalf. No third person could give such a notice. He then argues that on 18-10-1957 the plaintiff No. 2 alone was the person who was entitled to make a claim for damages. That plaintiff has not admittedly given any notice u/s 77. The notice u/s 77 is an imperative notice. That section lays down that unless such a notice as is contemplated by that

section is given, or to use the language of that section, unless the claim is preferred in writing by a person or someone on his behalf, that person shall not be entitled to a refund of overcharge or to compensation for loss etc. He therefore says that the alleged notice of the plaintiff No. 1 is no proper notice at all and there is no notice admittedly by the plaintiff No. 2. On this short ground alone, the claim of the plaintiffs deserves to be dismissed.

9. We have already pointed out that at the stage of pleadings the defendants denied the fact of subrogation and refused to recognise the plaintiff No. 2 as a person authorised to file a suit. Having taken up that stand, they now want to turn round and utilize the allegations made by the plaintiffs as a ground of attack for non-suiting the plaintiffs. This defence is now sought to be raised as a pure point of law. Even if therefore it may be permissible for the defendants to argue in that manner, it must be noted that they are blowing hot and cold in the same breath. Having refused to recognise the plaintiff No. 2 as a subrogate, they cannot now advert to the same position which is pleaded by the plaintiffs and then seek to non-suit the plaintiffs. Apart from this technical aspect we think that the terms of contract of insurance as well as the letter of subrogation in terms of that insurance policy authorised the plaintiff No. 1 to lend his name for the purpose of carrying on correspondence with the Railway Administration, as also for the purpose of taking appropriate legal remedies in Court. The subrogation clause at paragraph 15 of the insurance policy (Exh. P-I) requires the plaintiff No. 1 to do and concur in doing and permitting to be done all such acts and things as may be necessary or reasonably required by the Company for the purpose of enforcing any rights and remedies, or of obtaining relief or indemnity from other parties to which the Company shall be or would become entitled or subrogated at the expense of the Company. The original contract with the railways in this case is between the plaintiff No. 1 and the Railway Administration. The plaintiff No. 1 being the consignor, is entitled to recover damages. The fact of payment to the plaintiff No. 1 by the plaintiff No. 2 with a condition as we find in clause 15 of the insurance policy does not in any way affect the contractual liability and the results flowing therefrom between the plaintiff No. 1 and the Railway Administration. In the notice given on behalf of the plaintiff No. 1 it has been clearly mentioned that the insurers are the Indian Globe Insurance Company Limited. A full description of the railway receipt, its number, the name of the consignor, the name of the insurer, the name of the consignee and the fact of non-delivery of 100 cotton bales together with the amount of damages claimed have been clearly mentioned in the subject-matter of that notice. By an act inter parts between the plaintiff No. 1 and the plaintiff No. 2, we do not think that the liability that arises out of the contract to carry goods between the Railway Administration and the plaintiff No. 1 is affected in any manner. Even though the plaintiff No. 1 is paid by the plaintiff No. 2 by an express term, it is reserved that the plaintiff No. 1 will lend its name to every proceeding that may be necessary for the recovery and enforcement of the claim. In terms of clause 15 of the insurance policy, the letter of subrogation has been got executed. In these

circumstances, we are satisfied that the plaintiff No. 1's right to recover damages is not affected in any manner and the mere payment of the amount of damages by the plaintiff No. 2 to the plaintiff No. 1 does not terminate the right of the plaintiff No. 1 to claim damages from the defendants-railways. Though this promise allowed to be taken being a question of law, though not pleaded earlier we are satisfied that there is no substance in it and it does not affect the right of the plaintiff No. 1 to give the notice as well as to file the suit. In the plaint, a specific recital has been made that in spite of the earlier recitals, the Court may pass a decree in favour of any one of the plaintiffs. The Court has chosen to pass a decree in favour of the plaintiff No. 2 as it found that plaintiff No. 1 admitted to have received the amount from the plaintiff No. 2, The plaint is therefore properly filed by authorised persons and the notice dated 18-10-1957 is also by a person who was authorised to give such a notice.

10. The next and important plea raised is that there is no valid notice at all served upon either of the two railways, namely, the Central Railway and the South-Eastern Railway. In order to understand the factual aspect of this point, a few facts may be stated. The notice which is marked Exh. A before the Commissioner who recorded evidence at Bombay is in the form of a letter from Advocate Mirchandani addressed to the General Manager, South-Eastern Railway, and the General Manager, Central Railway, Bombay. It is dated 18-10-1957. Below this letter, there is an endorsement that copies are dispatched to the Chief Commercial Superintendent of Claims, South-Eastern Railway, Calcutta, and the Superintendent of Claims, Central Railway, Bombay, for necessary action and information. The first impression therefore we get is that this is a letter which is dispatched to the General Manager, South-Eastern Railway, and the General Manager, Central Railway. However, the evidence led by the plaintiffs itself shows that a copy of this letter was never sent to the General Manager, Central Railway, Bombay. It is an admitted position therefore that the letter (Exh. A) was never dispatched to the General Manager, Central Railway, Bombay. Undoubtedly, therefore, this is a case where there is no notice to the General Manager of the Central Railway, Bombay, u/s 77 of the Railways Act. It may be recalled that Khapri and Ajani are stations both on the Central Railway. Whatever damage was caused to the goods, that took place or was when the goods were being handled on the lines of the Central Railway. No part of the damage took place while the goods were entrusted to the South-Eastern Railway.

11. Mr. Tambe therefore argues in the face of this admitted position that there is no notice to the General Manager of the South-Eastern Railway, also. This is because the letter (Exh. A) is again admittedly alleged to have been sent by an ordinary pre-paid post and not by registered pre-paid post, under Part III of the Indian Post Office Act, 1866. A communication which is required or authorised by the Railways Act to be served on a railway administration may be served in the case of a railway administered by the Government, on the Manager, and in the case of a railway administered by a railway company, on the Agent in India of the Railway Company, in any of the three manners specified in clauses (a), (b) and

(c) of section 140 of the Railways Act. Mr. Tambe argues that if a communication is to be sent by post, then the party may resort to the method provided by section 140, namely, by forwarding it by post in a pre-paid letter addressed to the Manager or Agent at his office and registered under Part III of the Indian Post Office Act, 1866. If it is done as provided by section 140, then he concedes that a presumption u/s 142 may arise about the receipt of the letter at the other end. Mr. Tambe however further concedes that this is not the only way in which a notice could be served or a claim could be lodged with the Manager. The wording of section 140 shows that a communication may be served in one of the manners indicated in that section. If a party chooses to adopt one of the modes provided by section 144 and proves that the mode has been adopted, then the party will be entitled to rely on the presumption u/s 142 so far as service is concerned. However, section 140 does not restrict the method of service. If some other mode is resorted to, it will be equally good; but in that case the presumption u/s 142 will not be available to the party. The party concerned may have to prove the fact of service like any other fact in a litigation,

12. Having pointed out the legal position about the service of notice or communication under the Railways Act, Mr. Tambe argued that the General Manager, South-Eastern Railway, has denied having received any such notice. When the fact of receipt of notice is denied, it is for the plaintiff to prove that fact by leading cogent, convincing and sufficient evidence. On the record of this case, according to him, no such evidence has been led. We should therefore hold that no notice was served on the General Manager, South-Eastern Railway. So far as the notice u/s 77 of the Railways Act is concerned, the learned trial Judge had proceeded to give a finding in favour of the plaintiffs in paragraph 41 of his judgment by referring to certain rules of the Central Railway. The learned Judge says that the Central Railway by its rules has asked "all members of the public to prefer their claims to the Superintendent of Claims, Central Railway, Byculla. A similar endorsement is also to be found on the reverse of the railway receipt. On the basis of this assumption, the learned Judge says that there is evidence in this case that the Superintendent of Claims, Central Railway, Byculla, has received the letter and that would be enough notice to the Railway Administration itself. Mr. Tambe argued that there are no such rules and the reference is inaccurate. Mr. Thakar, who appears for the plaintiffs-respondents, was also unable to point out any rule made by the Central Railway in that behalf. We think that the reference is clearly erroneous so far as it refers to rules. The reference to the endorsement on the reverse of the railway receipt is correct. However, from the discussion which we shall make hereafter, it will appear that it is not necessary to consider in this litigation whether the notice to the Superintendent of Claims is enough notice to the Manager himself.

