THE MORVI MERCANTILE BANK LTD. AND ANR.

v.

UNION OF INDIA, THROUGH THE GENERAL MANAGER, CENTRAL RAILWAY, BOMBAY

March 3, 1965

[K. SUBBA RAO, RAGHUBAR DAYAL, J. R. MUDHOLKAR, R. S. BACHAWAT AND V. RAMASWAMI, JJ.]

Indian Contract Act (9 *of* 1872), *s.* 178, *Transfer of Property Act* (4 *of* 1882). *ss.* 4 *and* 137 *and Indian Sale of Goods Act* (3 *of* 1930), *ss.* 30 *and* 53—*Endorsel of Railway receipt—If pledgee of goods covered by receipt.*

A firm doing business in Bombay entrusted goods worth Rs. 35,500 to the Railway for delivery in Delhi. The goods were consigned to "self" and the firm endorsed the railway receipts to a Bank against an advance of Rs. 20,000 made by the Bank to the firm. The firm also executed a promissory note in favour of the Bank for that amount. When the goods reached the destination, the Bank refused to take delivery, on the ground that they were not the goods consigned by the firm. The Bank, thereafter filed a suit for the recovery of the value of the goods. The trial court dismissed the suit. On appeal by the Bank, the High Court allowed the appeal and decreed the claim for Rs. 20,000 on the ground that as pledgee of the goods, the Bank suffered loss only to the extent of the loss of its security. Both the Bank and the Railway appealed to this Court, and it was contended on behalf of the Railway that the endorsement of the railway receipt in favour of the Bank, did not constitute a pledge of the goods covered by the receipt and that the Bank had no right to sue for compensation.

HELD: (*Per* Subba Rao, Raghubar Dayal and Bachawat, JJ): The firm by endorsing the railway receipts in favour of the Bank, for consideration, pledged the goods covered by the said receipts, to the Bank, and the Bank being the pledgee could maintain the suit for the recovery of the full value of consignment amounting to Rs. 35,500. [264 H; 265 D-E]

On a reasonable construction of s. 178 of the Contract Act, 1872, ss. 4 and 137 of the Transfer of Property Act, 1882, and ss. 30 and 53 of the Indian Sale of Goods Act, 1930, an owner of goods, can make a valid pledge of them by transferring the railway receipt representing the said goods. To the general rule expressed by the Maxim *nemo dat quod non habet* (no one can convey a better title than what he had), to facilitate mercantile transactions, the Indian Law has grafted some exceptions, in favour of bonafide pledgees by transfer of documents of title from persons, whether owners of goods who do not possess the full bundle of rights of ownership at the time the pledges are made, or their mercantile agents. To confer a right to effect a valid pledge by transfer of document of title relating to goods on persons with defects in their title to the goods, and on mercantile agents, and to deny it to the full owners thereof, is to introduce an incongruity into the Act. On the other hand, the real intention of the legislature will be carried out if the said right is conceded to the full owner of goods and extended by construction to persons with defects in their title to the goods or to mercantile agents. A pledge being a bailment of goods under s. 172 of the Contract Act, the pledgee, as a bailee, will have the same remedies as the owner of the goods would have against a third person for deprivation of the said goods or injury to them under s. 180 of the Act. [264 A-C, H]

A *Ramdas Vithaldas Durbar* v. *S. Amarchand and Co.*, (1916) L. R. 43 I. A. 164 and *The Official Assignee of Madras* v. *The Mercantile Bank of India, Ltd.* (1934) L. R. 61 I. A. 416, referred to.

Per Mudholkar and Ramaswami JJ. (dissenting): There was no valid pledge of the consignments of goods represented by the railway receipt in favour of the Bank and the Bank was not entitled to
B sue the Railway for compensation for the loss of goods, relying upon the endorsements of the railway receipts in its favour. [272 G-H]

After the passing of the Indian Contract (Amendment) Act, 1930, the legal position with regard to the pledge of railway receipts, is exactly the same in Indian Law as it is in English Law, and consequently, the owner of the goods cannot pledge the goods represented
C by a railway receipt, by endorsing the railway receipt, unless the railway Authorities were notified of the transfer, and they agreed to hold the goods as bailee of the pledgee. Under the amended law a valid pledge can no longer be made by every person "in possession" of goods. It can only be made by a mercantile agent as provided in s. 178 of the Contract Act (after amendment in 1930) or by a person who has obtained possession of goods under a contract voidable under
D s. 19 or s. 19A of the Contract Act, as provided by s. 178 of the Act, or by a seller or buyer in possession of goods, after sale, as provided in s. 30 of the Indian Sale of Goods Act. [271 F-G; 272 C-D]

Further, though a railway receipt and all other documents enumerated in s. 2(4) of the Sale of Goods Act are assimilated to bills of lading for the purpose of the right to stoppage in transit and a pledge under s. 178 of the Contract Act, its legal position is the same
E as in English law, so that, no rights are created, merely by reason of the endorsement of a railway receipt by the consignee between the endorsee and the railway company which had issued the receipt to the consignee, the only remedy of the endorsee being against the endorser. The negotiation of the receipt may pass the property in the goods, but it does not transfer the contract contained in the receipt or the statutory contract under s. 74E of the Indian Railways Act.
F Negotiability is a creature of a statute or mercantile usage, not of judicial decisions apart from either. So, in the absence of any usage of trade or any statutory provision to that effect, a railway receipt cannot be accorded the benefits which flow from negotiability under the Negotiable Instruments Act, so as to entitle the endorsee, as the holder for the time being of the document of title, to sue the carrier —the railway authority—in his own name. If the claim of the Bank
G was as an ordinary assignee of the contract of carriage, then it had to prove the assignment. In the absence of proof of such assignment, or of the existence of any practice of merchants treating a railway receipt as a symbol of goods making a pledge of the receipt a pledge of goods, and in view of cl. (3) of the notice printed at the back of the receipt that an endorsement made on the face of the receipt by the consignee was only meant to indicate the person to whom the
H consignee wished delivery of goods to be made if he himself did not attend to take delivery, the Bank had no right to sue the Railway. [273 E-G; 274 D-G]

Since the language of s. 178 of the Contract Act is clear and explicit, if any hardship and inconvenience is felt because such a practice of treating the receipt as a symbol of goods were not recognised, it is for Parliament to take appropriate steps to amend the law and it is not for courts to legislate under the guise of interpretation. [275 G]

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 474 and 475 of 62. A

Appeal from the judgment and decree dated January 10, 1958, of the Bombay High Court in Appeal No. 375 of 1953.

