

1927

—
 DURGA
 CHARAN
 CHANDRA
 v.
 AMBICA
 CHARAN
 CHANDRA.

Chowdhurani v. Kamini Kumar Chowdhury (1)] and this view receives support from the decision of the Privy Council in *Nugenderchunder Ghose v. Sreemutty Kaminee Dossee* (2). In my judgment, there is no appreciable reason why a case like the present should not be governed by a similar principle.

—
 MUKERJI, J. The petitioner's contention, in my opinion, fails. The Rule accordingly is discharged with costs. Hearing fee two gold mohurs.

GRAHAM J. The point involved, namely, whether the subsequent mortgagee is restricted to his right of suit under section 74 of the Transfer of Property Act, or can independently maintain a suit in the present form and obtain a personal decree, is not altogether free from doubt. I agree, however, with my learned brother, that both remedies are available.

S. M.

Rule discharged.

APPELLATE CIVIL.

Before Duval and Mitter JJ.

INDIA GENERAL NAVIGATION AND RAILWAY COMPANY, LIMITED

v.

GIRIDHARILAL GOBERDHONE DAS.*

Common Carriers—Notice—Notice to local agent, if sufficient—Transmission of goods by several carriers in succession—Liability of the respective carriers for loss of goods—Indian Carriers Act (III of 1865), ss. 8, 9, 10.

Per MITTER J. Under section 10 of the Indian Carriers Act, notice to the local agent is sufficient. Notice to the managing agent is not essential

*Appeal from Appellate Decree, No. 1951 of 1924, against the decree of Iradatullah, District Judge of Bankura, dated July 2, 1924, modifying the decree of Moulvi Hasibuddin Ahmed, Munsif of that place, dated Aug. 25, 1923.

(1) (1925) 43 C. L. J. 142.

(2) (1867) 11 Moo. L. A. 241
8 W. R. 17 P. C.

The River Steam Navigation Company, Ltd. v. Messrs. Hazarimall Mullan Mal (1) explained.

Where goods are to be carried by several common carriers in succession and the goods are consigned to one of them and there is short delivery of the goods at their destination, the fact that the loss took place while the goods were being carried by a carrier to whom the goods were not consigned does not absolve the carrier to whom the goods were consigned from liability, unless he limits his liability by express agreement, inasmuch as the contract with the several carriers was one and indivisible.

Narang Rai Agarwalla v. River Steam Navigation Company, Ltd. (2), and *Gokul Chandra Das v. India General Steam Navigation and Railway Co., Ltd.* (3) distinguished.

Dekhari Tea Co., Ltd. v. Assam Bengal Railway Co., Ltd. (4) and *London and North-Western Railway Company v. Richard Hudson* (5) relied on

Per DUVAL J. The essential of a good notice is that it should reach the person who is liable to make good the loss.

British and Foreign Marine Insurance Co., Ltd. v. India General Navigation and Railway Co., Ltd. (6) distinguished.

Where several carriers carry the same goods, whether one carrier is an agent of another is a question of fact. Such a case is governed by the ruling in the case of *Muschump v. The Lancaster and Preston Junction Railway Company* (7) that the proper person who is liable is the person to whom the goods were delivered and that the contract is not a divisible one and that it is really a matter for the jury to decide with whom the contract really was.

SECOND APPEAL by the fourth defendant company.

This appeal arose out of a suit for damages for short delivery of goods sent by an invoice from the steamer station at Dowlatkhan to the railway station at Bankura.

There were four sets of defendants in the suit, viz., the Bengal-Nagpur Railway Company, the East Indian Railway Company, the Eastern Bengal Railway Company and the India General Navigation and Railway Company.

(1) (1917) 27 C. L. J. 294.

(4) (1919) I. L. R. 47 Calc. 6.

(2) (1907) I. L. R. 34 Calc. 419

(5) [1920] A. C. 324.

(3) (1907) 11 C. W. N. 1076.

(6) (1910) I. L. R. 38 Calc. 28.

(7) (1841) 8 M. & W. 421 151 ; E. R. 1103.

1927

INDIA
GENERAL
NAVIGATION
AND
RAILWAY
CO., LTD.
e.
GIRIDHARI-
LAL GOBER-
DRONE DAS.

1927

INDIA
GENERAL
NAVIGATION
AND
RAILWAY
CO., LTD.
v.
GIRDHARI-
LAL GOBER-
DHONE DAS.