13. Since the fact of notice to the Manager of the South-Eastern Railway is challenged, we will have to find out as a matter of fact whether any such notice or a claim u/s 77 of the Railways Act was ever lodged with the Manager or the General Manager of the South-Eastern Railway. On behalf of the plaintiffs,

witness Chetan Parsharam Malkani has been examined on commission at Bombay. He claims to be the proprietor of the Claims Recovery Bureau at Bombay and gives his capacity as the Agent of Messrs Indian Globe Insurance Company Limited. He claims to have instructed Advocate Mirchandani to give a notice u/s 77 of the Railways Act on behalf of the plaintiff No. 1. He also alleges that the plaintiff No. 1 instructed Advocate Mirchandani through him. He then produced the copy of the notice which is marked Exh. A. He further says that Advocate Mirchandani gave to him for dispatch, the original letter after making exact copies of the said original letter dated 18-10-1957 and he dispatched the said notice to the General Manager, South-Eastern Railway; the General Manager, Central Railway; the Chief Commercial Superintendent, South Eastern Railway, Calcutta; and the Superintendent of Claims, Central Railway, Bombay. The copy of the letter Exh. A was marked as an exhibit by consent of both sides. He then produced entries from his dispatch book and a copy of those entries is retained on the record as Ex. B, The original dispatch book was produced before the commissioner and was returned to the witness. He proved from the dispatch book that three letters were dispatched on that day addressed respectively to the Superintendent of Claims, Central Railway, Byculla; the Chief Commercial Superintendent, South-Eastern Railway, Calcutta; and the General Manager, South-Eastern Railway, Calcutta, on 18-10-1957. The copy of the dispatch book at Ex. B mentions the dispatch to be by ordinary post with a postal stamp of 15 naye paise each on the three letters addressed to the said three officers. Each of these letters bears the No. IGI/ ASM/2470/57 of 18-10-1957. This is the number of the communication, and from the further correspondence we will show that a letter of this number has been received by the Chief Commercial Superintendent of the South Eastern Railway.

14. The witness further proves that a letter from the Chief Commercial Superintendent, South-Eastern Railway, was received by Advocate Mirohandani and was handed over to him. That letter in its original appears at Ex. P-4 and is dated 12/17-12-1957. The cross-examination of this witness is very limited. He is first asked about his connection with the Claims Recovery Bureau and to be the sole proprietor of that Bureau- He admits that he has not power of attorney on behalf of the Indian Globe Insurance Company. He however adds that by a letter they authorised him to recover that claim but he was not in possession of that letter of authority when he gave evidence. He admits as a fact that the notice u/s 77 of the Railways Act was not sent by him by registered post but the same was dispatched by ordinary post. He is then asked about the handwriting of these entries in the dispatch book and he says that his clerk made those entries. The last question whether he had any other documentary evidence to prove that the said notice u/s 77 of the Railways Act was dispatched and his obvious reply was that he had no other document. This is all the cross-examination of this witness. If we look back to his examination-in-chief, we find that he is making a very important statement on oath that he dispatched the notices addressed to the three officers concerned and he received them from Advocate Mirehandani

for the purpose of dispatch. He wants to prove the fact of dispatch by producing the dispatch book. Undoubtedly, there is no other document. There could be any other document if only the letters were dispatched either under a certificate of posting or by registered post. In either case, some document in addition to these document would have been available. When admittedly, the letters are sent by ordinary post, there could be no further evidence of the dispatch. The dispatch has got to be accepted or rejected on the oral testimony of the witness who says that he dispatched those letters. The statement of witness Chetan in that behalf was therefore the most important statement in the examination-in-chief. We find that there is not even an attempt to cross-examine him in that behalf. From the manner in which a few questions are asked to this witness and DO serious attempt is made to cross-examine him on the question of dispatch, we think that there is nothing on the record which disentitles Chetan to be believed. In this state of the record and particularly the cryptic cross-examination, we are satisfied that Chetan is a witness of truth. When he stated on oath that he received three copies of the letter from Advocate Mirchandani and debited 15 naye paise against each of these letters in his dispatch book showing the prepaid ordinary post and further adds that he dispatched them, we think that there is direct evidence of the letters being carried up to the post office and put into the proper place where they are supposed to be placed for the purpose of dispatch.

15. There are some other developments which may be taken into account and they will confirm the finding that we are inclined to give. At the stage when the claim was being merely notified to the authorities, Chetan could have no interest as a person recovering the claims to dispatch one letter and not the others. His evidence can be accepted as a whole or rejected as a whole. There is no suggestion that this evidence of dispatch may be good in respect of one of the letters and not in respect of the other two. We look at this evidence from this point of view because the record shows that at least one letter has been considered and dealt with by the officers of the South-Eastern Railway. We may now look Ex. P-4 in that behalf. This is a letter addressed by the Chief Commercial Superintendent of the Eastern Railway, to Advocate Mirchandani at Bombay. It refers to the subject-matter in identical terms as we find the description of the subject-matter in the letter Ex. A. The reference to which this reply is give is "Your letter No. IGI/2470/57 dt. 18-10-57 on behalf of your clients Messrs Kalinga Textile Private Ltd." This reference in the letter of the Chief Commercial Superintendent convincingly shows that the letter received by him and replied to is the same letter as Ex. A. Out of the letters therefore, there is direct evidence that the Chief Commercial Superintendent of the South-Eastern Railway received that letter and has acted upon it.

16. There is also further evidence to show, though indirectly that the Superintendent of Claims, Central Railway, Bombay, must have also received this letter. Ex. P-4 is the reply of the Chief Commercial Superintendent of the South-Eastern Railway, Calcutta, to the plaintiff and that letter has been exhibited being original. However, a copy of that letter endorsed to the Superintendent of Claims,

Central Railway, Bombay, is also on record though it is not exhibited. We asked Mr. Tambe whether this is the letter produced by the defendants, but not being an advocate in the trial Court, he merely asked us to verify whether the record shows it to be so. We therefore searched the record but somehow do not find the list under which this document has come on record. In file D of the original record we found a letter issued by Mr. P. E. Wani, Joint Civil Judge, Senior Division, Akola, addressed to the Small Causes Court at Calcutta for the purpose of executing commission as certain witnesses were to be examined at Calcutta. This letter appearing at page 124 of the D file contains in it a list of witnesses to be examined and also a list of enclosures. At serial No. 9 of the enclosures there is a remark that the letter dated 12/1712-1957 filed by the defendants (one sheet) is enclosed. There is the description of other enclosures and among these enclosures we find at page 131 the copy which should be in the possession of the Central Railway. There is an endorsement with the usual rubber stamp of the Govt that this is produced by the defendants. It is obvious that at that stage no particular attention was paid to the exhibition of that document, because the original of that was already on record as Exh. P-4. However, being a document which has the inward number of the office of the Superintendent of Claims, Central Railway, Bombay, and a rubber stamp of the Court and a reference to it in the list of documents sent by the Court to the Court of Small Causes, Calcutta, there is no doubt that this is the original document produced by the defendants. Since one copy of it is already exhibited, this copy could also be read in this case. The importance of this document is that having given a reply to the plaintiff No. 2 through Advocate Mirchandani, the Chief Commercial Superintendent of the South-Eastern Railway, forwards a copy of this letter to the Superintendent of Claims, Central Railway, Bombay, for information in reference to his No. C-194-c 63/4079/58, dated 25-11-1957. In the endorsement further says that he will please confirm the repudiation and accept liability for the consequences of repudiation.

17. "When we told Mr. Tambe, the Learned Counsel for the railways, that we wish to read this letter in a certain manner he objected to the endorsement being interpreted in the absence of direct evidence. We told him that from the endorsement it is obvious that there was a communication by the Superintendent of Claims, Central Railway, to the Chief Commercial Superintendent, South-Eastern Railway, which letter is dated 25-11-1957. Since a copy of Exh. P 4 is endorsed" to the Superintendent of Claims, Central Railway, with a specific reference to his letter dated 25-11-1957, followed by a further direction that he should repudiate the liability and accept the consequences of such repudiation, it is clear to us that the earlier letter from the Superintendent of Claims, Central Railway, related to nothing else but the claim in question. Mr. Tambe says that the correspondence may merely refer to a query of an accident. Since accident has taken place on the Central Railway which is an admitted position, we will not be wrong in assuming that the inquiry will be made by the Central Railway and not by the South-Eastern Railway. From this fact also, we think that it could be

legitimately held that the Superintendent of Claims, Central Railway, was in correspondence with the Chief Commercial Superintendent, South-Eastern Railway, over the question of claim put in by the plaintiffs. The plaintiffs' claim lodged with either of these railways is nothing but the letter Exh. A. From this endorsement on the reverse of Exh. P-4 put at the copy of that letter at page 131 of the D file, we are satisfied that the Superintendent of Claims, Central Railway, also received the letter which was dispatched by Chetan.