J. C. Bhatt, B. R. Agarwala and *H. K. Puri,* for the appellants (in C.A. No. 474 of 1962) and respondent (in C.A. No. 475 of 1962). B

Niren De, Additional Solicitor-General, *N. D. Karkhanis, B.R.G.K. Achar,* for *R. N. Sachthey,* for Respondent (in C.A. No. 474 of 1962) and appellant (in C.A. Nos. 475 of 1962).

The Judgment of SUBBA RAO, DAYAL and BACHAWAT JJ. was delivered by SUBBA RAO, J. The dissenting Opinion of MUDHOLKAR and RAMASWAMI JJ. was delivered by RAMASWAMI J. C

Subba Rao, J. On October 4, 1949, M/s. Harshadrai Mohanlal & Co., a firm doing business at Thana, Bombay, hereinafter called the firm, entrusted 4 boxes alleged to have contained menthol crystals to the then G.I.P. Railway for carriage from Thana to Okhla near Delhi under a railway receipt bearing No. 233/27. On October 11, 1949, the firm consigned 2 more such boxes to Okhla from Thana under 2 railway receipts bearing Nos. 233/35 and 233/36. All the said 6 boxes were marked with the name of the said firm and were consigned to "self". The said firm endorsed the relevant railway receipts in favour of Morvi Mercantile Bank Ltd., hereinafter called the Bank, against an advance of Rs. 20,000 made by the Bank to the firm. The said consignments did not reach Okhla. The railway company offered to deliver certain parcels to the Bank, but the Bank refused to take delivery of the same on the ground that they were not the goods consigned by the firm. As the railway failed to deliver the boxes, the Bank, as the endorsee of the said railway receipts for valuable consideration, filed Civil Suit No 50 of 1950 in the Court of the Civil Judge, Senior Devision. Thana, against the Union of India through the General Manager, Central Railway, Bombay, for the recovery of Rs. 35,500, being the value of the goods contained in the said consignments as damages. The defendant in the written-statement averred that on February 1, 1950, the railway company offered to deliver all the consignments to the Bank, but the latter wrongfully refused to take delivery of the same on the ground that the consignments were not identical to the ones consigned from Thana; it put the plaintiff to strict proof of the allegation that the consignments contained menthol crystals as alleged or that the aggregate value of the said consignments was Rs. 35,500. or that the railway receipts were endorsed in favour of the plaintiff for valuable consideration. D E F G H

The learned Civil Judge found as follows: (1) The boxes consigned by the firm contained menthol crystals and by the wrongful conduct of the employees of the railway administration the contents of the boxes were lost; (2) the said consignments were not offered

A for delivery to the Bank, but what was offered were different consignments containing caustic soda; (3) the relevant railway receipts were endorsed by the firm in favour of the Bank for valuable consideration; and (4) the Bank, as endorsee of the railway receipts, was not entitled to sue the railway company on the railway receipts for loss of the consignments. On those findings the suit filed by the B Bank was dismissed with costs. The Bank preferred an appeal to the High Court against the decision of the learned Civil Judge, being First Appeal No. 375 of 1953.

The appeal was heard by a Division Bench of the Bombay High Court, consisting of J. C. Shah and Gokhale, JJ. The learned C Judges agreed with the learned Civil Judge on the first 3 findings; but on the 4th finding they took a different view. They held that the Bank, as endorsee of the said railway receipts, was entitled to sue for compensation for the loss suffered by it by reason of the loss of the consignments, but, as pledgees of the goods, it suffered the loss only to the extent of the loss of its security. On that view, D the learned Judges gave a decree to the Bank for a sum of Rs. 20,000 advanced by it with interest and proportionate costs in both the Courts. The plaintiff as well as the defendant preferred, by certificate, cross appeals to this Court.

Learned Additional Solicitor General raised before us the E following points: (1) In law the endosement of a railway receipt does not constitute a pledge; (2) an endorsement of a railway receipt for consideration constitutes at the most a pledge of the railway receipt and not the goods covered by it, and, therefore, in the present case the Bank acquired only a right to receive the goods covered by the relevant receipts from the railway; and (3) if the endorse- F ment of the railway receipts does not constitute in law a pledge of the goods, the Bank has no right to sue for compensation, as, though the proprietary right in the goods was transferred to it, the right to sue under the contracts did not pass to it.

The decision on the first point depends upon the scope of the legal requirements to constitute a pledge under the Indian law. G That calls for a careful scrutiny of all the relevant provisions of the Indian Contract Act, the Indian Sale of Goods Act and the Transfer of Property Act. for their combined consideration yields the answer to the problem raised.

Under the Contract Act, delivery of goods by one person to H another under a contract as security for payment of a debt is a pledge. Ordinarily delivery of tangible property is essential to a true pledge; but where the law recognizes that delivery of tangible symbol involves a transfer of possession of the property symbolized, such a symbolic possession takes the place of physical delivery. The short but difficult question, therefore, is whether the Indian law equates the railway receipts with the goods covered by them for the purpose of constituting delivery of goods within the meaning

of the Contract Act. Before the amendment of s. 178 of the Contract Act and the passing of the Sale of Goods Act, 1930, the scope of railway receipts vis-a-vis the goods covered by them came up for consideration before the Judicial Committee in *Ramdas Vithaldas Durbar* v. *S. Amarchand & Co.*, (1). The head-note of that case succinctly gives the following facts: Sellers of cotton consigned it to the buyer in Bombay, and forwarded to him receipts issued by the railway company which had undertaken the carriage. The receipts provided that they should be given up at the destination by the consignee, and that if he did not himself attend to take delivery he must endorse on the receipt a request for delivery to whom he wished it to be made. The evidence showed that similar receipts for cotton were used in the ordinary course of business in Bombay as proof of the possession and control of the goods therein referred to, or as authorising the holder to receive or transfer the goods. The consignee endorsed and delivered the receipts as security for advances made specifically upon them in good faith. The sellers sought to stop the cotton in transit. The Judicial Committee held that the railway receipts were instruments of title within the meaning of the Indian Contract Act, 1872, s.103, and that the sellers were therefore not entitled to stop the goods except upon payment or tender to the pledgees of the advances made by them. This decision lays down 3 propositions, namely, (i) the railway receipts in question in that case were used in the ordinary course of business in Bombay as proof of possession and control of the goods therein referred to, or as authorising the holder to receive or transfer the goods; (ii) such railway receipts were documents of title and a valid pledge of the goods covered by the receipts could be made under the Contract Act, before it was amended in 1930, by endorsing and delivering the same as security for advances made to the owner of the goods. It may be noticed at this stage that under the Contract Act before it was amended in 1930 there was no definition of the expression "documents of title", but there was one in the Indian Factors Act (XX of 1844) which, with certain modifications, made the provisions of the English Factors Act, 1842, applicable to British India. The last mentioned Acts defined the expression "documents of title to goods" as including any bill of lading, dock-warrant, ware-housekeeper's certificate, whar-finger's certificate, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. Railway receipt was *eo nomine* not included in the definition. But the Privy Council, on the basis of the evidence adduced in that case, brought the railway receipts under that part of the definition describing generally the documents of title to goods. It may also be noticed that the Judicial Committee, though

A B C D E F G H

(1) [1916] L. R. 43 I. A. 164.

