

1892 the Courts below, including the costs of this appeal, should be
 SURENDRO defrayed out of the corpus of his estate.
 KRSHUB They will humbly advise Her Majesty accordingly.
 ROY
 v.
 DOOGA- After this case had been argued, their Lordships received an
 SOONDERY intimation that the defendant Doorgasoondery had died. This
 DOSSEE. death made the suit defective in two respects; *first*, by the death of
 the then heir the inheritance ceased to be represented; *secondly*, there
 was no person in whose presence the accounts directed against the
 widows could properly be taken. The proceedings were suspended,
 in order that these defects might be cured; but though the Raja's
 heir has been brought into the suit, there is still no representative
 of the widows. Their Lordships, however, think that it is not
 necessary on account of this defect to delay the decree any longer.
 It rests with the plaintiff to apply to the Court below for all such
 parties as are necessary for this purpose to be brought upon the
 record.

Appeal allowed.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondent: Messrs. *Barrow and Rogers.*

C. B.

APPELLATE CIVIL.

Before Sir W. Comor Petheram, Knight, Chief Justice, and Mr. Justice Hill.

1892 THE SECRETARY OF STATE FOR INDIA IN COUNCIL, (DEFENDANT),
 March 17. v. BUDHU NATH PODDAR AND OTHERS (PLAINTIFFS).*

*Indian Railway Act (IV of 1879), s. 11—Railway Company, liability of—
 Carriage of gold and silver, &c.—Insurance, Increased charge for.*

Plaintiffs delivered a box of coins for carriage to the servants of a rail-
 way, and declared the nature of the contents at the time of delivery. No
 demand was made on the part of the railway for any increased payment for
 insurance. The box having miscarried,—*Held*, on the authority of *The*

* Appeal from Appellate Decree No. 753 of 1891 against the decree of
 T. D. Beighton, Esq., District Judge of Dacca, dated the 16th of February
 1891, reversing the decree of Babu Krishna Chunder Chatterji, Sub-
 ordinate Judge of Dacca, dated the 12th of August 1889.

Great Northern Railway Co. v. Behrens (1), that the Railway were liable for the loss.

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On the 15th March 1887 the plaintiffs despatched from Dacca station, by the Dacca and Mymensing State Railway, a wooden box, containing specie worth Rs. 4,291-14-5, addressed to their agent in Calcutta. From the findings of the lower Courts it appeared that the plaintiffs' gomastahs went to the booking office and delivered the box to the booking-clerk, asking him to weigh it. They informed him that it contained specie of a certain value, and asked what the fare would be for sending it *safely* (सिवायित्वा) to Calcutta. They were told the fare was Rs. 9-1, for which sum the box would be safely consigned. They then paid the fare and obtained a receipt. No demand was made on the part of the Railway for any increased charge for insurance. The box having been mislaid or stolen by the way, the Railway Company failed to give delivery to the Calcutta consignee. The plaintiffs sued to recover the sum of Rs. 4,291-14-5.

The defendants pleaded that no declaration under section 11 of the Railway Act (IV of 1879) as to the nature and value of the property had been made by the sender at the time of delivery to the booking-clerk, nor any insurance fee paid and accepted for the safe conveyance of the same, and that the goods were sent at the owner's risk under an express written agreement signed by the consignor.

The Court of first instance held that the defendant was not liable, the plaintiffs having made no proposal to insure the specie and no insurance having been accepted by a railway servant specially authorised in that behalf as provided by section 11 of Act IV of 1879, and accordingly dismissed the suit on this ground.

The lower Appellate Court decreed the plaintiffs' appeal principally upon the ground that the benefit of section 11 was under the circumstances lost to the Railway Company, they having received the goods after declaration of value without demanding an extra charge for insurance and there being no evidence to show that the insurance charge was brought to the notice of the consignees. In support of this view the learned Judge relied on the case of

1892 *Behrens v. Great Northern Railway Co.* (1), a decision upon the statute 11 Geo. IV & 1 Wm. IV, c. 68, s. 1.

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".
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The defendant appealed to the High Court.

The Advocate-General (Sir *Charles Paul*), Baboo *Hem Chunder Banerji*, and Baboo *Ram Charan Mitter* appeared for the Appellant.