18. It is true that the letter Exh. A was not dispatched under registered cover. The presumption which could be available to a party u/s 142 of the Railways Act is not available to the plaintiffs in this case. However, there is no legal bar to prove the receipt of these letters by the respective addressees if otherwise it could be done. We have pointed out by now that out of the three endorsees, two have received the letter. We have believed Chetan when he says that he dispatched all the three letters himself. Normally, therefore, looking to the common course of business that has been followed in this case, it would be legitimate to presume that the letter addressed to the General Manager South-Eastern Railway, must have reached him in due course. In the case of letters which are sent through post, their Lordships of the Privy Council have the following observations to make in *Harihar Banerji v. Bamshashi Roy* AIR 1918 PC 102:

If a letter properly directed, containing a notice to quit, is proved to have been put into the post office, it is presumed that the letter reached its destination at the proper time according to the regular course of business of the post office, and was received by the person to whom it was addressed and that presumption would apply with still greater force to letters which the sender has taken the precaution to register, and is not rebutted but strengthened by the fact that a receipt for the letter is produced signed on behalf of the addressee by some person other than the addressee himself.

We are concerned here not with a letter sent under registered cover but under ordinary post. Even in that behalf it is permissible to infer that in due course of the business of the post office, a letter which is properly addressed and actually dispatched must have reached its destination in course of time.

19. It may be remembered that compliance with the provisions of section 140 of the Railways Act will entitle a party to claim a presumption of service u/s 142. The moment the facts contained in section 140 are proved, it shall be deemed that the said letter is served. Such a presumption, as a matter of right, is not available to a party u/s 114 of the Evidence Act. The Court also is not obliged to presume certain consequences or results. Section 114 of the Evidence Act is only an enabling section. If from the given facts and circumstances of a case, the Court thinks that a certain inference should be drawn, it is permissible to do so. When looked at from that point of view, we find that there is an additional circumstance which should be taken into account before a final conclusion with respect to the service of the General Manager of the South-Eastern Railway is

drawn. We may now refer to the written statement. Paragraph 7 of the plaint alleged that the plaintiffs sent on 18th October 1957 to the General Managers of the South-Eastern Railway and the Central Railway statutory notices u/s 77 of the Railways Act by the letter of Advocate Mirchandani, a copy of which was enclosed with the plaint. The reply given by the defendants is worth noting in their own words. Paragraph 7 of the written statement is as follows:

As to para. 7, the notices referred viz. u/s 77, Indian Railways Act are not traceable. The defendants, therefore, deny the same. The plaintiff is put to the proof of the same.

Occurring of damage to properties while being handled by the railways may be a common occurrence and the railways might be receiving several notices in that behalf. Even then, the notification of a claim u/s 77 of the Railways Act is an important type of document. When a letter of this type is alleged to have been posted-and now we find that there is sufficient, believable and cogent evidence of its dispatch-the plea of the defendants makes peculiar reading. They have not the courage to say that they never received such a notice. They merely give a non-committal reply that no such notice is traceable and hence it is denied. This is an additional circumstance which we think should be taken into account in considering the cumulative effect of the evidence regarding the service of notice. In view of the circumstances which we have detailed earlier, read with the written statement of the defendants, we are satisfied that in this case looking to the facts proved and existing circumstances, an inference should be drawn that the letter dated 18-10-1957 was received by the General Manager of the South-Eastern Railway in due course of business. It must have been received at about the same time when the Chief Commercial Superintendent of that railway received that letter. The copy, Exh. A, shows that the appropriate name and the correct address of the addressee was there. We therefore hold in the circumstances of this case that a notice of claim u/s 77 by the plaintiff No 1 was duly served upon the General Manager of the South-Eastern Railway. We have already pointed out that admittedly no such notice has been served upon the General Manager of the Central Railway.

20. Before we go to the discussion of a further technical defence, we would point out that we are not deciding in this appeal a point raised by the Learned Counsel for the respondents, though that point was discussed at considerable length. The Learned Counsel for the respondent argued that a notice to the Superintendent of Claims, Central Railway, was sufficient notice to the Manager of the Central Railway or the Railway Administration itself. This position was hotly contested by Mr. Tambe, and the Learned Counsel for both the sides referred us to several decisions of various High Courts including some decisions of this Court. We are neither dealing with the point nor deciding it in this appeal, as we will presently point out that on the view of the notice u/s 77 of the Railways Act served upon the General Manager of the South Eastern Railway which, we are taking, it is not necessary to decide this question.

21. Even though we have found that the General Manager of the South-Eastern Railway received a claim notice u/s 77 of the Railways Act, Mr. Tambe, Learned Counsel for the railways, argued that that cannot enable the plaintiffs to obtain any relief. The goods belonging to the plaintiff No. 1 were accepted by the Central Railway and they traveled over the routes of the Central Railway, as also of the South-Eastern Railway. The destination station was on the South-Eastern Railway and the delivery was effected by the South-Eastern Railway. However, it has been conclusively proved, which finding is accepted by this Court, that the damage took place on the lines of the Central Railway, and no part of the damage took place while the goods were being handled by the South-Eastern Railway. On these proved facts, he says that there are two distinct Administrations, namely, the Central Railway and the South-Eastern Railway. The liability of a railway administration for damages is now a matter of statutory provision. Section 80 of the Railways Act points out the railway that is to be held responsible. At present, section 80 stands amended in 1961; but we are dealing with a matter where the cause of action arose in 1957. As section 80 then stood, only two railways were answerable for the claim. The contracting railway administration was always liable to pay, but it was also open to a party to claim damages from that railway administration over whose routes the damage or loss took place. The railway administration which merely delivered the goods and on whose lines no part of the loss or damage took place was not answerable before the amendment of 1961, Taking that position into account and on the assumption that there are two distinct railway administrations concerned in this litigation, Mr. Tambe argued that there may be a notice to the General Manager of the South-Eastern Railway. However, that railway is not liable to pay any damages because no part of the damage or IOBS took place while the goods were being handled by that railway. So far as the Central Railway is concerned, the IOBS occurred while they were in charge and they might have been answerable; but to them there is no notice u/s 77. In this manner, he says that even the finding given by this Court would not enable the plaintiffs to obtain a decree against either of the defendants.

22. According to Mr. Tambe, the notification of claim contemplated by section 77 is to be made to each of such railway administrations which are sought to be held liable. Unless that is done, it is not permissible to pass a decree against the particular railway administration. The opening clause of section 77 says that a person shall not be entitled to a refund or damages etc, until he does what is prescribed by the latter part of that section. Even if therefore damage has been caused and the claim is otherwise good, the person concerned who does not observe the provisions of section 77 shall not be entitled to recover any damages or refund from the railways. This being an imperative section, it must be strictly observed. According to him, the provisions of section 80 of the Railways Act must be read in conjunction with section 77 for understanding the relevant railway administrations which are to be served with notices. Since section 80 of the Railways Act permitted a party to claim damages from the contracting

railway, or where the goods traveled over the lines of other railway administrations and which traffic is described as through traffic, from the railway administration over whose lines the damage took place, there is an option to the party to sue either the contracting railway administration or the railway administration over whose lines the damage took place. Since section 80 points out the railway administrations which are to become liable, unless the claim u/s 77 is notified to that railway administration which is to be held liable, there can be no proper notice at all. Having made out these premises, he says that each of these so-called railways of the Union of India like the Central Railway and the South-Eastern Railway are separate railway administrations or administrations within the meaning of that expression contained in section 3 (6) of the Railways Act. There is considerable divergence of opinion among the High Courts over the correct meaning of sections 77 and 80 and the sufficiency of notice u/s 77 before a plaintiff succeeds in a suit for damages. Both the Learned Counsel therefore addressed us at great length over the correct meaning of the expression "railway administration" as used in section 77.