A its attention was called to the provisions of ss. 4 and 137 of the Transfer of Property Act, preferred to decide that case *dehors* the said provisions. In the Explanation to s.137 of the Transfer of Property Act, 1882, which was introduced by the Amending Act 2 of 1900, the definition of the expression "mercantitle document" is practically the same as that found in the Indian Factors Act noticB ed by the Judicial Committee in the decision cited supra, with the difference that it expressly includes therein railway receipt. Under s.4 thereof, the Chapter and the sections of the Act shall be taken as part of the Indian Contract Act, 1872. In 1930 Parliament in enacting the Indian Sale of Goods Act, 1930, presumably borrowed the definition of "documents of title to goods" from the IndianC Factors Act and the English Factors Act noticed by the Judicial Committee, but expressly included in the definition the railway receipt. This indicates the legislative intention to accept the mercantile usage found by the Judicial Committee in *Ramdas Vithaldas Durbar* v. *S. Amerchand & Co.*(1). The same definition was incorporated by reference in the Explanation to s.178 of the ContractD Act as amended in the year 1930. This definition is also in accord with the definition of "mercantile document of title to goods" in the Explanation to s.137 of the Transfer of Property Act. The Judicial Committee had another occasion to consider the question of pledge of railway receipt in *Official Assignee of Madras* v. *Mercantile Bank of India, Ltd.*(2). The facts in that case were as follows:E The insolvents did a large business in groundnuts, which they purchased from the up-country growers; the nuts were then despatched by rail and arrived in Madras by one or other of the two railways, the Madras & Southern Maharatta Railway or the South Indian Railway. Under an arrangement between the said Railways and the Madras Port Trust, the consignments of nuts when receivedF were deposited in the godowns of the Madras Port Trust. The general course of business was for the insolvents to obtain from the railway companies in respect of each consignment or wagon load a railway receipt. The insolvents obtained loans from the respondent-Bank after sending to the said Bank the railway receipts duly endorsed in blank and also after executing a promissory note for the G amount a letter of hypothecation. When the goods arrived at the port, delivery was taken from the Port Trust against the railway receipts. At the time the insolvents were adjudicated the bags of ground-nuts in question in that case were either in transit on the railway or in the transit sheds or godowns of the Port Trust. On those facts, the main question was whether the pledge of the railH way receipt was a pledge of the goods represented by them or merely a pledge of the actual documents. If there was a valid pledge before the insolvency, the Bank would be entitled to receive the amount realised by the sale of the goods; if not, the Official Assignee would be entitled to it. The Judicial Committee, after considering

(1) (1916) L.R. 43 I.A. 164.

(2) (1934) L.R. 51 I.A. 416, 423.

its earlier decision in *Ramdas Vithaldas Durbar's case* (1) and all the relevant provisions which we have noticed earlier, came to the conclusion that there was a valid pledge of the goods represented by the receipts. It may be noticed that this decision also turned upon the relevant provisions of the Contract Act before its amendment in 1930, though at the time the decision was made the amendment came into force. On the question whether a pledge of a document is a pledge of the goods as distinct from the document, the Judicial Committee observed:

> "Their Lordships likewise in the present case see no reason for giving a different meaning to the term (documents of title to goods) in s.178 from that given to the terms in ss. 102 and 103; in addition a railway receipt is specifically included in the definition of mercantile document of title to goods by s. 137 of the Transfer of Property Act, 1882, which, in virtue of s.4 of the Act, is to be taken as part of the Contract Act as being a section relating to contracts. A railway receipt is now included in the definition of documents of title to goods in s. 2, sub-s. 4, of the Indian Sale of Goods Act, 1930."

On the construction of the expression "person" in s. 178 of the Contract Act, it was argued that the said expression took in only a mercantile agent and that the law in India was the same as in England. Rejecting that plea, the Judicial Committee remarked at p. 426 thus:

> "Their Lordships did not in that case see any improbability in the Indian Legislature having taken the lead in a legal reform.
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> It may well have seemed that it was impossible to justify a restriction on the owner's power to pledge which was not imposed on the like powers of the mercantile agent. The same observation may well be true in regard to the words now being considered. The reasonableness of any such change in the law is well illustrated by the facts of the present case, where it was clearly intended to pledge the goods, not merely the railway receipts, and the respondents have paid in cash the advances they made on that footing. In these circumstances, it would be indeed a hardship that they should lose their security."

These pregnant observations show that there is no justification for the distinction that is being maintained in England between a pledge of a bill of lading and the pledge of documents of title other than a bill of lading. The Judicial Committee in this decision clearly laid down, after noticing all the relevant provisions of the Contract Act, the Transfer of Property Act and the Sale of Goods Act, that railway receipts were documents of title and the goods cover-

(1)(1916) L.R. 43 I.A. 164.

A ed by the documents could be pledged by transferring the documents. This decision is in accord with the view expressed by us on a fair reading of the said provisions.

