

1912

EMPEROR
v.
LALTA
PRASAD.

it. As long as the prosecution is confined to offences connected with this document committed prior to its production in court, such prosecution is within the law and requires no sanction. Sanction is required for offences committed by a party to a proceeding in any court, in respect to a document produced or given in evidence in such proceeding.

I find no reason for interfering and dismiss the application.

Application dismissed.

APPELLATE CIVIL.

1912,
July, 25.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.
NARAIN DAS AND ANOTHER (PLAINTIFFS) v. THE EAST INDIAN RAILWAY COMPANY (DEFENDANT).*

Act No. IX of 1890 (Indian Railways Act), section 75—Goods referred to in section 75 consigned on a "risk note"—Railway Company not liable for loss.

Where a person chooses to send goods referred to in section 75 of the Indian Railways Act on a "risk note" form instead of declaring them and paying the extra percentage demandable under the terms of the section he cannot hold the Railway Company by which such goods are sent responsible for the loss thereof.

In this case the plaintiffs or their agents consigned certain bars of silver for delivery at Allahabad to the Great Indian Peninsula Railway Company at Bombay. The box was delivered intact at Jubbulpore to the East Indian Railway Company, but when it was delivered at Allahabad one of the bars, valued at over Rs. 2,000, was missing. The box was sent on a risk note form and the plaintiffs did not pay the extra percentage provided for by section 75 of the Indian Railways Act, 1890. The plaintiffs sued the East Indian Railway Company for compensation and obtained a decree from the Subordinate Judge of Allahabad. On appeal, however, this decree was reversed by the District Judge and the plaintiffs' suit dismissed. The plaintiffs appealed to the High Court.

Dr. Satish Chandra Banerji and Munshi Damodur Das, for the appellants.

Mr. B. E. O'Connor and Pandit Laddi Prasad Zutshi, for the respondents.

* Second Appeal No. 256 of 1912 from a decree of H. E. Holme, District Judge of Allahabad, dated the 6th of December, 1911, reversing a decree of Guru Prasad Duba, Subordinate Judge of Allahabad, dated the 19th of June, 1911.

RICHARDS, C. J. and BANERJI, J.—The facts connected with this appeal are shortly as follows:—Plaintiffs or their agents consigned certain bars of silver for delivery at Allahabad to the Great Indian Peninsula Railway Company at Bombay. The Great Indian Peninsula Railway Company delivered the box intact to the East Indian Railway at Jubbulpore. When the box was delivered to the plaintiffs or their agents at Allahabad, it was found that one silver bar was missing, valued by the plaintiffs at Rs. 2,044-12-0. There can be no doubt that the silver bar was stolen in the course of its transit between Jubbulpore and Allahabad, either by one or more of the company's servants or by an outsider. As to how it was stolen there appears to be no evidence. Section 75 of the Railways Act of 1890 provides that "when any articles mentioned in the second schedule are contained in any parcel or package delivered to a railway administration for carriage by railway, and the value of such articles in the parcel or package exceeds one hundred rupees the railway administration shall not be responsible for the loss, destruction, or deterioration of the parcel or package unless the person sending or delivering the parcel or package to the administration caused its value and contents to be declared * * * and, if so required by the administration, paid or engaged to pay a percentage on the value so declared by way of compensation for increased risk." In the present case the plaintiffs or their agents signed a risk note which shows clearly on the face of it that they had been required to pay an increased percentage on the value but had elected not to do so. This being so, the only question which arises in the appeal is whether or not the silver can be said to have been 'lost' within the meaning of the section. It is contended that it would not be lost unless the actual way in which the silver was stolen was proved by the Railway Company. In our opinion this argument has no force whatever. As already stated, it is absolutely clear from the admitted facts that the silver bar was stolen whilst in transit between Jubbulpore and Allahabad. The package was delivered intact at Jubbulpore and one bar was missing when it was delivered to the plaintiffs or their agents at Allahabad. In our opinion this was a loss within the meaning of section 75. The case of *Hearn v. The London and South Western Railway Company* (1) is cited on behalf of the appellants. This case

1912

NARAIN DAS

v.

THE EAST
INDIAN
RAILWAY
COMPANY.

(1) (1855) 10 Ex., 793.

1912

NARAIN DAS
v.
THE EAST
INDIAN
RAILWAY
COMPANY.

turned upon an argument as to the sufficiency of a plea. In that case the declaration alleged that the particular goods had not been delivered through the negligence of the Railway Company, but there was no allegation that the goods had been lost. A perusal of the judgement in the case clearly shows that if it had been alleged that the title deeds had been actually lost while in transit in the Railway Company, the plea of the defendants would have been a good plea.

It has also been argued that the risk note cannot save the defendants unless they show that they took proper care of the package consigned to them. In our opinion the present case does not turn upon the construction of the risk note at all. The article was clearly one of the articles mentioned in the second schedule and the consignor was bound to declare the value of the article and to pay the percentage mentioned in the section so as to hold the railway company responsible for the loss.

In our opinion the appeal fails and is dismissed with costs.

Appeal dismissed.

1912
July, 13.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji

LALA (PLAINTIFF) v. NAHAR SINGH (DEFENDANT).*

Act (Local) No. II of 1901 (Agra Tenancy Act), section 22 -- "Lineal descendant" -- Adopted son.

Held, that an adopted son is a lineal descendant within the meaning of section 22 of the Agra Tenancy Act, 1901.

This was a suit to recover possession of a certain occupancy holding detailed in the plaint, left by one Siya Ram, the plaintiff's brother, who was said to have died childless about 8 months before the filing of the suit. It was alleged that, under section 22 of Local Act No. II of 1901, the said holding devolved on the plaintiff, but that the defendant, who was the daughter's son of the said Siya Ram, professing himself to be the adopted son of Siya Ram, caused his name to be recorded in the Revenue papers, and that the defendant was not in fact and could not have been legally adopted. The plaintiff, therefore, besides the holding, also asked for possession of a house which had been left by Siya Ram. It was further stated by the plaintiff that the plaintiff's objection in the Revenue Court had been summarily dismissed. The courts

* Second Appeal No. 1187 of 1911 from a decree of A. W. R. Cole, Additional Judge of Aligarh, dated the 22nd of August, 1911, confirming a decree of Suraj Narain Majju, Munsif of Bulandshahr, dated the 11th of May, 1911.