23. Mr. Tambe for the appellants pointed out to us that the scheme of the Act must be taken into account in order to understand the definition of "railway administration" or "administration". About the ownership of the railways and the historical survey of the ownership and transfer of management of the railways to the Union of India, information was placed before us from the judgment of the Madras High Court in *Narayanswami v. Union of India* AIR 1960 Mad. 68. Mr. Tambe admitted that substantially the reference to fact's were correct.

However, he points out that the ownership of the railways by the Union of India has nothing to do with the definition of "railway administration" or "administration". Factually, it may be correct to say that the ownership of the large stock and property of the railways in the Central Government started in 1890. The taking over of the administration began in 1925 and was well-nigh complete in 1944 except for a few minor railways. Mr. Tambe added as a fact from the information that he had collected from the Department that the mileage of the State-owned railways stood at 53,923 kilometers, whereas the mileage covered by other railways not administered by the Union is hardly 818 kilometers. According to him neither the ownership of the railway nor the passing of the Indian Independence Act have any relevance while deciding the implication of the expression "railway administration" or "administration". These references appear in our judgment because in some of the judgments cited by the respective parties on which reliance is placed, there are repeated references, to a position developed in law because of the passing of the Indian Independence Act. What exact difference the independence of this country makes to the interpretation of the expression " "railway administration" or "administration" was not brought to our notice by either of the Learned Counsel.

24. In order to show that the ownership of the railways has nothing to do with that expression, Mr. Tambe points out that the definition may be properly

analysed. The definition is as follows:

3 (6) "railway administration" or "administration" in the case of a railway administered by the Government means the manager of the railway and includes the Government and, in the case of a railway administered by a railway company, means the railway company;

He says that another definition which may be looked into is that of ""railway" contained in section 3 (4) which is as follows:

"railway" means a railway, or any portion of a railway for the public carriage of passengers, animals or goods and includes....

(a) all land within the fences or other boundary marks indicating the limits of the land appurtenant to a railway;

(b) all lines of rails, sidings or branches worked over for the purposes of, or in connection with, a railway;

(c) all stations, officers, warehouses, wharves , workshops, manufactories, fixed plant and machinery and other works constructed for the purposes of, or in connection with, a railway; and

(d) all ferries, ships, boats and rafts which are used on inland waters for the purposes of the traffic of a railway; and belong to or are hired or worked by the authority administering the railway;

25. Mr. Tambe argued that the essence of this definition of "railway administration" or "administration" is the administration of it and not ownership. Where a railway is administered by the Government, the definition says that the manager of the railway shall be the administration, and it being an inclusive definition, it will also include the Government. Where a railway is administered by a company, it will mean the railway company. In the definition of "railway" itself, we find references to various establishments, and ferries, ships, boats and rafts which may be hired by a railway for its own use and in that case, even that ferry, ship, boat and raft would be part of the Railway under the definition. When a railway hires some of these vehicles or other property, undoubtedly the ownership rests somewhere else. The railway is a mere hirer. Even then that property so long as it is used for the purposes of the railway is included in the definition of "railway". When such a Railway is administered by the Government, then the Manager of that railway which also include the Government, become the administration. We think that looking to these two definitions, the ownership may not have particular relevance. However, in the various judgments referred to us, the reference to ownership has been made possibly because after 1925 the ownership as well as administration of all the major railways in this country have vested in the Government. The repeated references to the ownership therefore appear to be meant for the purpose of describing the fact of administration of the railway by the Government.

26. Mr. Tambe then pointed out to us that the Central Government has two different capacities. In one capacity, by the inclusive definition given in section 3 (6) it will also become railway administration or administration. In another capacity, it still remains the Central Government which has several functions to perform as the Central Government vis-a-vis the railway administration. For the purposes of convenience, it may be stated that the position of the Central Government while it discharges purely governmental functions is one; and the duties which the Government has to discharge as railway administration on its commercial undertaking of the railways are quite another. The commercial activity namely, the railways, is only one wing of the Government of India, but the Central Government has a separate existence as Government. This, he says, is obvious if we look at the various provisions of the Railways Act.

27. Though Mr. Tambe took us through the various provisions of the Act, we think that it is not necessary to refer to all of them. One or two instances would be enough to illustrate his argument. He referred us to the provisions of section 17 of the Railways Act which lays down that subject to the provisions of sub-section (2), a railway administration shall, one month at least before it intends to open any railway for the public carriage of passengers, give to the Central Government notice in writing of its intention. Sub-section (2) of section 17 authorises the Central Government to reduce the period of, or dispense with, the notice mentioned in sub-section (1). He therefore argued that this section contemplates the Central Government as something different from the railway administration which also includes the Government so far as the definition of that expression is concerned. Another instance which may be referred to is the provisions of section 19. That section deals with the procedure in sanctioning the opening of a railway. This section in terms requires the railway administration to obtain the sanction of the Central Government for doing certain acts. Various other provisions were brought to our notice which clearly illustrate that the Central Government has two distinct capacities and therefore has two functions to perform so far as the Railways Act is concerned.

28. Having pointed out the difference between the different types of functions that the Central Government has to perform, he referred us to Chapter VII of the Railways Act, which deals with the responsibility of railway administrations as carriers. Mr. Tambe started his argument in this behalf by saying that the provisions of Chapter VII, and particularly of section 72, are a provision by which the responsibility of the railway administration is created.

We find it difficult to accept this statement of the legal position. According to us, the responsibility of the railway administration arises out of the contract of carriage it makes. Section 72 deals with the limits of that responsibility and does not speak of creating the responsibility. Sub-section (1) of section 72 in terms says that the railway administration shall be responsible for loss, destruction or deterioration of animals or goods delivered to the administration and that responsibility shall be that of a bailee under sections 151, 152 and 161 of the

Indian Contract Act. It also enacts that this responsibility of the bailee shall be subject to the other provisions of the Railways Act. The responsibility of the railway administration therefore has its origin in the contract of carriage and that responsibility is limited by two circumstances. It is first pointed out by section 72 that the responsibility will be of a bailee under the appropriate provisions of the Indian Contract Act, and there is a further limitation that it will be subject to the other provisions of the Railways Act. This section, according to us, is a section which limits the responsibility but does not create it. However, that by itself may not be a serious difficulty in proceeding further with the argument of Mr. Tambe. Having pointed out that there is a certain type of responsibility on the railway administration to make good the loss, he comes to the provisions of section 77, the non-observance of which would disentitle a party from claiming any refund or damages. Section 77 is as follows:

A person shall not be entitled, to a refund of an overcharge in respect of animals or goods carried by railway or to compensation for the loss, destruction or deterioration of animals or goods delivered to be so carried, unless his claim to the refund or compensation has been preferred in writing by him or on his behalf to the railway administration within six months from the date of the delivery of the animals or goods for carriage by railway.

So far as this section is concerned, he emphasises the use of the article "the" used before "railway administration" with which the claim is to be lodged. He says that the implication necessarily is that the claim must be preferred to that particular railway administration which is sought to be held liable for the loss or damage. In order to understand the correct meaning of section 77, it is argued that it must be read in conjunction with Section 80 deals with the liability of the several railway administrations, whereas section 77 merely deals with the preferring of the claim before a legal remedy is resorted to. It is therefore necessary that the appropriate railway administration is first found out which is responsible for answering the claim. Section 80 of the Railways Act is as under:

Notwithstanding anything in any agreement purporting to limit the liability of a railway administration with respect to traffic while on the railway of another administration, a suit for compensation for loss of the life of, or personal injury to, a passenger, or for loss, destruction or deterioration of animals or goods where the passenger was or the animals or goods were booked through over the railways of two or more railways administrations, may be brought either against the railway administration from which the passenger obtained his pass or purchased his ticket, or to which the animals or goods -were delivered by the consignor thereof, as the case may be, or against the railway administration on whose railway the loss, injury, destruction or deterioration occurred.