The goods were booked with the lastnamed company at its steamer station at Dowlatkhan and it undertook to deliver them at the railway station at Bankura on the Bengal-Nagpur Railway.

The Court of first instance found that the goods were lost on the East Indian Railway Company's line and decreed the suit as against the said company.

The East Indian Railway Company appealed and contended that no decree could be made against it, as the notice required by section 77 of the Indian Railways Act was not served on it within six months from the date of the delivery of the goods for carriage by it. It was admitted that there was short delivery of the goods consigned and that the plaintiff was entitled to the sum decreed. The appeal was decreed by the District Judge and the steamer company directed to pay to the plaintiffs the sum decreed in the primary Court.

The steamer company, thereupon, preferred this second appeal.

Mr. Amulyacharan Chatterji (with him *Babu Prakashchandra Pakrashi*), for the appellants. The notice on the steamer companies was bad in law and on that ground alone the suit ought to have been dismissed. It did not comply with section 10 of the Carriers Act, nor was it in accordance with the contract of the parties: *The River Steam Navigation Company, Ltd. v. Messrs. Hazarimall Multan Mal* (1). A notice on the joint agent of the steamer companies at Barisal was improper: *British and Foreign Marine Insurance Co., Ltd. v. India General Navigation and Railway Co., Ltd.* (2). On the findings of the lower Appellate Court, the steamer companies could not be held liable, their liability,

(1) (1917) 27 C. L. J. 294.

(2) (1910) I. L. R. 38 Calc. 28.

having ended as soon as they delivered the goods to the Eastern Bengal Railway Company, which was the next carrying body. There is no finding that there was any negligence on the part of the steamer companies. In the case of through booking by different carrying bodies, the liability of the railway company is to be decided with reference to the Railway Act and that of the steamship company by the Carriers Act: *Narany Rai Agarwalla v. River Steam Navigation Company, Ltd.* (1). *The Irrawaddy Flotilla Company v. Bugwandis* (2). The Court below erred in holding that the East Indian Railway Company was the agent of the steamer company and that the latter was answerable for the negligence of the former.

Here the risk-note was in Form H. By mistake a wrong note was put in. The document ought to have been admitted in evidence by the lower appellate Court.

Sir Provash Chunder Mitter (with him *Babu Ambikapada Chaudhuri*) appearing on behalf of the East Indian Railway Company, did not argue, the appeal being directed practically against the plaintiffs.

Dr. Bijankumar Mukerji, for the plaintiff-respondent. The notice on the steamer company was quite proper and sufficient in law. There is no provision in the Carriers Act corresponding to section 140 of the Railway Act and a letter to the agent specifying the claim would be quite enough. The case of *British and Foreign Marine Insurance Co., Ltd.* (3) rather supports my case. The case of *The River Steam Navigation Company, Ltd.* (4), is distinguishable. In that case there was a specific

1927
INDIA
GENERAL
NAVIGATION
AND
RAILWAY
CO., LTD.
c.
GIRDHARI-
LAL
GOBER-
DHONE
DAS.

(1) (1967) I. L. R. 34 Calc. 419.

(3) (1910) I. L. R. 38 Calc. 28.

(2) (1891) I. L. R. 18 Calc. 620 ;

(4) (1917) 27 C. L. J. 294.

L. R. 18 I. A. 121.

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 CO., LTD.
 v.
 GIRIDHARI-
 LAL
 GOBER-
 DHONE
 DAS.

agreement to the contrary. Moreover, the remarks then would constitute an *obiter*, as the rule was discharged.

The liability of the steamship company is to be determined by reference to the provisions of the Carriers Act and no finding of negligence is necessary: See the case of *British and Foreign Marine Insurance Company, Limited* (1) and *Akhil Chandra Shaha v. India General Navigation and Railway Co.* (2). The contract was with the steamer company and they were liable as carriers, even if there were other carrying bodies. The doctrine of agency or quasi-partnership is supported by some authorities, and even if there is no agency, the contract must be deemed to be made with the first carrying body and they would be responsible for any loss happening at any stage during transit: *Gill v. The Manchester, Sheffield, and Lincolnshire Railway Company*, (3), *Muschamp v. The Lancaster and Preston Junction Railway Company v. Collins*. (4), *Bristol and Exeter Railway Company* (5), *The Great Indian Peninsula Railway Company v. Radhakisan Khushaldas* (6), *Dekhari Tea Co., Ltd. v. Assam-Bengal Railway Co., Ltd.* (7).