Mr. J. T. Woodroffe and *Baboo Lal Mohan Das* appeared for the Respondents.

The following authorities were referred to. The Indian Railway Act (IV of 1879), ss. 9, 10, 11; Macpherson on Railways, 1880, pp. 232—239, and the case of *Jeytu Nund v. Punjab R. Co.*, Chief Court (Lahore), App. Civil 91, 1868, there cited; the Carrier's Act (III of 1865); 11 Geo. IV & 1 Wm. IV, c. 68, s. 1, and 17 and 18 Vict., c. 31, s. 7; *Coggs v. Bernard* (2) and cases there cited; *Behrens v. Great Northern Railway Co.* (1) cited in *Venkatachala Chetti v. South Indian Railway Co.* (3).

The judgment of the Court (PETHERAM C. J. and HILL J.) was delivered by—

PETHERAM, C. J.—This was an action brought by the plaintiffs against the defendant as the owner of a Railway for the loss of a box of coins delivered to them to be carried, and accepted by them for that purpose. The defence is that the defendant is protected from liability by reason of section 11 of the Railway Act (IV of 1879), but the fact is that at the time of the delivery of the box to the railway people they were informed of what the nature of the contents was, and with that information they made no demand for any increased payment for insurance. That seems to me to be within the authority of the case of *The Great Northern Railway Co. v. Behrens* (4). The head note of that case is, "Where a carrier receives goods of the description mentioned in the 11 Geo. IV & 1 Wm. IV c. 68 and the person delivering the same has declared their value and nature, he is not bound to tender, but the carrier must demand, the increased charge mentioned in the notice affixed in his office, warehouse or receiving house, whether the goods

(1) 30 L. J. Exch., 153; on appeal (2) 1 Sm. L. C., 9th ed., p. 201.

see 7 H. & N., 950.

(3) I. L. R., 5 Mad. 208 (213).

(4) 7 H. & N., 950.

are there delivered, or to a servant sent to fetch them; and if no such demand is made the carrier is liable for the loss of or injury to the goods, although the increased charge has not been paid." The words of the English Act (1) and the words in this Act (2) are practically the same so far as this matter is concerned, and we think that the reasoning of that case applies to these cases in this country as well as in England, and that this appeal must be dismissed with costs.

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Appeal dismissed.

A. A. C.

Before Mr. Justice Prinsep and Mr. Justice Hill.

HARIPRIA DEBI (PLAINTIFF) v. RAM CHURN MYTI AND ANOTHER
(DEFENDANTS).*

1892
March 25.

Bengal Tenancy Act (VIII of 1885), s. 188—Ejection—Joint-owners.

Section 188 of the Bengal Tenancy Act of 1885 is no bar to a suit for ejection by one of two joint-owners when the suit is brought under the contract law on a breach of the conditions of a lease by the tenant.

THIS was a suit brought by one of two joint-owners of certain nij-jete land to eject a tenant after service of notice. Defendant No. 2, who was one of the joint-owners, refused to join the plaintiff in bringing the suit, and was therefore made a *pro forma* defendant. On the 15th Aushran 1284 (29th November 1877) the plaintiff granted a *potta* (for the purposes of cultivation and improvement) of her eight annas share of the property in the suit, containing 38 bighas and odd cottahs of land, and consisting of garden *dhosa* and *balu* lands and *gerias* (tanks), to Ram Churn Myti (defendant No. 1). The *potta*, which was duly registered, provided *inter alia* that defendant No. 1 should not, without the consent of the plaintiff, cut the trees in the garden, excavate tanks, turn *dhosa* land into *jul* land, alter the boundaries, or let any portion of the land to tenants. On the 9th Magh 1294

* Appeal from Appellate Decree No. 388 of 1891 against the decree of Babu Dwarika Nath Bhattacharjee, Subordinate Judge of Midnapore, dated the 31st of December 1890, affirming the decree of Babu Jogendra Nath Bose, Munsiff of Contai, dated the 30th of April 1890.

(1) See 11 Geo. IV. & 1 Wm. IV, c. 68, s. 1; and 17 & 18 Vict., c. 31, s. 7.

(2) See Act IV of 1879, s. 11.