

decided except that the present action was the remedy to which the plaintiff should resort." It is true that the question referred to the Full Bench in *Denobundhoo's Case* (1), and answered in the affirmative by the majority of the Judges, was framed in such a way as to lay down the proposition that a title to property not set up in a former *plaint* cannot under any circumstances be relied on in a subsequent suit to recover the same property. But the grounds of the decision, and the authorities quoted in support thereof, did not cover such a wide proposition, nor has such a strict interpretation of the law been approved of by the High Courts in this country.

Confining ourselves, then, to the 5th and 6th issues framed by the Subordinate Judge, which relate to the agreement of 1874, it is seen that the Subordinate Judge held that the arbitration award (*i.e.*, the agreement of 1874) was proved and valid, and that under it plaintiffs were entitled to their half share in the ancestral estate according to their position in the family. Evidently that was the intention of the agreement, should the agreement itself be binding on defendants 1—3, who were the only defendants who pleaded to the present claim.

The learned counsel for appellants did not attempt to argue that defendants 1—3 were not bound by the agreement of 1874, but contented himself with arguing generally that the present suit was barred by the previous suit. This contention has been shown to be not good; therefore the decree of the Subordinate Judge must be confirmed with costs.

*Decree confirmed.*

14 B. 57 = Chitty's S.C.C.R. 235.

[57] ORIGINAL CIVIL.

*Before Sir Charles Sargent, Kt., Chief Justice, and  
Mr. Justice Bayley.*

THE GREAT INDIAN PENINSULA RAILWAY COMPANY (*Plaintiffs*) v.  
HANMANDAS RAMKISON AND VIRJI HANSRAJ (*Defendants*)\*

[27th September, 1889.]

*Stoppage in transitu—Railway receipts—Effect of endorsing railway receipts—Title of indorsee of such receipts—Contract Act (IX of 1872), s. 103.*

The firm of China Devakaran carried on business in Bombay. A, the agent of the firm, bought from the first defendant, Hanmandas, at Bijapur, a quantity of wheat which at A's request was on the 28th and 29th May 1889, consigned by Hanmandas to the firm of China Devakaran at Bombay, on the understanding that the consignees were not to have the wheat until they had paid the *hundis* drawn in respect of it. The wheat was sent to Bombay on the 28th and 29th May, 1889, in three consignments, *viz.*, of 56, 104 and 181 bags respectively, and two *hundis* for Rs. 1,000 and Rs. 1,500 respectively payable at sight were drawn by A in Bijapur on the firm of China Devakaran in Bombay, and were given by him to the first defendant, Hanmandas, who thereupon handed to A the three railways receipts for the three consignments which had been despatched by the first defendant's agent at Bijapur railway station. The *hundis* were sent by the first defendant Hanmandas to his agent in Bombay for collection. The *hundi* for Rs. 1,000 arrived in Bombay on the 31st May, and was paid on the 1st June.

\* Small Cause Court Suit No.  $\frac{186}{14315}$  of 1889.

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The *hundi* for Rs. 1,500 arrived in Bombay on the 1st June, and was dishonoured on the 2nd June by the firm of China Devakaran, which afterwards stopped payment and became insolvent. The railway receipts given by the first defendant to A at Bijapur were in the following form :—

“Received from Hanmandas Ramkison the undermentioned goods, 181 bags of wheat.

“This receipt must be produced by the consignee, or the goods will not be delivered ; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment, or this railway receipt, is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face hereof, each order must bear a stamp.

“I (we) hereby certify that I (we) am (are) aware that the Southern Mahratta Railway has received the abovementioned goods subject to the conditions noted on the back, and that I (we) agree that it should receive them subject to these conditions.

“(Sender's signature) \_\_\_\_\_”

On obtaining these railway receipts, A sent them at once to the firm of China Devakaran in Bombay, and on the 31st May, 1889, they were endorsed by China [58] Kanji, a member of the firm, to the second defendant, Virji Hansraj to secure an advance of Rs. 2,000. The endorsement was as follows :—“Signature of China Devakaran. I have sold the delivery, as *per* this receipt, to Virji Hansraj. The handwriting of China Kanji.” Two consignments (*viz.*, 56 bags and 104 bags) and part of the third (*viz.*, 73 bags out of 181) had arrived in Bombay by the 2nd June, in bags bearing China Devakaran's marks. On that day the second defendant, Virji Hansraj, applied to the Railway Company for delivery, and paid full freight on all three consignments. He was allowed to remove the 56 bags and the 104 bags. After having done this he loaded his carts with the 73 bags, which had then arrived, out of the consignment of 181 bags without any objection on the part of the Railway Company, but he was not allowed to take them out of the station yard, and the 73 bags were consequently unloaded, and together with the balance of the consignment of 181 bags, which subsequently arrived, were retained by the Railway Company. The reason given by the Company's servants for the detention was the receipt of a telegram sent by the first defendant, Hanmandas, from Bijapur, on hearing of the dishonour of the *hundi* for Rs. 1,500, directing that the 181 bags should not be delivered. At the trial the Judge found that this telegram had probably been received before all of the 73 bags had been loaded into the carts.