The lower Appellate Court rightly exercised its discretion in rejecting the risk-note form. That discretion should not be interfered with in appeal.

Cur. adv. vult.

MITTER J. This is an appeal from the decree of the District Judge of Bankura, which reversed the decree of the Munsif of Bankura. The India General

(1) (1910) I. L. R. 38 Calc. 28.

(4) (1841) 8 M. & W. 421 ; 151 E. R. 1103.

(2) (1915) 21 C. L. J. 565.

(5) (1858) 7 H. L. C. 194.

(3) (1873) L. R. 8 Q. B. 186.

(6) (1881) I. L. R. 5 Bom 371.

(7) (1919) I. L. R. 47 Calc. 6

Navigation and Railway Company, Limited, and Rivers Steam Navigation Company, Limited, have preferred this appeal which arises out of an action commenced by the plaintiffs' firm for recovery of damages for short delivery of goods. The plaintiffs' case is that one Rambilash Muralidhar consigned 129 maunds 31 seers of betel-nuts in 71 gunny bags to defendants-appellants at Daulatkhan steamer station for delivery to them at Bankura. The defendant No. 4, appellant, undertook to carry the goods from Daulatkhan to Bankura *via* the Eastern Bengal Railway (defendant No. 3), the East Indian Railway (defendant No. 2) and the Bengal-Nagpur Railway (defendant No. 1). The plaintiffs further alleged that when they went to take delivery of the goods at Bankura station there was short delivery by 31 maunds 28½ seers, of which the then current price was at Rs. 19 per maund; and that they exchanged correspondence with the different companies from which it transpired that servants of defendant No. 2 misappropriated the same and the reason for making all the railway and steamer companies parties to the action was stated to be the fact that the goods passed through the lines of all the defendant companies. The claim was laid at Rs. 629. The defendant Steam Navigation Company and another who are the appellants before us contended *inter alia* that the suit should fail for want of proper notice, that they made over the goods in good order to the Eastern Bengal Railway at Khulna on the 1st February, 1922 and that thereupon their liabilities ceased. The Munsif found that notices had been served on the defendant-companies according to the provisions of section 77 of the Railways Act and that the loss of the goods in question occurred while the goods were in transit on the East Indian Railway (defendant No. 2) and passed a

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 CO., LTD.
 v.
 GURDHARI-
 LAL
 GOBER-
 DHONE
 DAS.
 — —
 MITTER J.

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 CO., LTD.
 v
 GIRDHARI-
 LAL GOBER-
 DHONE DAS.
 MITTER J.

decree for the amount claimed against the East Indian Railway and dismissed the suit against the other railway companies, as also against defendants, Steam Navigation and Company and another, who are the appellants before us.

The East Indian Railway appealed to the District Judge making the plaintiffs' firm alone as party-respondent. Some time after the period of limitation had expired for filing the appeal, defendant No. 4 was made a party-respondent to the appeal. The appeal was heard and the appeal was decreed and the plaintiffs' suit was dismissed against the East Indian Railway Company on the ground that notice under section 77 of the Indian Railways Act was not a proper notice as it was served more than six months after the delivery of the goods for carriage by the East Indian Railway Company. But a decree was made against defendant Steam Navigation Company and another. It will be noticed here, plaintiffs preferred no appeal against the decree of the Munsif dismissing their suit against defendant No. 4. The lower Appellate Court in passing a decree against defendant No. 4 was evidently purporting to act under O. XXI, r. 33 of the Code of Civil Procedure and it may be a question if the defendant No. 4 could be added as a respondent, if the period of limitation for filing an appeal against him had expired. However, as this point was not taken by the appellant in their memorandum of appeal, nor urged before us, we do not think we should permit it to be raised. In second appeal, the learned advocate for the appellant raises two points: first, that the suit should have been dismissed against defendant No. 4 as there was no service of notice on them under section 10 of the Indian Carriers Act (III of 1865). It is said that although notice was served on the local agents of the