According to this section, only two Railway administrations are answerable-the contracting railway as well as the railway on whose routes the loss or damage took place. Mr. Tambe argues that either of these railway administrations being answerable, the plaintiff or a claimant must first make up his mind as to against

which railway administration he wants to make a claim. Having done so, he may prefer a claim to that railway administration u/s 77. Mr. Tambe further argues that in many cases of this type, several railway administrations are being joined, but strictly speaking, it is not necessary. The contracting railway being always liable, the purpose of the claimant would be served if he gives a proper notice to the contracting railway administration alone and sues it in due course if the claim is not settled. However, if the claimant chooses to serve a notice u/s 77 on some other railway administration than the contracting railway administration, then he cannot succeed unless that railway administration is shown to be responsible u/s 80.

29. Mr. Tambe also made some reference to sections 79 and 80 of the CPC also. According to him, the provisions of section 79 merely lay down the description of the Government concerned in case a suit is to be filed by or against the Government. It does not require that a claim against the railway should necessarily be filed against the Central Government. Section 80, according to him, in the same manner merely lays down how a notice shall be served upon the Government if a suit against Government is intended. Clause (b) of section 80 merely tells a claimant that in the case of a suit against the Central Government where the suit relates to a railway, then the notice must be served upon the General Manager of that railway. According to him, the expression "that railway" after the words "the General Manager of" is also important. This again indicates that a notice u/s 80, even though intended to make a Government a party defendant must be addressed to the General Manager of that railway which is sought to be made liable. The wording of section 80 of the CPC also gives the clue to the understanding of the real meaning of sections 77 and 80 of the Railways Act. He therefore argues that in the present case, the notice u/s 77 ought to have been addressed to the General Manager of the South-Eastern Railway as well as the General Manager of the Central Railway.

30. According to Mr. Tambe, the definition of the word "railway" means not only the entire railway system but any portion of it. It is therefore possible to visualize that a railway administration could be one administration for all the railways or there could be separate administrations for portions of the railways. As even a portion of the entire system is a railway, a separate unit, by whatever name called, either a division or a zone, would constitute a separate railway administration. If this is so, then he says that the definition in section 3 (6) may again be closely seen. In the case of Government-administered railways, the definition speaks of the Manager of "the" railway as being the railway administration. Primarily, therefore, it is the Manager of "the" railway. Where the entire railway system of the country is divided into parts or zones, and each part or zone has a separate Manager as is apparent from the present structure of the Indian railways, each part or zone would be "the" railway for the purposes of understanding the Manager thereof. He therefore says that the Manager of such a railway, namely, zone, has all the rights of the Manager over that zone alone and not over the rest of the net-work of the Indian railways. He says that so far

as he knows, a General Manager for the entire country has not been appointed. What we therefore have is the division of the Indian railways administered by the Government into zones, with each zone having a separate Manager of its own. Primarily, therefore, each such zone headed by a Manager is a railway administration or administration for the purposes of this Act. It is entirely different, he argues, that the definition being inclusive, in the case of each Manager, the Government would also be included in the administration. However, the Government being capable of discharging different functions in different capacities would be answerable as administration in respect of a certain part or zone when a claim relates to that particular zone. There is nothing inconsistent in the definition which requires any other meaning to be given to the expression "railway administration" or "administration". The inclusion of the Government in the definition cannot therefore be something which is decisive of the real meaning. Government, he says, has several parts to play, as Government, as railway administration etc., and therefore has been included in the definition as representing several ones.

31. Mr. Tambe then pointed out as a mere historical fact that the definition of "railway administration" was amended twice. Before 1948 there were certain railways owned and managed by the Indian States. In the case of those railways, in the definition, along with the Government was also included a reference to the Native States. The word "Native" was omitted by the amending Act of 1948 and the reference to the "States" itself was omitted by the Adaptation of Laws Order, 1950, after which the Indian States merged with the adjoining territories and the entire country emerged as the Union of India, with the ownership and administration of all the major railways vesting in the Union of India. The reference to the "Native States" or "States" therefore became unnecessary and was properly deleted.

32. According to Mr. Tambe, even though the administration of all the major railways was transferred to the Central Government by about 1944, there has been no change or amendment made in section 80 of the Railways Act. That section still conceives of more railway administrations than one and the responsibility of each one is fixed according as the administration is a contracting party or a party on whose lines the damage took place. This reference therefore could not be to any other administration than each of the separate administrations which are headed by a separate Manager. This is the only rational way in which the provisions of the Railways Act must be understood and interpreted. If that is done, then it is obvious that in the present case the damage occurred on the lines of the Central Railway whose Manager has no notice at all u/s 77 of the Railways Act. The South-Eastern Railway, whose Manager had a notice according to the finding of this Court, is not liable because no part of the damage took place on its lines.

33. How sections 77 and 80 of the Railways Act should be understood is therefore the main question that falls to be decided in this appeal. There are two

distinct views which are subscribed to by the various High Courts and Mr. Tambe relied upon a number of judgments which took the view which he is canvassing. The first case on which he relies is *Dominion of India v. Firm Museram Kishuwprasad* 1950 NLJ 128 = AIR 1950 Nag. 85 = 1 L R 1950 Nag, 212. That judgment relates to a cause of action which are on or about S-5-1946. 255 bags of dry coconuts were dispatched from Rajahmundry station (Jubbulpore) on the M. S. M. Railway to the plaintiff-firm at Howbagh station (Jubbulpore) on the B. N. Railway. As there was a short delivery, the plaintiff instituted a suit after serving a notice upon the Secretary to the Central Government "Commerce and Railway Department". The defence was that the loss did not occur on the B. N. Railway. The loading of the wagon was done at Rajahmundry and the consignment booked under a "said to contain" railway receipt. The wagon was received intact at Gondia but only 251 bags were found inside. To be B.N. Railway authorities intimated this fact to Rajahmundry and transshipped the bags as found and later delivered the same to the consignee at Howbagh station. The main contention was that a notice ought to have been served upon the M. S. M. Railway and that railway ought to have been made a party. This contention of the B. N. Railway was accepted by the Division Bench of the Nagpur High Court on the footing that u/s 80 of the Railways Act, each railway administration is to be treated as a separate entity with a separate existence and personality. The injured party has the option to sue the railway administration with whom the contract was made or the railway administration on whose railway the loss has occurred. Merely suing the Governor-General as representing the entire State-owned railways (at least before the Indian Independence Act was passed, which is the case here) is not a proper form of suit because that would render section 80 otiose and meaningless. It was further observed that whatever may be the position after the Indian Independence Act, it is clear that the suit as laid ought to have been again against one or the other railway administration or both. Suing the Governor-General would not make the railway administration a party as it is not only contrary to the scheme of the Act but would also make section 80 of the Act inoperative. This judgment has been followed subsequently by the Madhya Pradesh High Court in *Central India Chemicals (Private) Ltd. v. Union of India (Railways)* (1). It was held in that case that where a consignment reaches the consignee in a damaged form, it is for him to decide whether he is able to spot the particular railway administration over whose railway his goods were damaged. If he is sure of it, he need implead that administration only. If he is not, he should implead the administration which received the goods from the consignor. The choice given by section 80 is not between suing one or more railway administrations and not suing any of them at all; it is between suing this or that out of two or more administrations involved. It is no answer to state that the Union of India having been impleaded the non-joinder of one or more railway administrations is immaterial; it is a statutory requirement based on sound principles. The Division Bench based these observations upon the judgment to which we have referred earlier.

34. The next judgment relied upon is *K. Virraju v. Southern Railway* A I R 1960 A P S 14 According to the learned Judges, section 77 read with section 80 of the Railways Act makes it clear that section 77 treats each of the railway administration as a separate entity with separate existence and personality, though they may now happen to be owned by the Central Government. The purpose underlying section 77 is that the authorities concerned should be apprised of the loss or damage promptly in order to enable them to investigate into the matter quickly and get some information as regards the loss or damage. This interpretation of section 77 of the Railways Act, according to the learned Judges, is reinforced by the terms of section 80 of the Code of Civil Procedure, as also section 140 of the Railways Act. Hence, according to the Andhra Pradesh High Court, any railway administration against whom relief is sought must be served with notice u/s 77 of the Railways Act and failure to do so will disentitle the aggrieved party to maintain a suit for any of the relief's mentioned in that section. The Andhra Pradesh High Court was addressed on the point that section 80 was enacted at a time when the different railway systems belonged to different owners and, therefore, such a provision was necessary. According them, however, that does not alter the situation as otherwise Parliament would have amended section 80 suitably. That section, as it stands, points to the conclusion that the individuality of each of the railway administration is continued. Thus, section 80 furnishes a clue to the interpretation of section 77.