*Held*—

(1) That there was no such delivery of the 181 bags to China Devakaran's agent at Bijapur, as to deprive the first defendant Hanmandas of his right of stoppage *in transitu*.

(2) That there was such a delivery of the 73 bags at the railway station to the second defendant, Virji Hansraj, as to determine the first defendant's right of stoppage *in transitu*. It was to be assumed that the first defendant's telegram did not arrive in time to prevent the bags being placed, with the consent of the Railway Company, on the second defendant's carts, for it was not until the carts had been loaded that the Company's servants interfered to prevent their leaving the station yard. Before that time the freight for the 73 bags had been paid by the second defendant, and the railway receipt had been given up to the Company duly signed by the second defendant's servant. Everything had been done on the part of the Company to divest themselves of their lien as carriers ; for the mere fact that the carts were still standing in the goods compound of the railway station after the bags had been placed on them could not affect the question, there being no suggestion that the matter as between the Company and the second defendant had not been completely settled.

(3) That the railway receipts were not instruments of title within the meaning of s. 103 of the Indian Contract Act (IX of 1872), and that by endorsing and handing them over the firm of China Devakaran did not assign them to the second defendant within the meaning of the said section.

[F., 14 Bom. L.R. 532 = 16 Ind. Cas. 61 ; R., 1 S.L.R. 1 ; 7 S.L.R. 163 = 24 Ind. Cas. 798 ; D., 3 Bom. L.R. 260 (266) ; 39 B. 255 = 15 Bom. L.R. 890 = 21 Ind. Cas. 343.]

CASE stated for the opinion of the Judges of the High Court by W. E. Hart, Chief Judge of the Court of Small Causes at Bombay.

[59] "1. This was an interpleader suit brought by the G. I. P. Railway Company to determine the question of title to 181 bags of wheat in their hands which the first defendant claimed to stop in transit as the unpaid vendor of the insolvent consignee, and of which the second defendant claimed delivery as the holder of the railway receipt of the Southern Mahratta Railway Company for the goods endorsed to him by the consignee to secure an advance made on them.

"2. These 181 bags formed one of three consignments of 56, 104 and 181 bags which were consigned by the first defendant at Bijapur on the 28th and 29th May, 1889, to the firm of China Devakaran in Bombay at the request of their agent in Bijapur, on the understanding that the consignees were not to have the wheat till they had paid the *hundis* drawn in respect of it.

"3. The *hundis* so drawn by China Devakaran's agent in Bijapur in respect of these consignments, were two in number, for Rs. 1,000 and 1,500 respectively, drawn on the firm of China Devakaran in Bombay and payable at sight, and were sent by the first defendant to his agent in Bombay for collection.

"4. The former of these two *hundis* arrived in Bombay on 31st May, and was paid on 1st June. The latter, which arrived here on the 1st June, was dishonoured on the 2nd by the firm of China Devakaran, who afterwards stopped business and filed a petition in insolvency.

"5. On receiving these two *hundis* from China Devakaran's agent at Bijapur, the first defendant handed to him the three receipts of the Southern Mahratta Railway Company for the three consignments of 56, 104 and 181 bags which had been despatched by the first defendant's forwarding agent at the Bijapur Railway Station.

"6. The form of receipt in use by the Southern Mahratta Railway Company is somewhat peculiar, and differs from that used by the other and older railway companies in Bombay, especially in the notification printed in English and Marathi at [60] the foot of it. I would, therefore, solicit particular attention to the railway receipt, Ex. B (original annexed), for the 181 (1).

(1) The railway receipt was in the following form:—

" SOUTHERN MAHRATTA RAILWAY.

" GOODS RECEIPT NOTE.

