

(1913) 11 MAD CK 0026
In the Madras High Court

C. Fakeerappa and Others

APPELLANT

Vs

M. Thippanna and Others

RESPONDENT

Date of Decision : 10-11-1913

Acts Referred:

Citation : 30 Ind. Cas. 950

Hon'ble Judges : Spencer, J;Sadasiva Aiyar, J

Bench : Division Bench

Judgement

1. We think that the learned District Judge's finding, that the first respondent obtained the railway receipt as security for an advance bona fide made by the first respondent on the 7th December 1908, is fully supported by the evidence, especially the accounts of the insolvent firm and of the first respondent.

2. Amarchand and Co. v. Ramdas 21 Ind. Cas. 343 : 15 Bom. L.R. 890 decides that a railway receipt is a mercantile document of title to goods; and it is proved that by the custom of the trade in Bellary lawful possession as pledgee of a railway receipt entitles the holder of that receipt to get possession of the goods from the carrier and to retain the goods as security for the moneys advanced on pledge of the railway receipt. This custom really creates a charge at once on the goods themselves in the possession of the carrier and that charge ripens into a pledge of the goods themselves when the holder of the railway receipt gets possession of the goods in due course. As regards Section 16, Clause (3), of the Provincial Insolvency Act, as soon as the pledge of the railway receipt was made to the first respondent, the insolvent's right to get delivery from the Railway Company ceased (see Section 137 of Act IV of 1882); the goods were no longer in the eye of the law in "the possession, order or disposition of the insolvent" within the meaning of Clause (3) of Section 16 as against the right of the first respondent to get possession of the goods and to sell the same for and reimbursing the advance made by him. Further, Section 16, Clause (3), is directed against "the true owner" who negligently allows the insolvent to retain goods in the insolvent's possession, order or disposition as the reputed owner. In

the present case, the first respondent is admittedly not the true owner of the same, and he did not allow the insolvent to retain any goods as reputed owner thereof.

3. The appeal is dismissed with costs. As the first respondent has incurred unnecessary expenses in printing, the whole of the entries found in pages 22 to 42 of the documents instead of only a few of the entries in page 27, the first respondent will himself bear the costs incurred in printing pages 22 to 26 and 28 to 42.

4. For similar reasons the Civil Miscellaneous Appeal No. 234 of 1911 is dismissed with costs.