35. A similar view has been taken by a learned single Judge of the Orissa High Court in *K. P. Cloth Stores v. Union of India* AIR 1960 Ori 124. The learned Judge held that in case of through booking of goods where the goods consigned are carried over several railway administrations, notice of claim for the loss or damage to the goods has to be given to each of the railways concerned, and notice to one railway administration is not sufficient notice to the other railways in order that they may be made liable for the alleged loss or damage. The learned Judge referred to several judgments and prefers to follow the view of the Andhra Pradesh High Court and the Patna High Court in preference to the view of the Madras High Court.

36. Mr. Tambe then referred us to the judgment of the Patna High Court in *Governor-General v. Sukhdeo Ram* AIR 1949 Pat 32, which takes a survey of a large part of the case-law on the point. The facts of that case show that the suit was filed against the Governor-General-in-Council as representing the railway which delivered the goods. The evidence in that case showed that no part of the goods were destroyed or damaged while the goods were being handled by the delivering railway. With reference to section 80 of the Railways Act, the judgment proceeds to hold that it only gives a choice of claiming his remedy either against the railway administration to which the goods are consigned or against the railway administration on which the loss occurs. If the loss has not taken place on the railway which is sued, a suit against the Governor-General representing that railway could not succeed and the Governor-General could not be held for the loss on the theory of agency or partnership. This judgment has madly

proceeded upon the construction of section 80 of the Railways Act as giving the clue to the understanding the railway administration which is required to be apprised of the claim u/s 77. The learned Judges referred to the divergence of opinion between various High Courts before section 80 of the Railways Act was enacted in 1890, since that section was enacted for the purpose of setting at rest the controversy, the learned Judges held that that section must be read in conjunction with section 77 in order to ascertain, which railway administration is in fact liable. The notice of claim has got to be given to that Administration which is to be held responsible. On that view of the matter, the plaintiff there was non-suited because he brought a suit, may be, in the name of the Governor General but representing a certain railway administration which was not at all responsible for the loss.

37. Mr. Tambe also drew considerable support from the judgment of the Calcutta High Court in *Jagannath Ohelram v. Union of India* AIR 1986 Cal 540. In the case before the Calcutta High Court, the suit was laid against the Eastern Railway on whose routes no part of the loss or damage had occurred. On the basis of section 80 of the Railways Act, the learned single Judge of the Calcutta High Court holds that the Union of India will be liable as carrying on business of railway administration provided the railway administration in respect whereof the liability arose in the railway administration to which liability can be fastened by virtue of the provisions of the Railways Act. In the case where the goods were accepted by the Western Railway for transshipment and the Eastern Railway merely delivered them, the Court at Calcutta could not be said to have jurisdiction on the ground that the Union of India carries on the business of one of its railways, namely, the Eastern Railway, at Calcutta. The proposition for which support is sought from this case is that the various zonal railways like the Eastern Railway, Western Railway etc., are recognised as separate entities and as such notice must be served upon that railway administration which is sought to be made liable.

38. In all these cases, the basis accepted for the particular interpretation is that each zonal railway is a separate administration. This conclusion is drawn on the basis that the definition of "railway administration" or "administration" speaks of the Manager of the railway where it is administered by the Government, and also includes the Government. Since the Manager of a railway represents the administration as such, it is contended that the same meaning must be given to the expression "railway administration" when used in section 77 of the Railways Act. It is further held that section 80 of the Railways Act, which speaks of the railways that are answerable for a claim, conceives of different administrations, and only that administration is responsible which is either the contracting railway or the railway over whose routes the damage or loss took place. This section is supposed to control the provisions of section 77 and gives a clue to the interpretation of that section. Since different administrations are involved in the case of what is known as "through traffic", the responsibility of each administration must be separately ascertained. Aid is also taken in furtherance of this argument from the provisions of section 140 of the Railways Act, as also of

section 80 of the Code of Civil Procedure. u/s 140, the service of any document in the case of a railway administered by the Government is required to be made on the Manager. Emphasis is laid upon the article "the". It is stated that the Manager of the particular railway which is responsible either as the contracting railway or the railway on whose lines the damage took place, was in the view of the Legislature while making use of that article. Section 80 of the CPC is also relied upon as furnishing a guide or clue to the interpretation of sections 77 and 80 of the Railways Act. So far as section 79 of the CPC is concerned, it only deals with the description of the Government if it is required to be made a party either as a plaintiff or as a defendant in a suit.

39. Section 80 of the Code has been recently amended in 1948. This amendment is particularly referred to as indicating the manner in which notice must be given to the Central Government where it is going to be a party defendant in a suit. The Union of India could be responsible to answer the claim of a party dealing with the Indian railways because of the definition of the expression "railway administration". Reference is made to clause (b) of section 80 of the CPC which requires that in the case of a suit against the Central Government where it relates to a railway, notice is to be given to the General Manager of that railway {the underlining is ours). Emphasis is laid again on the expression "that railway". That railway means the particular railway which is either the contracting railway or is otherwise responsible as the railway on whose lines the damage took place. As a cumulative effect of reading these provisions together, it is held that unless the particular administration which is responsible or liable in damages is made aware of the claim by a notice u/s 77 of the Railways Act, there is no proper compliance with section 77. As a logical corollary it is assumed that section 80, though enacted in 1890, has remained un-amended till today despite the Government owning and administering all the major railways of this country. It therefore means that Parliament in terms continued the existence of this auction in the same form, because the different zonal railways for which the Union of India appointed Managers are being treated as separate railway administrations which have a separate legal existence and are legal entities capable of suing and being sued. Even though the ultimate liability may be of the Union of India it is assumed that the Union of India, as owning and administering the railway which may be a zonal railway according to the present set-up, is responsible only as such and not in its ultimate capacity as the Union of India. This reasoning has been placed before us by Mr. Tambe and he relied upon the above-mentioned judgments for supporting the propositions canvassed before us.

40. According to us, the provisions of section 77 of the Railways Act must be independently examined and effect must be given to them as they are found in that section. Section 80 of the railways Act may have relevance in understanding which administration is liable. However, section 80 must be understood in the manner in which it came to be introduced in the Act. The legislative history of section 80 as also the history of ownership and administration of the various major railways in this country by the Union of India must be remembered for the

purpose of understanding the import of each of these sections. There was considerable controversy before 1890 over the liability of the various company owned and administered railways. Many company railways were in the habit of inserting a clause by which their liability was restricted to their handling of the goods and until they were traveling on their liner. In spite of such a clause, the contract of carriage was from one station to another, which many times fell upon the railway owned and administered by another company. The consignor or the consignee had not always the means to know where precisely the loss or damage occurred. In the circumstance, various shades of opinion were current in the decisions of the different High Courts. Some held that the contracting railway was an agent of the other administration over whose rail the goods were ultimately carried and delivered. Some held that the other administration was an agent for and on behalf of the contracting railway. The liability was accordingly being fixed either in the capacity of principal or agent. In order to set at rest this controversy, section 80 came to be introduced in the Railways Act. The provisions of section 80 are overriding provisions. That section opens with the clause "Notwithstanding anything in any agreement, etc.". This means that whatever the contract of carriage, the liability in damages is statutorily fixed under the provisions of section 80. Even if a clause of terminating the liability of the contracting railway after the goods are handed over to the other railway were to be introduced in the contract, after 1890 the provisions of section 80 would override such a contract. Undoubtedly, the administration of the various company railways vested in various companies when that section was introduced. Each company railway was a separate railway administration in the eyes of law. Each one of them was a separate legal entity capable of suing and being sued as such. This being the purpose for which section 80 was introduced even today that section has to serve the very purpose for which it was enacted.