" Bijapore Station, dated \_\_\_\_\_

" Received from Hanmandas Ramkison the undermentioned goods:—

| Consignee.          | No. of Articles. | Description.   | Paid. |
|---------------------|------------------|----------------|-------|
| China Devakaran ... | 181              | Bags of wheat. |       |

" This receipt must be produced by the consignee, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment, or this railway receipt, is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face hereof, each order must bear a stamp.

" I (we) hereby certify that I (we) am (are) aware that the Southern Mahratta Railway has received the above-mentioned goods subject to the conditions noted on the back, and that I (we) agree that it should receive them subject to these conditions.

" (Sender's signature) \_\_\_\_\_

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" 7. The three railway receipts mentioned in paragraph 5 were immediately sent by their agent at Bijapur to the firm of China Devakaran in Bombay, and by China Kanji, a member of that firm, were endorsed to the second defendant to secure an advance of Rs. 2,000 on 31st May in the following form written across a one-anna receipt stamp:—

" 'Signature of China Devakaran. I have sold the delivery as per this receipt to Virji Hansraj. The handwriting of China Kanji.'

" 8. The consignments of 56 and 104 bags and 73 bags out of the consignment of 181 had all arrived in Bombay by 2nd June in bags bearing China Devakaran's marks, into which they had been packed by the first defendant in his warehouse at Bijapur, and some of which belonged to China Devakaran, while others had been purchased for them and debited to their account by the first defendant.

[61] " 9. The second defendant applied to the Railway Company by his servant for delivery on 2nd June, and paid the full freight on all the three consignments. After some delay, owing to a mistake of this servant in regard to the signature of the delivery order at the foot of the plaintiffs' advice notes accompanying their bills for the freight, he was allowed to remove the 56 bags and the 104 bags in carts hired by him on the second defendant's account of the carting agent at the Wari Bandar Goods Station, who is not a servant of the plaintiffs.

" 10. After the 56 bags and the 104 bags had been so removed, the second defendant's servant without objection on the part of the plaintiffs in like manner loaded into the carting agent's carts, with a view to their removal, the 73 bags which had then arrived out of the consignment of 181 bags. But, on his proceeding to sign a receipt for the delivery of these goods, the plaintiffs' servants refused to allow him to do so, and without such receipt they would not issue the gate pass necessary to allow the carts to leave the station-yard with the 73 bags. These were accordingly unloaded, and together with the balance of the consignment of 181 bags, which subsequently arrived, were retained by the plaintiffs.

" 11. The reason given for this refusal on the part of the plaintiffs' servants was the receipt of a telegram despatched by the first defendant from Bijapur (on being apprised of the failure of China Devakaran to pay the hundi for Rs. 1,500) on the same 2nd June to the Goods Traffic Inspector at Wari Bandar in the following terms:—'181 and 104 bags wheat marked 596 and 598 don't deliver to China Devakaran till further intimation.'

" 12. There was no proof of the exact time when this telegram was received by the Goods Traffic Inspector at Wari Bandar. I found, however, that he had certainly not received it before the 73 bags arrived at Wari Bandar, but had probably received it before they had been all loaded into the carts.

" 13. It is usual in Bombay among merchants engaged in the grain trade for railway receipts of the Southern Mahratta Railway Company to be endorsed by one holder to another [62] frequently many times, and each time upon a one-anna receipt stamp. These receipts so endorsed are considered as representing the goods, and entitling the last endorsee the delivery to such an extent that many merchants in Bombay advance money on them to the amount of several lakhs of rupees yearly.

" 14. On these facts I held, in regard to the first defendant's right of stoppage in transit under s. 99 of the Indian Contract Act IX of 1872,

"First, (on the authority of *James v. Griffin* (1) and Benjamin on Sale (4th ed.), p. 853) that there had not been such a delivery of possession of the 181 bags to China Devakaran's agent at Bijapur as disentitled the first defendant to exercise his right of stoppage in transit; and,

"Secondly, that there had not been such a delivery of possession to the second defendant's servants at Wari Bandar as determined the first defendant's right of stoppage in transit in regard to the 73 bags. This ruling was based—having regard to the axiom enunciated in *Bethell v. Clark* (2) that the Courts should favour the right of stoppage in transit (see also Benjamin on Sale, 4th ed., p. 843)—partly on the determination by the first defendant's telegram of the plaintiff's authority to deliver to China Devakaran, partly on the authority of the judgment of Scott, J., in the unreported case of *Haji Sher Mahomed v. The B. B. and C.I. Railway Company*, and partly on the fact of the agreement between the first defendant and China Devakaran's agent at Bijapur that China Devakaran were not to have the goods till they had paid the *hundi*, as to which see remarks of Jessel, M. R., in *Merchant Banking Company of London v. Phoenix Bessemer Steel Company* (3).