Even so, it is contended that by the amendment of s. 178 of
B the Contract Act in 1930, the Legislature has taken away the right of an owner of goods to pledge the same by the transfer of documents of title to the said goods. Under the old section "a person" who was in possession of any goods etc. might make a valid pledge of such goods, whereas under the present section "a mercantile agent", subject to the conditions mentioned therein, is authorized
C to make a pledge of the goods by transferring the documents of title. Therefore, the argument proceeds, a person other than a mercantile agent cannot make a valid pledge of goods by transferring the documents representing the said goods. This argument appears to be plausible and even attractive; but, if accepted, it will lead to anomalous results. It means an owner of goods cannot
D pledge the goods by transferring the documents of title, whereas his agent can do so. As the Privy Council pointed out it is impossible to justify a restriction on the owner's power to pledge when there is no such restriction imposed on the like powers of a mercantile agent. A carefull scrutiny of s. 178 of the Contract Act and the other relevant provision thereof indicates that the section assumes the
E power of an owner to pledge goods by transferring documents of title thereto and extends the power even to a mercantile agent. A pledge is delivery of goods as security for payment of a debt. If a railway receipt is a document of title to the goods covered by it, transfer of the said document for consideration effects a constructive delivery of the goods. On that assumption if we look at s. 178 of the
F Contract Act, the legal position is apparent. The material part of s. 178 of the Contract Act reads:

> "Where a mercantile agent is, with the consent of the owner, in possession of goods or the documents of title to
G goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has not authority to pledge."

H

The section emphasizes that a mercantile agent shall be in possession of documents of title with the consent of the owner thereof; if he is in such possession and pledges the goods by transferring the documents of title to the said goods, by fiction, he is deemed to have expressly authorized by the owner of the goods to make the same. The condition of consent and the fiction of authorization indicate that he is doing what the owner could have done. So too,

s. 30 of the Indian Sale of Goods Act discloses the legislative mind. The relevant part of the said section reads:

> "Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same."

This sub-section shows that a person who sold the goods as well as a mercantile agent acting for him can make a valid pledge in the circumstances mentioned therein. If an owner of goods or his mercantile agent, after the owner has sold the goods, can make a valid pledge by transferring the documents of title to the goods, it would lead to an inconsistent position if we were to hold that an owner who has not sold the goods cannot pledge the goods by transferring the documents of title. Sub-s. (2) of s. 30 of the Indian Sale of Goods Act relevant to the present enquiry reads:

> "Where a person, having bought or agreed to buy goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist."

This sub-section clearly recognizes that a buyer or his mercantile agent can pledge goods by transferring the documents of title thereto: it protects a *bona fide* pledgee from the buyer against any claim by the original owner based on the lien or any other right still left in him. If the owner—the purchaser becomes the owner—cannot pledge the goods at all by transfer of documents of title, the protection given under sub-s. (2) of s. 30 of the Sale of Goods Act to a *bona fide* purchaser is unnecessary. The material part of s. 53(1) of the Sale of Goods Act reads:

> "Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto:
>
> Provided that where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith

A and for consideration, then, if such last mentioned transfer was by way of sale, the unpaid seller's right of lien or stoppage in transit is defeated, and, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transB feree."

This sub-section protects a *bona fide* pledgee from an owner against any rights still subsisting in his predecessor-in-interest. This assumes that the owner can pledge the goods by transfer of the relevant documents of title. The said sections embody statutory exC ceptions to the general rule that a person cannot confer on another a higher title than he possesses.

The argument that s. 178 of the Contract Act, as amended in 1930, restricts the scope of the earlier section and confines it only to a mercantile agent was noticed by the Judicial Committee in *Official Assignee of Madras* v. *Mercantile Bank of India, Ltd.* (1) D and it observed therein:

> "The Indian Legislature may well have appreciated in 1872 the exigencies of business, even though in 1930 they recanted. Or perhaps they did not appreciate fully the effect of the actual words of the section."

E These observations indicate that the Judicial Committee did not express any final opinion on the construction of the amended s. 178 of the Contract Act as the question in the appeal before it related to the unamended section. Further, it did not notice the other sections referred to earlier which throw a flood of light on the true meaning of the terms of s. 178 of the Contract Act, as it now stands. F This conclusion also accords with the view expressed by Bachawat, J., in *Commissioner for the Port Trust of Calcutta* v. *General Trading Corporation Ltd.*(2).

The Indian decisions cited at the Bar do not deal with the question whether a valid pledge of goods can be effected by transfer of documents of title, such as a railway receipt, representing G the goods; they were mainly concerned with the question whether an endorsee of a railway receipt for consideration could maintain an action on the basis of the contract embodied in the said receipt: see *The firm of Dolatram Dwarakdas* v. *The Bombay Baroda and Central India Railway Co.* (3); *Shah Mulji Deoji* v. *Union of India*(4) *Commissioner for the Port Trust of Calcutta* v. *General Trading* H *Corporation Ltd.* (5); and *Union of India* v. *Taherali* (6). These raise a larger question on which there is a conflict of opinion. In the view we have taken on the question of pledge, it is not necessary to express our opinion thereon in these appeals.

(1) (1934) L.R. 61 I.A. 416, 423.
(2) A.I.R. 1964 cal. 290.
(3) (1914) I.L.R. 38 Bom. 659.
(4) A.I.R. 1957 Nag. 31.
(5) (1956) 58 Bom. L.R. 650.

The law on the subject, as we conceive it, may be stated thus: An owner of goods can make a valid pledge of them by transferring the railway receipt representing the said goods. The general rule is expressed by the maxim *nemo dat quod non habet*, i.e., no one can convey a better title than what he had. To this maxim, to facilitate mercantile transactions, the Indian law has grafted some exceptions, in favour *bona fide* pledgees by transfer of documents of title from persons, whether owners of goods or their mercantile agents who do not possess the full bundle of rights of ownership at the time the pledges are made. To confer a right to effect a valid pledge by transfer of documents of title relating to goods on owners of the goods with defects in title and mercantile agents and to deny it to the full owners thereof is to introduce an incongruity into the Act by construction. On the other hand, the real intention of the Legislature will be carried out if the said right is conceded to the full owner of goods and extended by construction to owners with defects in title or their mercantile agents.

We are glad that, on a reasonable construction of the material provisions of the relevant Acts, we have been able to reach this conclusion. To accept the contentions of the respondents to the contrary would be a retrograde step and would paralyse the entire mechanism of finance of our internal trade. In this vast country where goods are carried by railway over long distances and remain in transit for long periods of time, the railway receipt is regarded as a symbol of the goods for all purposes for which a bill of lading is so regarded in England.

The next question is whether the plaintiff would be entitled to recover the full value of the consignments amounting to Rs. 35,500/- or, as the High Court held, only the amount of Rs. 20,000/- with interest, i.e., the amount secured under the pledges. The answer to this question depends upon the construction of s. 180 of the Contract Act, it reads:

> "If a third person wrongfully deprives the bailee of the use or possession of the goods bailed, or does them any injury, the bailee is entitled to use such remedies as the owner might have used in the like case if no bailment had been made; and either the bailor or the bailee may bring a suit against a third person for such deprivation or injury."