41. According to an agreed statement of facts made before us, there is no doubt that most of the property belonging to the various railways became of the ownership of the Union of India or the erstwhile Government of India by about 1890. The process of taking over the administration of the various railways from the companies started in or about 1925 and continued till about 1944. The railways owned by the former princely State still remained of their ownership and those railways were merged with the Union-owned railways in or about 1950. By about 1950, therefore, a broad picture emerged where the Union of India was the owner as well as administering all the major railways in this country. A reorganisation of these railways started by 1-4-1951 and was completed by 1-4-1952. As a result of the amalgamation of the various company railways and the State-owned railways and the reorganisation thereof, the railway system owned and administered by the Union of India came to be divided into six zones. Each of such railways was given a name, like the Western Railway, Central Railway, Southern Railway, etc. Even though the major portion of the railways began to be administered by the Union of India, still there were some railways owned and administered by private companies, as also owned and administered

by District Boards. Mr. Tambe emphasised the fact that the mileage covered by such railways was very meagre. That may be so and it may be a correct statement of fact. How does it make any difference in principle? So long as there exist even today railways administered by the Union of India, as also railways administered by private companies, there may be occasions when goods have to travel over both these railways. Provision must continue to be made for a consignor who books goods which travel on both these railways. Section 80 is still the section to which resort must be had by such a party for holding either this or that railway responsible. The purpose and the intention for which section 80 was enacted still subsist and the mere continuance of section 80 in the form in which it was enacted cannot lead to the conclusion that the various zonal railways in which the Union railways are now divided became separate railway administration with independent existence and legal status.

42. In the same manner, the provisions of section 140 of the Railways Act which merely speak of the manner of service of a document on the various railways cannot be of particular assistance in interpreting the provisions of section 77 of the Railways Act.

43. According to us, in the matter of claim for damages, what is mainly relevant is the incident of these damages. In other words, who is really the contracting party and who is really responsible to a claimant? The claimant no doubt deals primarily with some portion of the railway which, is known by one of the names given to the zonal railways. However, the definition of the expression "railway administration" being an inclusive definition, it appears to us that the Manager of any of these railways always includes the Government. It may be noted that the expression "railway" means a railway or any portion of the railways. The entire system of Indian Railways should be "railway", as also any portion of it. The expression "Manager of the railway" would mean the Manager of a particular portion which may have been separated for the purpose of administrative convenience. Even if there is a small unit which is also "railway" in the eyes of law the Manager of any such smaller unit would always include the Government. The responsibility for loss, destruction, etc. arises under the Indian Contract Act, as we have already pointed out and not under the Indian Railways Act. It is the Union of India or the Government which is included in all the Managers representing the various portions of railways, that is the contracting party and that is ultimately responsible for making good the loss due to destruction or otherwise. This basic fact, according to us, is the main factor which must be taken into account in understanding the function, purpose and sufficiency of notice u/s 77 of the Railways Act.

44. We think that the provisions of sections 79 and 80 of the CPC lend considerable support to the view we are taking. Section 79 merely describes how the Government shall be described a party in a suit, whether as a plaintiff or as a defendant. Section 80 deals with a notice to be served upon the Government when a suit is contemplated against it. The amended section after 1948 lays

down that when such a suit is contemplated against the Central Government where it relates to a railway, then a notice of the suit shall be served upon the General Manager of that railway. The expression "a suit against the Central Government where it relates to a railway" does indicate that in a case where a suit in respect of railway is to be filed, it is to be filed against the Central Government after complying with the provisions of section 80 of the Code. The party that is therefore conceived of as responsible for making good the loss or damage is the Central Government. It is because the Central Government is required to be sued that a prior notice u/s 80 of the Code becomes necessary. In respect of that notice, the present section as it stands amended after 1948, speaks of a particular type of notice when the claim relates to a railway. We think that these provisions clearly indicate that the responsibility for making good the loss lies upon the Central Government and a suit for claiming such damages has got to be filed against the Central Government.

45. With this background of the history of ownership and administration of the Indian Railways, as also the legislative history of section 80, the provisions of section 77 may now be examined. Undoubtedly, a notice of claim has got to be given within the period stated in that section, without which no person shall be entitled to a refund or claim. Even though there is a difference of opinion over the incidence of damages as we have already pointed out earlier, there seems to be unanimity of opinion among all High Court over the purpose of section 77. The Supreme Court in *Jttmull Bhojraj v. D. H. Railway* points out that in enacting section 77 the intention of the Legislature must have been to afford only a 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 on the railways. They therefore pointed out that bearing this object in mind, the provisions of section 77 should be liberally construed. It is true that in the case before the Supreme Court, the dispute was not as to which of the railways should be served but the dispute related to the contents of the notice. A notice undoubtedly was served upon the Manager of the railway concerned, but it was more or less a letter informing the Manager that certain packages were short-delivered and seemed to have been lost or misplaced. He should therefore make inquiries in that behalf. This was all that was stated and there was no claim as such for short delivery. The Supreme Court says that the purpose and object of section 11 being to make the railway administration aware of a claim, so that stale and fraudulent claims may not be lodged against it, that purpose is already served by such a letter. In the circumstances, on a liberal construction of that section, the Supreme Court holds that that notice was sufficient notice under the provisions of section 77.

46. Three questions seem to arise so far as the notice u/s 77 is concerned. One related to the contents of the notice. In that behalf, we have now an authoritative pronouncement that information which would serve the purpose of bringing the claim to the notice of the railway administration is enough and the

judgment of the Supreme Court is illustrative of one such incident.

47. The other two questions relate to the service of notice on a particular officer. On whom the notice should be served is also a question open to debate. We have already pointed out that in this appeal we are not deciding the question whether a notice upon a subordinate officer of a high rank but not upon the Manager himself is or is not sufficient notice. The third question is whether in the case of through traffic each of the Managers is entitled to a notice or in the case of railways owned and administered by the Union of India, preferring of such a claim to one of the Managers whose railway has dealt with the consignment is sufficient compliance with section 77. So far as the last point is concerned, we have already pointed out the purpose and the intention of section 77. We have also pointed out that today most of the major railways are owned and administered by the Union of India. It is the Union of India that is ultimately responsible in damages. With this background, if we look at the fact that the railways are administered by the Government, we find that there is nothing in the provisions of the Railways Act which gives each of the zonal railways which is headed by a Manager a separate legal existence. Neither the definition contained in section 3 (6) nor any other provision seems to give an independent legal existence to such separate zonal railways. According to us, emphasis must be laid on the unity of administration and unity of ownership of the railways. It may be that there are certain functions to be performed by the Manager of a railway administration which are laid down in the Act. For the purpose of carrying out those functions, a Manager has to be provided for and the fact that such a Manager is the head of each section of the railways which is styled as a zone does not give him any separate legal existence in the eyes of law. We do not think that each such, zonal railway can sue or be sued in its own name.

48. A claimant, who ultimately must file a suit against the Union of India for recovering his claim relating to loss or destruction during the course of the consignment being handled by the State-owned and administered railway, has to comply with two distinct provisions. He must prefer a claim u/s 77 of the Railways Act and he must again serve a notice u/s 80 of the Code of Civil Procedure. The purpose and function of both these notices is more or less similar. Section 77 is primarily meant to make the railway administration aware of the claim, so that immediate investigation is started. The notice u/s 80 of the Code is also meant to enable the Government to consider whether the claim is just and should be compounded. Both the sections conceive of the possibility of compounding of just claims and avoidance of unnecessary litigation. According to us, therefore, two important conclusions are now reached. One is that each zonal railway is not a separate legal entity and the other is that the purpose and function of the notice u/s 77 of the Railways Act, as also section 80 of the Code of Civil Procedure, are primarily to avoid fraudulent and delayed claims, and in the second place, to enable just claims being compounded.

49. We have also pointed out that so far as the content of the notice u/s 77 of

the Railways Act is concerned, it is now accepted as a uniform rule that that notice has to be liberally construed. Whether the contents of a particular notice are sufficient compliance with the provisions of section 77 may be, in the facts and circumstances of each case, a question to be decided independently. However, the principle on which that question has to be decided appears to be a settled one. If that is the primary purpose of section 77 of the Railways Act, we think that the service of notice upon the Manager of any of the railways which have handled the goods would serve the purpose of section 77 and would be sufficient compliance with it. Since all the railways are now owned and administered by the Government, the Manager of any of those railways which has dealt with the goods and gets enough particulars from the claimant about the number of the railway receipt, the nature of the goods and the date of booking etc., should be in a position to know from the record of his own section what has happened to the goods. It should be possible for him to immediately communicate with the Managers of other sections or zones on whose rails the goods have also passed. A notice to any of these Managers through whose railway systems the goods have passed is a sufficient notice to the Government which is administering all these railways. Emphasis is laid upon the article "the" used before the expression "railway administration" in section 77. Mr. Tambe for the appellants argued that the intention is that the particular railway which is responsible must alone be served. If more than one railways are sought to be made liable, then each one of them must be served with a notice. We think that the only import of the expression "the railway administration" used in section 77 is to point out to the claimant that he must serve a notice upon that railway which has handled the goods. Any portion of a railway is also "railway" according to the definition contained in section 3 (4).