"15. I, therefore, considered the first defendant, as the unpaid vendor of the insolvent firm of China Devakaran, on 2nd June, 1889, had the right, under s. 99 of the Indian Contract Act, to stop in transit the whole consignment of 181 bags, as well as those then loaded into the carts at Wari Bandar Station as those which had not then arrived.

"16. But this right of the first defendant I held to be subject to the right of the second defendant under s. 103 of [63] the Indian Contract Act, as I thought, having regard to *Merchant Banking Company of London v. Phoenix Bessemer Steel Company* (3) and the remarks at p. 785 and 786 of the 4th edition of Benjamin on Sale, that a document in the form of the annexed receipt of the Southern Mahratta Railway Company with its endorsement, which the evidence shows to be so treated in the local usage of the grain trade as I have pointed out in paragraph 13, was an 'instrument of title' within the meaning of s. 103 of the Indian Contract Act, and that by its endorsement and delivery to the second defendant under the circumstances herein set forth it had been sufficiently 'assigned' within the meaning of that section.

"17. It appeared that, after giving credit for the net proceeds realized by the sale of the 56 and 104 bags, there still remained a balance due to the second defendant in respect of his advance of Rs. 2,000 as a charge on the remaining consignment of 181 bags. I, therefore, held that the first defendant could, as against the second defendant, exercise his right of stoppage in transit as regards these bags only on payment of that balance.

"18. Against this decision the first defendant desires to have a case stated for the opinion of the High Court on the questions:

"(i) Whether the railway receipt of the Southern Mahratta Railway Company in the form annexed is, in the circumstances above set forth, an instrument of title within the meaning of s. 103 of the Indian Contract Act.

"(ii) Whether, by so endorsing and handing it over as aforesaid, the firm of China Devakaran assigned the said railway receipt to the second defendant within the meaning of the said section.

(1) 2 M. & W. 683.

(3) L. R. 5 Ch D. 205, (219).

(2) L. R. 20 Q. B. D. 615.

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"To these questions the second defendant desires to add—

"(iii) Whether the facts above set forth show such a delivery of the 181 bags to China Devakaran's agent at Bijapur as to deprive the first defendant of his right of stoppage in transit.

"(iv) Whether there was such a delivery of the 73 bags to the second defendant's servant at Wari Bandar as determined the right, if any, of the first defendant to stop the same in transit."

[64] *Lang*, for Hanmandas Ramkison.

*Inverarity*, for Virji Hansraj.

The following authorities were referred to upon the third and fourth questions of the case:—*Merchant Banking Company of London v. The Phoenix Bessemer Steel Company*(1); *Bethall v. Clark*(2); Benjamin on Sale pp. 762, 776, (4th ed.); Tudor's Mercantile Cases, pp. 438, 489 (ed. 1884); *Cowasji v. Thompson*(3). As to the first and second questions: Indian Contract Act IX of 1872, ss. 102, 103, 108; Stat. 5 and 6 Vic., c. 39, s. 4, (Factors' Act); Stat. 40 and 41 Vic., c. 39, Factors' Act of 1877; Benjamin on Sale, pp. 793, 794, 805. (4th ed.); *Cowasji v. Thompson* (3); *Gunn v. Blocklow, Vaughan & Co.* (4); *Hathesing v. Laing; Laing v. Zeden*(5); *Zwinger v. Samuda*(6); *Noble v. Kenmoway*(7); Tudor's Mercantile Cases, (ed. 1884), p. 434; suit No. 134 of 1884 (unreported); suit No. 287 of 1886 (unreported); Suit No. 484 of 1888 (unreported).

#### JUDGMENT.

SARGENT, C.J.—The facts out of which this reference by the Chief Judge of the Small Cause Court arises are fully set out in the case stated by the Court. With respect to the third question, whether there was such a delivery to China Devakaran's agent at Bijapur as to deprive the first defendant of his right of stoppage, we agree with the Chief Judge that it must be answered in the negative. There was no actual delivery to the agent of that firm at Bijapur, and the wheat, therefore, remained *in transitu* in the hands of the Railway Company until delivery to the consignee: see *James v. Griffin* (8) where Parke, B., says: "The vendor has a right if unpaid, and if the vendee be insolvent, to retake the goods before they are actually delivered to the vendee, or some one whom he means to be his agent, to take possession and keep the goods for him." It is clear, therefore that, whether the first defendant be regarded as a factor and *quasi* vendor, he was entitled to stop the 73 bags before they [65] were delivered by the Company in Bombay (*Feise v. Wray* (9) and *Ireland v. Livningston* (10)).