company at Daulatkhan, no notice having been served on their agent at Calcutta the notice is invalid, and reliance is placed on *The River Steam Navigation Company, Ltd. v. Messrs. Hazarimall Multan Mal* (1) in support of their contention. The second point raised is that as the goods were admittedly in order when the river journey was completed and the goods were made over to the Eastern Bengal Railway the liabilities of the defendant Steam Navigation Company ceased, as it is admitted by the plaintiffs that the loss occurred in transit over the East Indian Railway. To the first contention the learned vakil for the respondents replies by arguing that the Carriers Act does nowhere state that the notice under section 10 should be served on the agent at Calcutta and there is no such corresponding provision in the Carriers Act as we have in section 140 of the Indian Railways Act and consequently the cases cited have no application. We think this contention of the learned vakil for the respondents is well-founded and must prevail. All that the cases cited by the appellants lay down is that where notice under section 10 of the Carriers Act has not been shown to have been duly served, knowledge *aliunde* of the service of notice by the common carrier is not sufficient.

The second point raised by the appellants is one of considerable difficulty. The argument for the appellants assumes that there are a series of contracts with different companies and there is not one contract with the Steam Navigation Company, or River Steam Navigation Company at Daulatkhan. This argument receives considerable support from the decision of Mr. Justice Brett in *Narang Bai Agarwalla v. River Steam Navigation Company, Ltd.* (2) and of Mr. Justice Mitra and Mr. Justice Caspersz in

1927
 INDIA
 GENERAL
 NAVIGATION,
 AND
 RAILWAY
 CO., LTD.
 v.
 GIRIDHARI-
 LAL GOBER-
 LONE DAS.
 MITTER J.

(1) (1917) 27 C. L. J. 294.

(2) (1907) I. L. R. 34 Calc. 419.

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 CO., LTD.
 v.
 GIRIDHARI-
 LAL GOBER-
 DHONE DAS.
 MITTER J.

Gokul Chandra Das v. India General Steam Navigation and Railway Co., Ltd. (1) to this extent that so far as liability for any loss for the river portion of the journey is concerned it is to be governed by the Carriers Act and liability for any loss arising in the journey by rail is to be determined by the Indian Railways Act. As to how far this view about the differentiation of liabilities is right may be a matter open to question and we find indications of a contrary opinion in an elaborate and learned judgment of the learned Chief Justice in the case of *Dekhari Tea Co., Ltd. v. Assam Bengal Railway Co., Ltd.* (2). In that case the learned Chief Justice observed as follows:—

“The facts here seem to me to be distinctly stronger than those in any of the leading cases which were decided with reference to contracts by railway companies to carry to places that were on other companies’ lines [*Muschamp v. The Lancaster and Preston Junction Railway Company* (3), *Scothorn v. The South Staffordshire Railway Company* (4) and *Bristol and Exeter Railway Company v. Collins* (5)], or to carry to a point beyond their own lines which involved transport by water [*Wilby v. The West Cornwall Railway Company* (6)].

“Subject to any written documents, it is a question of fact for a jury to say whether there was one contract or more than one. The basis, however, of the above decisions is that it would be a strained and improbable inference to hold that a sender on an ordinary ‘through booking’ transaction enters into a series of contracts with Carriers Nos. 1, 2 and 3, making each carrier except the last his agent to

(1) (1907) 11 C. W. N. 1076.

(4) (1853) 8 Exch. 341;
91 R. R. 527.

(2) (1919) I. L. R. 47 Calc. 6.

(5) (1858) 7 H. L. C. 194.

(3) (1841) 8 M. & W. 421.;
151 E. R. 1103.

(6) (1858) 2 H. & N. 703;
157 E. R. 290.

“make a further contract, or treating him as the next
 “carrier’s agent to a further contract with the sender.
 “If it be said that though there is an entire contract
 “with the first carrier for the whole journey, yet
 “there may also be a contract with each of the other
 “carriers for their own part of the transit, this no
 “doubt is true. But as an inference it is still more
 “elaborately improbable. It involves a contract and
 “a parallel series of other contracts. This series has
 “to be operated either by each carrier being treated
 “as the sender’s agent to contract with the next
 “which involves a doubtful scheme for the trans-
 “mission of authority; or else by each carrier being
 “treated as having made the previous one (or perhaps
 “the first one) his agent to contract on his behalf,
 “while himself being the previous carrier’s agent to
 “perform.