Under this section, a pledge being a bailment of goods as security for payment of a debt, the pledgee will have the same remedies as the owner of the goods would have against a third person for deprivation of the said goods or injury to them. If so, it follows that the Bank, being the pledgee, can maintain the present suit for the recovery of the full value of the consignments amounting to Rs. 35,500/-.

A The last question is whether the Bank was the pledgee of the goods or was only the pledgee of the documents of title whereunder they could only keep the documents against payment by the consignee as contended on behalf of the Railway. The firm borrowed a sum of Rs. 20,000/- from the Bank and executed a promissory note, Ex. 104, dated October 6, 1949, in its favour. It also B endorsed the railway receipts Nos. 233/27, 233/35 and 233/36 in favour of the Bank. The Accountant of the Bank deposed that the railway receipts were endorsed in favour of the Bank, which had advanced the said amount to the firm on the security of the said railway receipts. The evidence of this witness was not challenged in the High Court. The Bank advanced a large amount of money C to the firm. The three transactions, namely the advancing of loan, the execution of the promissory note and the endorsement of the railway receipts, together form one transaction. Their combined effect is that the Bank would be in control of the goods till the debt was discharged. This is a well known practice followed by Banks. The Judicial Committee both in *Ramdas Vithaldas Durbar* v. D *S. Amerchand & Co.*(1), and *the Official Assignee of Madras* v. *The Mercantile Bank of India, Ltd.*(2) held that such a transaction was a pledge. We, therefore, hold on the facts of this case that the firm by endorsing the railway receipts in favour of the Bank for consideration pledged the goods covered by the said receipts to the Bank.

E In this view it is not necessary to express our opinion on the question whether if the transaction was not a pledge of the goods, the Bank would be entitled to sue on the basis of the contract entered into between the firm and the Railway.

No other question was raised. In the result, Civil Appeal No. 474 of 1962 filed by the Bank is allowed; and Civil Appeal No. 475 F of 1962 filed by the Railway is dimissed. The plaintiff's suit is decreed with costs throughout.

Ramaswami, J. We regret we are unable to agree with the judgment pronounced by our learned brother Subba Rao J.

On October 4, 1949, M/s. Harshadrai Mohanlal & Co., (hereinafter referred to as the firm) entrusted 4 boxes containing "men- G thol crystal" to the then G.I.P. Railway for carriage from Thana railway station to Okhla near Delhi. On October 11, 1949, the firm consigned 2 more boxes also alleged to have contained "menthol crystal" to Okhla from Thana railway station. The Railway Receipts issued were numbered 233/27, 233/35 and 233/36. All the six boxes were consigned to "self". It is alleged that the Rail- H way Receipts with regard to these six boxes were endorsed in favour of Morvi Mercantile Bank Ltd. (hereinafter referred to as the plaintiff-bank) against an advance of Rs. 20,000 by the plaintiff-bank on security of the Railway Receipts. The G.I.P. Railway offered to deliver the boxes at Okhla railway station but the plaintiff-bank declined to accept the same alleging that the boxes were not those

(1) (1916) L.R. 43 I.A. 164.
(2) (1934) L.R. 61 I.A. 416, 423.

which were consigned from Thana station. The plaintiff-bank filed Civil Suit No. 50 of 1950 in the Court of the Civil Judge, Senior Division, Thana, claiming a sum of Rs. 35,000 as damages for breach of contract. The suit was contested by the defendants on the ground that identical boxes which were consigned by the firm at Thana were offered to the plaintiff-bank who declined to accept the same and the Railway Administration had not committed any breach of contract and, therefore, the Union of India was not liable to pay any damages. The trial Judge held that the boxes consigned by the firm contained "menthol crystals" and by the unlawful conduct of the employees of the railway administration the contents of the boxes were lost, but he took the view that the plaintiff-bank, as endorsee of the railway receipts, was not entitled to sue for compensation for loss of the consignments. In taking that view the learned Civil Judge followed a decision of the Bombay High Court in *Shamji Bhanji & Co.* v. *North Western Railway Company*(1). The Civil Judge accordingly dismissed the suit by a judgment and decree dated January 15, 1953. Against that decision the plaintiff-bank preferred an appeal to the Bombay High Court which confirmed the findings of the Civil Judge that the Railway failed to deliver the boxes at Okhla and the boxes contained "menthol crystals". The High Court also held that the plaintiff-bank assignees of the railway receipt was entitled to bring a suit for damages for breach of contract against the Union of India though the damages would be limited to the loss of its security. In taking this view the Bombay High Court relied upon its previous decision in *The Union of India* v. *Taherali Isaji*(2).

The first question for determination in this case is whether there was a valid pledge of boxes of "menthol crystals" in favour of the plaintiff-bank by endorsement on the railway receipts by the firm.

In English Law a pledge arises when goods are delivered by one person called the 'pledgor' to another person called the 'pledgee' to be held as security for the payment of a debt or for discharge of some other obligation upon the express or implied understanding that the subject-matter of the pledge is to be restored to the pledgor as soon as the debt or other obligation is discharged. It is essential for the creation of a pledge that there should be a delivery of the goods comprised therein. In other words, a pledge cannot be created except by delivery of the possession of the thing pledged, either actual or constructive. It involved a bailment. If the pledgor had actual goods in his physical possession, he could effect the pledge by actual delivery; but in other cases he could give possession by some symbolic act, such as handing over the key of the store in which they were. If, however, the goods were in the actual physical possession of a third person, who held for the bailor so that in law his possession was that of the bailor, this pledge could be effected by a change of the character of the possession of the

(1) A.I.R. 1947 Bomb. 169.
(2) (1956) 58 Bomb. L.R. 650.

A third party, that is by an order to him from the pledgor to hold for the pledgee, the change being perfected by the third party attorning to the pledgee, thus acknowledging that he thereupon held for the latter. There was thus a change of possession and a constructive delivery; the goods in the hands of the third party came by this process constructively in the possession of the pledge. But B where goods were represented by documents the transfer of the documents did not change the possession of the goods, save for one exception, unless the custodian (carrier, warehouseman or such) was notified of the transfer and agreed to hold in future as bailee for the pledgee. The one exception was the case of bills of lading, the transfer of which by the law merchant operated as a C transfer of the possession of, as well as the property in, the goods. This exception has been explained on the ground that the goods being at sea the master could not be notified; the true explanation was perhaps that it was a rule of the law merchant, developed in order to facilitate mercantile transactions, whereas the process of pledging goods on land was regulated by the narrower rule of the D common law.