With respect to the fourth question, we think there was such a delivery of the 73 bags at the Wari Bandar to the second defendant's servant as to determine the first defendant's right of stoppage *in transitu*. Section 105 of the Contract Act provides that the notice by the vendor to the carrier to stop the goods must be given to the principal in possession at such time and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to his servant

(1) L.R. 5 Ch. D. 205 (219).

(3) 3 M.L.A. 422.

(5) L.R. 17 Eq. 92.

(7) 2 Douglas, 510.

(9) 3 East, 93.

(2) L.R. 20 Q.B.D., 615 (617).

(4) L.R. 10 Ch. Ap. 491.

(6) 7 Taunt 265 (270).

(8) 2 M. & W. 623 (632).

(10) L.R. 5 H. L. 395.

in time to prevent a delivery to the buyer. It is left in doubt by the case whether the goods traffic inspector received the first defendant's telegram before all the 73 bags had been placed on the carts; but in any case we must assume that it did not arrive in time to prevent the bags being placed with the consent of the railway officials on the second defendant's carts hired for the purpose; for it is plain that it was not till the loading of the carts had been completed that the Company's servants interfered to prevent the second defendant's servant from removing the carts from the railway compound. Before that the freight for these 73 bags had been paid by the second defendant's servant to the Company, and the railway receipt had also been given up to the Company, duly signed by the second defendant's servant. Mr. Justice Bayley says in *Crawshay v. Eades* (1): "In order to divest the consignor's right to stop *in transitu* there ought to be such a delivery to the consignee, as to divest the carrier's lien." Here everything had been done on the part of the Company to divest themselves of their lien, for the mere fact that the second defendant's carts were still standing in the goods' compound after the bags had been placed on them cannot, in our opinion, affect the question, there being no suggestion that the matter as between the Company and the second defendant had not been completely settled. It is true the 73 bags formed a part of the consignment of 181 bags, but the rest of the 181 bags had not arrived,—a circumstance which distinguishes the case from *Crawshay v. Eades* (1) where [66] the Court held that the delivery was in course of proceeding, and that there was, therefore, no such delivery of a portion of the goods as to deprive the vendor of his lien even as to them. After what had occurred, the Company could no more refuse, in the interest of the first defendant, to let the carts leave their premises than the carrier in *Bird v. Brown* (2) had the right to refuse to deliver the goods to the purchaser. In that case the Court says: "The goods had then arrived at Liverpool, and were ready to be delivered to the parties entitled. Bird, on behalf of the assignees of the consignees, demanded the goods, and tendered the amount due for the freight. Assuming that there had been no previous stoppage *in transitu* the masters of the several ships were thereupon bound to deliver up the goods to Bird ...and they could not, by their wrongful detainer of them and delivering them over to other parties, prolong the *transitus*, and so extend the period during which stoppage might be made. The *transitus* was at an end when the goods had reached the port of destination, and when the consignees, having demanded the goods and tendered the amount of the freight, would have taken them into their possession but for a wrongful delivery of them to other parties."

It remains to consider the first and second questions as to the effect of the endorsement and delivery by the firm of China Devakaran of the railway receipts to the second defendant as regards the remainder of the 181 bags. In *Trikam Panachand v. Bombay, Baroda and Central India Railway Company* (3) Mr. Justice Farran held that the railway receipts in that case, which are in the same form as those which are issued by the G. I. P. Railway Company, were not documents of title, being in form simple receipts with a notification that "the Company reserve the right of delivering the goods without the production of the receipt," and, therefore, not distinguishable from wharfingers' certificates and mates' receipts, which were held not to be documents of title in *Gunn v. Bolcklow Vaughan & Co.* (4)

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(1) 1 B. & C. 181 (184).

(2) 4 Ex. 786 (797).

(3) Unreported.

(4) L.R. 10 Ch. Ap. 491.

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and *Hathesing v. Laing*; *Laing v. Zeden* (1). However, in *Chunilat Jodraj* [87] v. *The G. I. P. Railway Company* (2) the same learned Judge had under consideration a railway document, signed by the Rajputana-Malwa Railway officials, in the same form as that of the present goods receipt-note, and which is, we are informed, the one in use on all the State railways, and is somewhat differently worded from the goods receipt in the former cases. It runs thus:—

‘Received from the consignor the undermentioned goods for conveyance to C. Bandar Station by goods train; consignee—China Devakaran; description—181 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment of this railway receipt is sold one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one anna stamp. If more than one order appear on the face hereof, each order must bear a stamp. For conditions of contract see back.—Signature (———).’