“Again, this latter view is possible and in
 “some cases it is right. Such a position is *quasi-*
 “partnership and is illustrated by *Gill v. The*
 “*Manchester, Sheffield, and Lincolnshire Railway*
 “*Company* (1) and *The Great Indian Peninsula*
 “*Railway Company v. Radhakisna Khushaldas* (2).
 “It has been put in argument that where for their
 “mutual advantage two companies are in the habit
 “of handling through traffic for a reward to be divided
 “in proportions, there is in substance a *quasi-partner-*
 “ship and each is the agent of the other to contract.
 “I do not agree. Mutual advantage is the pre-supposi-
 “tion in every contract and not the less so that it is
 “often vitiated by mistake or sadly falsified by
 “events. It is not of itself a principle of confusion
 “which obliterates the distinction between a sub-
 “contract to perform and an agent’s or partner’s
 “authority to contract. The case of *Foulkes v.*

1927

INDIAN
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 CO., LTD.
 v.

GIRIDHARI-
 LAL GOBER-
 DENE DAS

MITTER J.

(1) (1873) L. R. 8 Q. B. 186.

(2) (1881) I. L. R. 5 Bom. 371.

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 Co., LTD.
 v.
 GIRIDHARI-
 LAL GOBER-
 DHONE DAS
 MITTER J.

“*The Metropolitan District Railway Company* (1), if the facts be considered, is no authority for any proposition so wide. It was a case where the defendant railway carried for the whole journey by their own rolling-stock partly over their own line and partly over another as to which they had running powers. There was a body of evidence as to the relationship between the companies and the position of the booking clerk who issued the ticket. It was not a case of carriage by successive companies over their own lines.”

It is true, in that case the Steam Navigation Co. was made liable for loss due to their own negligence, not on the basis of any contract with the owner of the goods, but on the basis of their liability as common carrier under the Indian Carriers Act, even in the absence of parity of contract with the owner. But the observations of the learned Chief Justice quoted above throws considerable light on the present controversy. The law in England is to the effect that where goods are addressed to a place beyond the sphere of the carrier's business so that from another point he must forward them by another carrier he is responsible for the goods for the whole journey unless he limits his liability by agreement. See *Shepherd v. The Bristol and Exeter Railway Company* (2), and *Muschamp v. The Lancaster and Preston Junction Railway Company* (3).

We have in second appeal received in evidence a risk-note in form H tendered on behalf of the appellants which was executed by the present plaintiffs in favour of the Eastern Bengal Railway Co., as through mistake the risk-note in another case was filed by the Eastern Bengal State Railway Co. But as the loss

(1) (1880) 5 C. P. D. 157.

(3) (1841) 8 M. & W. 421

(2) (1868) L. R. 3 Exch 189.

151 E. R. 1103.

did not take place while the goods were in transit in Eastern Bengal State Railway the risk-note does not protect the defendants from liability even if we take the decision of Mr. Justice Brett in *Narang Rai Agarwalla v. River Steam Navigation Company, Ltd.* (1) to be a sound one. At one time, in the course of argument, it seemed to us that this fact of the execution of the risk-note in favour of Eastern Bengal State Railway Co., shows that there was one contract with the first carrier as also a separate contract with each of the other carriers for their own part of the transit, and as the loss occurred in transit over the East Indian Railway line, the defendant Steam Navigation Co. were absolved from all liability. But as has been pointed out by the learned Chief Justice in the case of *Dekhari Tea Co., Ltd. v. Assam Bengal Railway Co. Ltd.*, (2), as an inference it is improbable, as it involves a contract and a parallel series of contracts. The District Judge has made the defendant Steam Navigation Co. Ltd., liable for the negligence of the East Indian Railway Co., treating the latter as the agent of Steam Navigation Co., within the meaning of section 8 of the Indian Carriers Act. Whether in the absence of the terms of agreement between the different companies it is impossible to infer that the East Indian Railway were the agents of the Steam Navigation Company may be a matter open to doubt. But, under section 9 of the Indian Carriers Act, it is not necessary for the plaintiff to prove that "such loss, damage or non-delivery was due to the negligence or criminal act of the carrier, his servants or agents." It is difficult to say how the Steam Navigation Company and another can escape liability if the contract was one and indivisible contract with them, as the carrier would

1927

INDIA
GENERAL
NAVIGATION
AND
RAILWAY
CO., LTD.
GIRIDHARI
LAL GOBER-
DHONE DAS.