The position in English Law, therefore, was that in the case of delivery of documents of title other than bills of lading, a pled of the documents is merely a page of the *ipsa corpora* of them, for the transfer of documents does not change the possession of the goods unless the custodian (carrier, warehouseman or such) was E notified of the transfer and agreed to hold in future as bailee for the pledgee. In *Inglis* v. *Robertson and Baxter*(1). It was held by the House of Lords that where goods are lodged in warehouses in Scotland a pledgee of the goods must, to make effective all real rights which depend on the constructive delivery of the goods, give notice of the pledge to the warehouse-keeper. The Factors Act 1889 F enacts:

> "S.3. A pledge of the documents of title to goods shall be deemed to be a pledge of the goods."; and s.1: 'For the purposes of this Act' (sub-s. 5). The expression 'pledge' shall include any contract, pledging, or giving a lien or G security on, goods, whether in consideration of an original advance or of any further or continuing advance or of any pecuniary liability'. Sect. 9 prescribes that the effect of delivery or transfer of the documents of title of the goods under any pledge &c., by a person who having bought the goods obtains with the consent of the seller H possession of the goods or documents of title, shall have the same effect as if the person making the delivery or transfer were a mercantile agent in possession of the goods or documents of title with the consent of the owner."

Goods were stored by G, a domiciled Englishman, in a bonded warehouse in Glasgow, transferred into the name of G as owner; and the warehouse-keeper issued to G delivery orders showing that

(1) (1898) A.C. 616.

the goods were held to G's order 'or assigns by endorsement hereon'. G obtained a loan from I an English merchant, and delivered to him in England a letter of hypothecation stating that he deposited a part of the goods with him in security, with power of sale, and G endorsed and handed to I the delivery warrants. I did not intimate or give notice of the right he had acquired to the warehouse-keeper. R. & B., claiming as personal creditors of G, arrested the goods in the hands of the warehouse-keeper and then raised an action against him in the Scottish Court claiming through the arrestment a preferable right thereto. It was held by the House of Lords that s. 3 of the Factors Act, 1889, was merely intended to define the full effect of the pledge of the documents of title made by a mercantile agent, and that it had no application to the case of the pledge of the documents of title by one in the position of G, who was not a mercantile agent within the meaning of the Act; nor was G a pledgor within s. 9 of the same Act. At pages 625 to 627 Lord Watson states:

A B C D E F G H

> "I can see no reason to doubt that, by Scottish law as well as English, the endorsement and handing over of delivery orders in security of a loan, along with a letter professing to hypothecate the goods themselves, is sufficient in law, and according to mercantile practice, to constitute a pledge of the documents of title, whatever may be the value and effect of the right so constituted. In my opinion, the right so created, whether in England or in Scotland, will give the pledgee a right to retain the *ipsa corpora* of the documents of title until his advance is repaid. The crucial question in this case is whether the right goes farther, and vests in the pledgee of the documents, not a *jus ad rem* merely, but a real interest in the goods to which these documents relates.
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> It was not disputed by the appellant's counsel, and it is hardly necessary to repeat, that by the common law of Scotland the indorsation and hypothecation of delivery orders, although it may give the pledgee a right to retain the documents, does not give him any real right in the goods which they represent. He can only attain to that right by presenting the delivery orders to the custodier by whom they were granted, and obtaining delivery of the goods from him, or by making such intimation of his right to the custodier as will make it the legal duty of the latter to hold the goods for him. His right, which in so far as it relates to the goods is in the nature of *jus ad rem,* will be defeated if, before he has either obtained delivery or given such intimation, the goods are validly attached in the hands of the custodier by a creditor of the person for whom the custodier holds them."

A The principle is reiterated by the House of Lords in *Dublin City Distillery Ltd.* v. *Doherty*(1) in which the plaintiff advanced moneys to a distillery company on the security of manufactured whisky of the company stored in a ware-house. Neither the company nor the excise officer could obtain access to the warehouse without the assistance of the other, and the whisky could only be delivered B out on presentation to the excise officer of a special form of warrant supplied by the Crown. On the occasion of each advance the company entered the name of the plaintiff in pencil in their stock-book opposite the particulars of the whisky intended to be pledged and delivered to the plaintiff (1) an ordinary trade invoice and (2) a document called a warrant, which described C the particulars of the whisky and stated that it was deliverable to the plaintiff or his assigns. It was held by the House of Lords that the plaintiff was not entitled to a valid pledge on the whisky comprised in the warrants. At pages 843 and 847 of the Report Lord Atkinson states the law on the point as follows:

D "As to the second question, it was not disputed that, according to the law of England, and indeed of Scotland, a contract to pledge a specific chattel, even though money be advanced on the faith of it, is not in itself sufficient to pass any special property in the chattel to the pledgee. Delivery is, in addition, absolutely necessary to complete E the pledge; but of course it is enough if the delivery be constructive, or symbolical, as it is called, instead of actual.

The example of constructive delivery frequently given is the delivery of the key of the store or house in which the goods have been placed; but that is because, in the F words of Lord Hardwicke, 'it is the way of coming at the possession, or to make use of the thing', Ward v. Turner (1751) 2 Ves. Sen. 431 at P. 443).

* * * *

The giving by the owner of goods of a delivery order to the warehouseman does not, unless some positive act be G done under it, operate as a constructive delivery of the goods to which it relates: McEwan v. Smith (1849) 2 H.L.C. 309). And the delivery of a warrant such as those delivered to the respondent in the present case is, in the ordinary case, according to Parke B., no more than an acknowledgment by the warehouseman that the goods are H deliverable to the person named therein or to any one he may appoint. The warehouseman holds the goods as the agent of the owner until he has attorned in some way to this person, and agreed to hold the goods for him; then, and not till then, does the warehouseman become a bailee for the latter; and then, and not till then, is there a constructive delivery of the goods. The delivery and

(1) (1914) A.C. 823.

receipt of the warrant does not *per se* amount to a delivery and receipt of the goods: Farina v. Home (16 M. & W. 119); Bentall v. Burn ((1824) 3 B.&C. 423)." A