The learned Judge expressed the inclination of his opinion that such goods receipts were instruments of title within the contemplation of s. 103 of the Contract Act; but added that he did not intend to decide the question whether he should have held them to be such without some evidence that they were so treated by merchants and the trade, as he had come to a conclusion on another part of the case which made it unnecessary for him to do so.

There can be no doubt, we think, that such a document, if endorsed, would not have been treated in the English Courts as a document or instrument of title to exclude the vendor's right of stoppage *in transitu* when the Contract Act came into force in September, 1872. The decision of the Exchequer Court in 1846 in *Farina v. Home* (3) was then in force, by which a delivery warrant signed by a wharfinger, whereby the goods were made deliverable to the plaintiff, “or his assignee by endorsement”, was held to be “no more than a token of authority [68] to receive possession”—(Blackburn on Sales, p. 297,) or, as Mr. Baron Parkes states it, “only an engagement by the wharfinger to deliver to the consignee, or any one he may appoint, and that until the wharfinger has attorned to the assignee and agreed with him to hold for him there was no constructive delivery to the assignee.” That decision was never overruled, and authoritatively determined the legal effect of such documents—at any rate until the passing of the Factors' Act of 1877, (40 and 41 Vic., c. 39).

The language of the goods receipt in question scarcely affords so strong an indication of an authority to the assignee by endorsement to receive the goods as that of the document before the Court of Exchequer, and the document, therefore, is in no higher degree “a symbol of the goods,” so as to exclude the right of stoppage than the wharfinger's certificate in the above case. It may be that both of them would have that character by virtue of s. 5 of the English Factors' Act of 1877, which, as pointed out in Benjamin on Sale, (4th ed.) p. 708, assimilates all documents of title as defined by s. 4 of the previous Factors' Act, 5 and 6 Vic., c. 39, to bills of lading for the purposes of defeating the right of stoppage. But that Act has not been extended to India. In *Trikam Panachand v. Bombay, Baroda and Central India Railway Company* (4),

(1) L. R. 17 Eq. 92.  
(3) 16 M. & W. 119.

(2) Unreported.  
(4) Suit 287 of 1886 (see 9 B. 244).

Mr. Justice Farran seems to have thought that, in the absence of any definition of a document of title in the Contract Act itself, s. 4 of Act XX of 1844 (by which the English Factors' Act, 5 and 6 Vic., c. 39, was extended to India) might be properly accepted as a guide to the meaning of the expressions "documents showing title to goods," or "instruments of title to goods," in ss. 108 and 103 of the Contract Act; but it appears to us that, however much that definition might assist in construing the expression "document showing title" in s. 108 of the Contract Act, which was virtually substituted for the Factors' Act and is in *pari materia*, it cannot be properly used in construing the expression "instrument of title" in s. 103, which relates to an entirely different subject-matter from the Factors' Act, and that it is, therefore, more reasonable to presume [69] that, in a matter of such general commercial importance, the framers of the Contract Act intended to leave the term "instrument of title" in s. 103 to be construed with reference to the decisions then in force in the English Courts. The case of *Merchant Banking Company of London v. Phoenix Bessemer Steel Company* (1), which was decided before that Act came into force, was referred to as bearing on the question. There doubtless the Master of the Rolls, Sir G. Jessel, decided against the right of stoppage, but it was on special grounds (see p. 217,—first, on account of the general custom of the iron trade, and, secondly, because he thought he ought to impute to the vendors special notice and special knowledge that the warrant was intended to be used for the purpose of raising money on it; and having that knowledge they issued the document in that particular form. In conclusion he adds: The vendors "purposely issued a second document of title with a view of its being used for a special purpose." In the present case no custom has been proved, and there are no special circumstances from which the intention could be inferred that the goods, receipt should be used for pledging the bags.

We must, therefore, answer the first and second questions in the negative. If this be thought by the commercial community to be an unsatisfactory state of the law, it will be necessary, in our opinion, that the desired change should be made by the Legislature.

Costs of this reference to be costs in the case.

Attorney for first defendant:—Mr. D. S. Garud.

Attorneys for second defendant:—Messrs. Chalk, Walker and Smetham.

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