MITTER J.

1927

INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 Co., LTD.
 v
 GIRIDHARI-
 LAL GOBER-
 DHONE DAS.
 MITTER J.

be responsible for any loss which occurred before delivery of the same to the plaintiffs. The view which we take receives support from the decision of the House of Lords in *London and North Western Railway Company v. Richard Hudson* (1). We have given our most anxious consideration to this case and we do not see our way to hold that defendant No. 4, *i.e.*, Steam Navigation Co., and another are not liable for the loss. The result is that the appeal fails and must be dismissed with costs.

DUVAL J. The facts of this case are that one Rambilash Muralidhar had made over certain bags of betel nuts to the joint steamer agent of India General Navigation and Railway Company, Ltd., and Rivers Steam Navigation Co., at steamer station at Daulatkhan for their being sent to Bankura. The goods had to proceed by river to Khulna and thence across the Eastern Bengal Railway to Naihati, and thence on the East Indian Railway to Asansol and the rest of the journey by the Bengal-Nagpur Railway. It is admitted that some pilfering took place of the goods on the East Indian Railway and it is also clear that there was no risk-note under the Railways Act to cover the risk on either the East Indian Railway or Bengal-Nagpur Railway, nor did the Steamer Companies limit their liabilities by taking any risk-note which they might have been able to take under the Carriers Act. Now the learned District Judge has given a decree against the Steamer Company after coming to certain findings of fact. He found that the East Indian Railway Company, was acting as an agent of the Steamer Company, to carry goods, and, therefore, he held that as the goods were lost the Steamer

(1) [1920] A. C. 324.

Company which had entered into a contract to send the goods to Bankura were liable for the loss.

In appeal two points were taken. The first was that the notice issued to the Steamer Company was a bad notice under the Carriers Act. The notice was sent by post and was received by the joint agent of India General Navigation and Railway Company, Ltd., and Rivers Steam Navigation Company at Daulatkhan. He was the local representative of the two companies and the plaintiff did not know when he consigned the goods by which Steamer Company his goods would be taken to Khulna. I cannot see that there could be a better service of notice than what was served on the joint representative. I was referred to some remarks made in the case of *British and Foreign Marine Insurance Co., Ltd., v. India General Navigation and Railway Co., Ltd.* (1), where it is stated that a notice by a letter to the Managing Agent would be a good notice, but that decision does not say that the notice such as was given here is not also a good notice. The essential of a good notice appears to be that it should reach the person who is liable to make good the loss. The local agent received the notice and in fact it is clear from the pleadings that the companies were made aware of the claim lodged.

Now the second point is whether the Railway Company is an agent of the Steamer Company. Here reference was made to the case of *Gokul Chandra Das v. India General Steam Navigation and Railway Co., Ltd.*, (2), and to the case decided by Mr. Justice Brett. As to these cases I may remark that there is no definite finding as to whether in point of law one company is an agent of another and as to whether there were separate contracts. Those cases were decided

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 Co., LTD.
 v.
 GURDHARI-
 LAL GOBER-
 DHONE DAS
 DUVAL J.

(1) (1910) I. L. R. 38 Calc. 28. (2) (1901) 11 C. W. N. 1076.

1927
 INDIA
 GENERAL
 NAVIGATION
 AND
 RAILWAY
 CO., LTD.
 v.
 GIRIDHARI-
 LAL GOBER-
 DRONE DAS.
 DEVAL J.

with reference to the fact that the value and description of the articles lost were not expressly declared as the law required them to be declared. But it appears to me that the matter is really one of fact. The Judge has come to a finding, though I must admit that he has not dealt very much with the evidence, that the East Indian Railway was an agent of the Steamer Company. The present case, therefore, appears to me to be strictly speaking governed by the ruling in the case of *Muschamp v. The Lancaster and Preston Junction Railway Company* (1) (which is still the law) that the proper person who is liable is the person to whom the goods were delivered and that the contract is not a divisible one and that it is really a matter for the jury to decide with whom the contract really was.

I agree with the District Judge that in this case the Steamer Companies were the people who entered into a contract for delivery of the goods undamaged at the place of their destination using the Railway Companies as their agents and were liable to make good the loss.

In this view the appeal is dismissed with costs.

Appeal dismissed.

S. M.

(1) (1841) 8 M. & W 421 ; 151 F.R. 1103.