In our opinion, the position in Indian Law is not different. Section 172 of the Contract Act which defines a 'pledge' affirms the English Common Law. Section 172 states that "the bailment of goods as security for payment of a debt or performance of a promise" is called a "pledge". The bailor is in this case called the "pawnor" and the bailee is called the "pawnee". According to s. 148 of the Contract Act "a bailment is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the 'bailor'. The person to whom they are delivered is called the 'bailee'. Section 149 states that the delivery to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Reference should also be made to s. 178 of the Contract Act, as it stood before the Indian Contract (Amendment) Act, 1930. The original s. 178 states: B C D

"A person who is in possession of any goods, or of any bill of lading, dock-warrant, warehouse-keeper's certificate wharfinger's certificate, or warrant or order for delivery, or any other document of title to goods, may make a valid pledge of such goods or documents: Provided that the pawnee acts in good faith and under circumstances which are not such as to raise a reasonable presumption that the pawnor is acting improperly: E

Provided also that such goods or documents have not been obtained from the lawful owner, or from any person in lawful custody of them, by means of an offence or fraud." F

By the Indian Contract (Amendment) Act, 1930 the section was repealed and the subject-matter of that section is now spread over the present ss. 178 and 178A of the Contract Act and s. 30 of the Indian Sale of Goods Act. The new section 178 of the Contract Act states: G

"Where *a mercantile agent* is, with the consent of the owner, in possession of goods or the documents of title to goods, any pledge made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorised by the owner of the goods to make the same; provided that the pawnee acts in good faith and has not at the time of the pledge notice that the pawnor has no authority to pledge. H

Explanation—In this section the expressions 'mercantile agent' and 'documents of title' shall have the meanings assigned to them in the Indian Sale of Goods Act, 1930."

A Section 30 of the Indian Sale of Goods Act provides as follows:

"30(1) Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition
B thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery or transfer were expressly authorised by the owner of the goods to make the same.

(2) Where a person, having bought or agreed to buy
C goods, obtains, with the consent of the seller, possession of the goods or the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him, of the goods or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice
D of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist."

Section 178A of the Contract Act states:

"178A. When the pawnor has obtained possession of
E the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title."

After the passing of the Indian Contract (Amendment) Act, 1930
F the legal position with regard to the pledge of railway receipts is exactly the same in Indian law as it is in English law and consequently the owner of the goods cannot, pledge the goods represented by the railway receipts in the present case unless the railway authorities are notified of the transfer and they agree to hold the goods as bailee for the pledgee.

G On behalf of the appellants Mr. Bhatt placed strong reliance upon the decision of the Judicial Committee in *Official Assignee of Madras* v. *Mercantile Bank of India, Limited* (1) in which it was held that a railway receipt, providing that delivery of the consigned goods is to be made upon the receipt being given up by the consignee or by a person whom he names by endorsement thereon, is
H a document of title within the meaning of the Indian Contract Act, 1872, (s. 178 for which a new section was substituted by the amending Act IV of 1930), and a pledge of a railway receipt operated under the repealed section as a pledge of the goods. But this decision is not of much assistance to the appellants, because it was concerned with the interpretation and legal effect of s. 178 of the Contract Act as it stood before the Indian Contract (Amending)

(1) (1934) 61 I.A. 416.

Act (Amending Act IV of 1930). It was held by the Judicial Committee in that case that under the repealed s. 178 the owner of the goods could obtain a loan on security of a pledge of the goods by the pledge of the documents of title. But it is significant to note that s. 178 has been amended by the Amending Act, 1930 and under the present section statutory power to pledge goods or documents of title is expressly confined to mercantile agents while acting in the customary course of the business. There are two other instances in which a person other than the owner of the goods may make a valid pledge of the goods and these two instances are dealt with in s. 178A of the Contract Act and s. 30 of the Indian Sale of Goods Act. The result, therefore, under the amended law is that a valid pledge can no longer be made by every person "in possession" of goods. It can only be made by a mercantile agent as provided in the new s. 178 of the Contract Act or by a person who has obtained possession of the goods under a contract voidable under s. 19 or s. 19A of the Contract Act as provided in s. 178A, or by a seller or by a buyer in possession of goods after sale as provided in s. 30 of the Indian Sale of Goods Act. Learned Counsel for the appellants also referred to the decision of the Judicial Committee in *Ramdas Vithaldas Durbar* v. *S. Amerchand & Co.*[1] in which the Judicial Committee explained the legal effect of s. 103 of the Contract Act, as it originally stood. It was held by Lord Parker that the railway receipts are instruments of title within the meaning of the Indian Contract Act, 1872, s. 103, and that the sellers were therefore not entitled to stop the goods in transit except upon payment or tender to the pledgees of the advances made by them. It is manifest that the decision cannot afford assistance to the appellants, because, in the first place, it related to the construction of old s. 103 of the Contract Act in regard to the right of stoppage of goods in transit, and, in the second place, there has been a significant change in the law in view of the legislative amendment of s. 178 of the Contract Act by the Indian Contract (Amendment) Act, 1930.

In the present case, therefore, our concluded opinion is that there is no valid pledge of the consignments of menthol crystals represented by the railway receipts in favour of the plaintiff-bank and the finding of the High Court on this point is erroneous in law

We shall next deal with the question whether the plaintiff can sue on the contract of bailment even though there is no valid pledge of the goods in favour of the plaintiff. It was contended on behalf of the appellants that the plaintiff-bank was the endorsee of railway receipts and, therefore, it was entitled to sue the defendants for compensation for the loss of the goods. We are unable to accept this argument as correct. At Common law a bill of lading was not negotiable like a bill of exchange so as to enable the endorsee to maintain an action upon it in his own name, the effect of the

[1] (1914) 43 I.A. 164.

A of the endorsement being only to transfer the property in the goods but not the contract itself. It was observed by Alderson, B. in *Thompson* v. *Dominy* (1) as follows:

> "This is another instance of the confusion, as Lord Ellenborough in Waring v. Cox expresses it, which 'has arisen from similitudinous reasoning upon this subject'. B Because, in Lickbarrow v. Mason, a bill of lading was held to be negotiable, it has been contended that that instrument possesses all the properties of a bill of exchange; but it would lead to absurdity to carry the doctrine to that length. The word 'negotiable' was not used in the sense in which it is used as applicable to a bill of exchange, but C as passing the property in the goods only."