Therefore, the reference in section 77 is only meant to emphasise the fact that the notice must go out to some railway which has actually dealt with the goods and not to others. In this approach, do not think that section 80 of the Railways Act either furnishes a clue or controls the interpretation. Section 80 is an independent provision made to point out the statutory liability irrespective of a contract.

50. So far as section 80 of the CPC is concerned, it was argued that the notice contemplated has got to be served upon the General Manager of "that railway". Here again, the argument was that it is that railway which is sought to be made liable that is conceived of by this section. According to us, this clause which is introduced after 1948 only illustrates that fact that the Central Government has multifarious activities, and so far as its commercial undertaking in the matter of railways is concerned, it wants the notice of Built against it to be addressed to the General Manager of the railway. If the notice relates to a railway and is addressed to the General Manager of that railway, the General Manager is in a position to report to the Central Government whether the claim is just or should be compounded or should be repudiated. The expression "that railway", according to us, only means that particular railway which has handled the goods

and nothing more. If more than one zonal railway have handled the goods and the suit is contemplated against the Union, the General Manager of any one of the zonal railways would answer the description "the General Manager of that railway". Since there is now unity of administration and ownership, the General Manager of any of these zonal railways, through whose territories the goods have passed, would be in a position to make a report to the Union of India, as also be in a position to communicate with the General Managers of other zones over whose territory the goods have passed. We think the provisions of section 80, clause (b) support the interpretation we are putting on the provisions of section 77 of the Railways Act.

51. Mr. Thakar for the respondents levied upon a judgment of the Madras High Court in *Narayan swami v. Union of India* AIR Mad 1960 58. In that case, a Division Bench of the Madras High Court has taken a survey of the case law relating to the provisions of sections 77, 80 and 140 of the Railways Act. They have also considered the legislative history of section 80, as also the history of ownership and administration of the major railways in this country. The implications of sections 79 and 80 of the CPC are also considered. The conclusion at which the Madras High Court arrived is that one notice u/s 77 to a General Manager of one Government railway concerned in the route over which through traffic passed will be sufficient because all the railways over which the traffic passed are owned by the Central Government. They also pointed out that in the absence of any specific enactment either in section 77 or in section 140 indicating the particular General Manager, to whom notice ought to be given in a case of through traffic carried over more than one zonal unit of the Government railways, notice to any one such General Manager is sufficient compliance with these provisions. We are in respectful agreement with the conclusions arrived at in that judgment.

52. Another important judgment we must refer to is *Union of India and Another Vs. Landra Engineering and Foundry Works and Another*, . This is a decision of a Full Bench to which the question was referred whether notice u/s 80 of the Code, of Civil Procedure was required to be served on both the Eastern and Northern Railways or service on the Northern Railway alone is sufficient. Hence with the provision of this section. That was not a case directly dealing with the provisions of section 77 of the Railways Act. However, the facts in that case show that the goods traveled over two systems of railway, namely; the Eastern Railway and the Northern Railway. The notice to the Government was served upon the General Manager of the Northern Railway alone and not upon the General Manager of the Eastern Railway as well. It was also held proved in that case that no part of the loss or damage occurred on the route of the Northern Railway. It was being contended on behalf of the Union of India before the Punjab High Court that the reference in clause (b) of section 80 of the CPC being to a notice to the General Manager of that railway, the notice ought to have been served upon the General Manager of the Eastern Railway as the damage occurred over the lines of that railway. The General Manager of the Eastern Railway alone could

answer the description of ""the General Manager of that railway" within the meaning of that expression as used in clause (b) of section 80 of the Code. Negating this contention of the Union of India, the Full Bench held that the principle on which a single notice to any one of the General Managers of the zonal railways which handled the goods is to be given is the same which we have pointed out earlier. For construing the provisions of section 80 of the Code, the Full Bench refers to sections 77 and 80 of the Railways Act and concludes that in view of the unity of ownership and unit, of administration and looking to the purpose and function of the notice u/s 80, making the Government aware of the claim through the General Manager of any of the railways owned and administered by it is sufficient notice u/s 80 of the Code of Civil Procedure. We are also in respectful agreement with the approach of the Full Bench of the Punjab High Court and we think that this approach lends considerable support to the conclusion to which we have arrived.

53. Though several other judgments were cited before us, we may refer to a judgment of the Allahabad High Court in *Firm Deokishan Srigopal Vs. Union of India (UOI) (Formerly Dominion of India) and Others*, . This is a judgment of a single Judge dealing with the sufficiency of notice under sections 77 and 80 of the Railways Act. The facts in that case show that the consignment traveled over the systems of various railways The consignor was unable to locate the loss on a particular railway. The judgment holds that a notice to one of the railways meets the requirements of section 77, What is important is that the learned Judge refers to the conclusion arrived at by a Division Bench of that Court in *Dominion of India v. Mjs. Madan Engineering Tool Products* First Appeal No. 161 of 1950 decided on 21-12-1962. The Learned Counsel for the respondents made considerable search to find out whether this judgment was reported but he was unable to trace any report of this judgment. The passage quoted by the learned Judge is as follows:

If, therefore, "Railway Administration" includes the Government, and if notice of the claim u/s 77 of the Railways Act is served on the Government, could it be said that it has not been given to the "Railway Administration1?

Belying upon that reasoning the conclusion arrived at by the learned Judge is that a notice upon the Manager of any to the zonal railways that handled the goods is a sufficient and enough notice u/s 77 of the Railways Act.

54. We may point out that no specific judgment of this Court dealing with the question discussed above was cited before us except 1966 Mh. L J 555 decided by one of us (Deshmukh J.). Mr. Tambe said that he could not find any other reported judgment directly dealing with the point. He however made available typed copies of three decisions. One is a judgment of a learned single Judge in Civil Revision Application No. 285 of 1957 decided on 17-3-1958 at the Nagpur Bench. Whatever the facts of that case, the judgment in the civil revision application dismissed the revision on the ground that the railway station Mahim was not on the Central Railway and the notice to the Central Railway was not a

proper notice to the Western Railway. In fact, the Central Railway had not handled the goods at all. This judgment cannot be of any assistance in the present appeal.

55. The second judgment made available is a decision of another learned single Judge in Civil Revision Application No. 425 of 1959 decided on 13-7-1960. In that case, the plaintiff, who had filed the suit, had given a notice u/s 80 of the Code of Civil Procedure. Though two points are covered by the judgment, the judgment mainly dismisses the revision application on the ground that the plaintiff did not make out a case of himself being an assignee of the goods and as such entitled to give notice. A cause of action has got to be properly made out in the notice u/s 80 of the Code. Since that was not done, the suit was liable to be dismissed. Incidentally, it was observed that the other ground, namely, that one of the railways was not served, was also well founded. In this case, the question of sufficiency of notice u/s 77 was not discussed at all.

56. The third judgment is also of a learned single Judge in Second Appeal No. 351 of 1951 decided on 8-7-1953. In that case also the sufficiency of notice u/s 77 of the Railways Act is considered, but the arguments addressed, as well as the trend of the judgment show that everybody assumed that notices to different railway administrations were necessary. The cause of action arose in June 1947 and the names of the railways are referred to as G. I. P. Railway etc. This is a case before the reorganisation of railways and the sufficiency of notice as we have dealt with has not been raised as a point of law at all. None of the judgments therefore cover the point which we have decided in this appeal.

57. So far as the factual position in the present appeal is concerned, we have already held that the notice u/s 77 issued by ordinary prepaid post to the General Manager of the South-Eastern Railway has been served upon him. That notice, according to us, is sufficient notice under the provisions of section 77 of the Railways Act and it was not necessary for the plaintiff-claimant to serve separate notices upon the General Managers of the South-Eastern Railway and the Central Railway. If this is so, the appeal filed by the Union of India must fail and is dismissed with costs.