

he represents all the creditors and his position is similar to that of a judgment-creditor, who can attach and sell the coparcenary property to recover the debts incurred by the father or manager of the family property in the ordinary course of the business of the family. That the coparcenary property is available for such debts is well recognised. The plaintiff is, therefore, not entitled to any relief even if his interest in the coparcenary property did not vest in the Receiver.

The appeal, therefore, fails and is dismissed with costs.

A. N. C.

Appeal dismissed.

APPELLATE CIVIL.

Before Mr. Justice Abdul Raof and Mr. Justice Addison.

DARBARI MAL-RAM SAHAI (PLAINTIFF)

Appellant

versus

THE SECRETARY OF STATE (DEFENDANT) .

Respondent.

1925

July 21.

Civil Appeal No. 691 of 1924.

Indian Railways Act, IX of 1890, section 80—Through-booked traffic—Suit for non-delivery against Railway to which goods were not handed and on which loss was not proved to have occurred—whether competent.

Goods were handed under Risk Notes A and B to the B. N. W. Railway and booked through *via* the N.-W. Railway. Plaintiff brought a suit (to which he refused to make the B. N.-W. Railway a party) against the N.-W. Railway through the Secretary of State on the ground of non-delivery by that Railway.

1925

DARBARI MAL-
RAM SAHAI
v.

THE SECRETARY
OF STATE.

Held, that as the goods had not been delivered by the consignor to the N.W. Railway nor their loss proved to have occurred on that railway, the defendant was not liable for the loss of the goods, *vide* section 80 of the Indian Railways Act.

Hill Sawyers and Company v. The Secretary of State (1), distinguished.

Second appeal from the decree of W. deM. Malan, Esquire, District Judge, Amritsar, dated the 17th January 1924, modifying that of Lala Ram Narain, Subordinate Judge, 3rd class, Amritsar, dated the 3rd May 1923, in so far as to reduce the amount of the decree.

DURGA DAS, for Appellant.

GOVERNMENT ADVOCATE, for Respondent.

The Judgment of the Court was delivered by—

ADDISON J.—The plaintiff sued the Secretary of State for India for Rs. 1,505-9-6 on the ground that half of a consignment of 820 tins of molasses, namely, 410 tins, had not been delivered to him by the North-Western Railway. The goods were delivered to the B. N. W. Railway by Dana Mal-Babu Ram of Naukhar, District Gorakhpur, on Risk Notes A and B. The plaintiff refused to make the B. N. W. Railway a party to the suit. The N.-W. Railway pleaded that no suit lay against them under the provisions of section 80 of the Railway Act, and that they were protected by the risk notes. The trial Court decreed the claim to the extent of Rs. 1,328-0-6, but on appeal, the learned District Judge allowed the plaintiff only the sum of Rs. 268-14-0 being the freight paid for the undelivered half of the consignment. He held that the N.-W. Railway was not liable by reason of the provisions of section 80 of the Railway Act, as it had not been proved that the loss occurred on that Railway,

and that further the risk notes on which the goods were booked protected the railway. Against this decision the plaintiff has filed this second appeal.

There is a finding of fact that it has not been proved that the loss occurred on the N.-W. Railway, and it seems to us that on this finding the decision of the lower appellate Court must be upheld, as in order to make the N.-W. Railway liable it is necessary under section 80 of the Railway Act that the loss should have occurred on that Railway. There may have been loss to the owner by the fact that the goods in question were not delivered, as laid down in *Hill Sawyers and Company v. The Secretary of State for India* (1); but in that case it was clearly established that the "loss" to the owner was caused by the N.-W. Railway, and, therefore, it was not protected by section 80 of the Railway Act. In the present case, however, the N.-W. Railway is clearly not liable as the concluding portion of section 80 is to the effect that, when goods are delivered to one railway administration, another railway administration can only be sued if the "loss" occurred on its railway. This appeal must therefore fail and we dismiss it with costs.

N. F. E.

Appeal dismiss.

(1) (1921) I. L. R. 2 Lah. 133 (F.B.).

1925

DARBARI MAJ-
RAM SAHAI

v.

THE SECRETARY
OF STATE.