Delivery orders, warrants, written engagements to deliver goods and similar documents are in the same position as the bills of lading were before the Bills of Lading Act, 1855 (18 & 19 Vic. c. 111). They are mere promises by the seller, being the issuer or D transferor, to deliver, or authorise the buyer to receive possession. It is only by reason of the enactment of the Bills of Lading Act, 1855 (18 & 19 Vic. c. 111) that the issue or transfer of a bill of lading operates as a delivery to the buyer of the goods shipped, and the consignee of the bill of lading is entitled to sue upon the contract contained in the same. The same provisions are contained in the Bills E of Lading Act (Act IX) of 1856 in India. It is true that the railway receipt and all other documents enumerated in s. 2, sub-s. (4), Sale of Goods Act, are assimilated to bills of lading for the purposes of the right of stoppage in transit under s. 103, Contract Act and a pledge under s. 178, Contract Act as explained by the Judicial Committee in *Ramdas Vithaldas* v. *S. Amerchand & Co.*(2) F and *Official assignee of Madras* v. *Mercantile Bank of India*(3). But the effect of these decisions is not to assimilate the railway receipt to a bill of lading for all purposes whatsoever. The legal position of the railway receipt is the same as it was in English law and that position is not affected at all by the enactment of s. 2, sub. s. (4) of the Sale of Goods Act, or the enactment of provisions analo- G gous to ss. 103 and 178 of the Contract Act. As stated in *Halsbury's Laws of England*, Hailsham Edition, Vol. 29, at p. 143, Art. 179:

> "Such documents, although they may purport to be, or may commonly be treated as, transferable, are not negotiable instruments, unless there be a trade usage to that effect. Accordingly, subject to the provisions of the Fac- H tors Act 1889, the owner cannot claim delivery of the goods except from the seller who is the issuer or immediate transferor of the document."

It is manifest that there are no rights created merely by reason of the endorsement of a Railway Receipt between the endorsee and

(1) 153 E.R. 532.
(2) (1916) L.R. 43 I.A. 164.
(3) (1934) L.R. 61 I.A. 416, 423.

the railway company which has issued the railway receipt to the consignee, the only remedy of the endorsee being against the endorser. This was the position in English law, except in the case of bills of lading the transfer of which by the Law Merchant operated as a transfer of the possession of as well as the property in the goods as observed by Lord Wright in *Official Assignee of Madras* v. *Mercantile Bank of India, Limited*(1) at page 422. The endorsee may bring an action as an assignee of the contract of carriage but then the assignment has to be proved as in every other case. It is true that by reason of s. 137 of the Transfer of Property Act, the provisions relating to the transfer of an actionable claim do not apply to a railway receipt, and the assignment need not be according to any particular form, but a railway receipt is not like a negotiable instrument (See *Mercantile Bank of India Ltd.* v. *Central Bank of India Ltd.*(2). It is also apparent that subject to the exceptions mentioned in ss. 30 and 53 of the Indian Sale of Goods Act, 1930, and s. 178 of the Contract Act, 1872, its possessor cannot give a better title to the goods than he has. The negotiation of the railway receipt may pass the property in the goods, but it does not transfer the contract contained in the receipt or the statutory contract under s. 74-E of the Indian Railways Act. Negotiability is a creature of statute or mercantile usage, not of judicial decisions apart from either. So, in the absence of any usage of trade or any statutory provision to that effect, a railway receipt cannot be accorded the benefits which flow from negotiability under the Negotiable Instruments Act, so as to entitle the endorsee as the holder for the time being of the document of title to sue the carrier—the railway authorities—in his own name. If the claim of the plaintiff is as an ordinary assignee of the contract of carriage, then the plaintiff has to prove the assignment in his favour. In the present case the plaintiff-bank has furnished no such proof of assignment in its favour. In view of cl. (3) of the notice printed at the back of the railway receipt it is clear that an endorsement made on the face of the railway receipt by the consignee is meant to indicate the person to whom the consignee wishes delivery of the goods to be made if he himself does not attend to take delivery. An endorsement made by the consignee on the face of the railway receipt requesting the railway company to deliver the goods to the endorsee merely conveys to the railway company that the person in whose favour the endorsement is made by the consignee is constituted by him a person to whom he wishes that delivery of the goods should be made on his behalf. Clause (3) of the notice printed at the back of the railway receipt states:

> "That the railway receipt given by the railway company for the articles delivered for conveyance, must be given up at destination by the consignee to the railway company, otherwise the railway may refuse to deliver and that the signature of the consignee or his agent in the delivery

(1) (1934) L.R. 61 I.A. 416.
(2) (1937) 65 I.A. 75.

A book at destination shall be evidence of complete delivery.

If the consignee does not himself attend to take delivery he must endorse on the receipt a request for delivery to the person to whom he wishes it made, and if the receipt is not produced, the delivery of the goods may, at the discretion of the railway company, be withheld until the person entitled in its opinion to receive them has given an indemnity to the satisfaction of the railway company."

In the present case the plaintiff has not proved by proper evidence an assignment of the contract of carriage. In our opinion, the law on the point has been correctly stated by Bhagwati, J. in *Shamji Bhanji & Co.* v. *North Western Rly. Co.*(1). It follows, therefore, that the plaintiff has no right to bring the present suit against the Union of India.

Counsel for appellant has referred to the practice of merchants in treating a railway receipt as a symbol of goods and in making pledge of goods by pledge of railway receipts, but no such practice or custom has been alleged or proved on behalf of the plaintiff in the present case. In the absence of such allegation or proof it is not open to the Court to take any judicial notice of any such practice. Counsel for appellant also referred to possible inconvenience and hardship to merchants if such a practice is not judicially recognised, but the argument from inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of the statute is obscure. In *Sutters* v. *Briggs*(2). Lord Birkenhead stated:

"The consequences of this view of s. 2 of the Gaming Act, 1835 will no doubt be extremely inconvenient to many persons. But this is not a matter proper to influence the House unless in a doubtful case affording foothold for balanced speculation as to the probable intention of the legislature."

In the present case the language of s. 178 of the Contract Act is clear and explicit and if any hardship and inconvenience is felt it is for Parliament to take appropriate steps to amend the law and not for the courts to legislate under the guise of interpretation.

For the reasons expressed, we hold that Civil Appeal 474 of 1962 brought by the plaintiff-bank should be dismissed and Civil Appeal 475 of 1962 brought by the Union of India through the General Manager, Central Railway should be allowed with costs and the suit of the plaintiff-bank should be dismissed with costs throughout.

ORDER BY COURT

In accordance with the majority Judgment, Civil Appeal 474 of 1962 is allowed and Civil Appeal 475 of 1962 is dismissed, and the plaintiff's suit is decreed with costs throughout.

(1) A.I.R. 1947 Bom. 169.
(2) [1922] I.A.C. 1.