
(1928) 08 CAL CK 0031

In the Calcutta High Court

Case No : Original Civil Suit No. 2626 of 1927

Haji Rahimbux Ashan Karim

APPELLANT

Vs

Central Bank of India Ltd.

RESPONDENT

Date of Decision : 10-08-1928

Acts Referred:

Citation : (1928) 08 CAL CK 0031

Final Decision : Dismissed

Judgement

Lort-Williams, J.—Substantially the facts in this case are undisputed.

2. The Plaintiffs are a mercantile firm dealing in cutlery and other goods. The firm of Kerr Tarruck & Co. were an importing firm and for a long time prior to 1927 had been used to import such goods in accordance with orders given by the Plaintiffs and sell to them under various agreements. It was not part of the business of Kerr Tarruck & Co. to act as warehousemen, nor did they hold themselves out as such. On the 15th January, 1927, the Plaintiffs and Kerr Tarruck & Co. made a type-written agreement in the nature of giving Plaintiffs a monopoly in Calcutta for one year. This agreement needed the assent of the exporters in Germany, and pending the arrival of that, on the 16th February, the Plaintiffs accepted drafts for goods covered by the agreement of the 15th January, and a verbal agreement was made in case the exporters' consent was withheld, by which the Plaintiffs agreed to take the goods already imported and to be imported under the monopoly agreement at 7% per cent, less than the invoice price and make payment therefor within five months from the date of a fresh contract which was to be entered into. Kerr Tarruck & Co. were to draw hundies on the Plaintiffs and the particulars of the goods were to be set out on the hundies. Delivery orders were to be issued, but the Plaintiffs were to take delivery as they required the goods; meanwhile the goods were to remain in Kerr Tarruck & Co.'s godowns free of rent. Delivery orders were issued sometimes at the time when the hundies relating to the goods referred to in such delivery orders were accepted, and sometimes earlier and sometimes later. The exporters

refused their consent and thereupon on the 20th July a list of the goods covered by the agreement, which goods had by that time arrived, was made out and on the 21st July, a contract was made by which the Plaintiffs agreed to purchase from Kerr Tarruck & Co. these goods which consisted of 319 cases of cutlery. This agreement is partly printed and partly typewritten. The latter portion is to the effect that the cases were shipped as per an attached statement, dated the 20th July, 1927. Payment were to be made within five months from date and deliveries were to be taken within that time. The printed portion is inappropriate to some extent as it is intended obviously to apply to a contract for goods to be imported, whereas on the 21st July these were ready goods having already arrived in Calcutta. Payments were to be made by hundies to be drawn by Kerr Tarruck & Co., and accepted by the Plaintiffs, and these in fact were drawn payable at various dates within the five months mentioned; and delivery orders were issued to the Plaintiffs from time to time; meanwhile pending delivery the goods remained in Kerr Tarruck & Co.'s godowns.

3. So far as they are material, Clauses 4 and 5 of the contract are as follows:

(4) We engage to accept on presentation and to pay on or before maturity the draft drawn upon us for the goods shipped in execution of this order.

(5) Should we fail to pay for the goods in accordance with para. 4 of this contract, you are hereby authorized to sell the goods on our account without giving us any notice, by private sale or public auction, and we agree to pay you any loss or deficiency arising on such sale, together with all costs, charges and expenses with usual brokerage and interest at the rate of 12 per cent, per annum. We further agree to pay you all local charges and expenses together with 2 1/2 per cent, commission.

4. The effect of this contract, therefore, was that there was a sale of ready ascertained goods upon credit, and both the property in the goods and the right to possession passed to the Plaintiffs at the date of the contract.

5. The present action affects only 140 of the cases, of which 75 cases have been delivered to the Plaintiffs and 65 remain undelivered which are of the value of Rs. 32,500. Nine hundies were accepted and nine delivery orders were issued. These covered the whole of the goods in suit. Two of the hundies were paid by the Plaintiffs. One was unpaid and remained in the hands of Kerr Tarruck & Co., and six were negotiated by them and were dishonoured by Plaintiffs on presentation. Full particulars of all these matters are set out in Exhibit D. No demand for delivery had been refused prior to the dishonour of the hundies. Plaintiffs made a demand from Defendants on December 1st, but at that time the six hundies had been dishonoured.

6. On the 12th October, 1927, Kerr Tarruck & Co. were adjudicated insolvent and towards the end of November, Plaintiffs discovered that they had pledged these goods to the Defendants on the 24th and 25th August, 1927.

7. The Plaintiffs' claim against the Defendants is for delivery of goods in suit or Rs. 32,500 their value and interest at 6 per cent, until realisation.

8. The following are the issues raised:

(1) Was there an agreement for the purchase and sale of the goods in suit as alleged in para. 3 of the plaint?

(2) Have the Plaintiffs paid for the goods and the duty and charges in respect thereof ?

(3) If not, were the Plaintiffs entitled to demand the goods from the Defendant bank ?

(4) And was the refusal of the bank to deliver wrongful ?

(5) Was there a valid pledge as alleged in para. 5 of the written statement ?

(6) Are the Plaintiffs entitled to maintain this suit in respect of the goods not paid for ?

(7) What damages, if any, are the Plaintiffs entitled to.

9. The main issue to be decided is whether there was a valid pledge and whether the Defendants can avail themselves of the provisions of Section 178 or 179 of the Indian Contract Act.

10. At first the goods lay in godowns rented by Kerr Tarruck & Co., in premises belonging to the Bengal Bonded Warehouse Association, the contents of which godowns were pledged by Kerr Tarruck & Co. to the Imperial Bank, who had a sort of floating charge over all goods of Kerr Tarruck & Co., lying in their godowns at any particular time. When Kerr Tarruck & Co. desired to re-pledge them to the Defendants, they removed the goods, then numbering 95 cases, from the rented godowns to godowns in the same premises controlled by the Bengal Bonded Warehouse Association, who issued warehouse certificates for them and these were endorsed in favour of and handed to the Defendants as security.

11. Subsequently 30 out of the 95 cases were delivered to the Plaintiffs at their request and upon delivery orders previously issued.

12. The fact that Mr. B.N. Sircar, the senior partner of Kerr Tarruck & Co., who applied to the Defendants for the loan and offered a pledge of the goods as security, was also a member of the local advisory committee appointed under Article 117 of the articles of association of the Defendant bank, to assist their agent in deciding whether to grant loans, does not, in my opinion, fix the Defendants with constructive or imputed notice of Kerr Tarruck & Co.'s fraud. It would not be within the region of common sense to presume that Mr. B.N. Sircar would communicate the facts establishing his own guilt to his colleagues on the advisory committee or to the Defendants. In *re Hampshire Land Company* [1896] 2 Ch. 743., *Houghton and Company v. Nothard, Lowe and Wills, Limited* [1928] A.C. 1. Nevertheless I consider the episode unfortunate and the practice

inadvisable. To allow members of the advisory committee to recommend loans to be made to one another, is to create a conflict between interest and duty, which might easily give rise to a suspicion of malafides.

13. The main issue which I have to decide is whether there was a valid pledge, and this will depend upon whether the transaction comes within the provisions of Section 178 of the Indian Contract Act. That section is as follows:

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 pawner is acting improperly: provided also that such goods or documents have not been obtained from their lawful owners or from any person in lawful custody of them, by means of an offence or fraud.

14. And if the ordinary or popular meaning is given to the word possession," it is clear that Kerr Tarruck & Co., who were persons who had sold goods and continued in possession of them and who held documents of title to them, fulfilled the requirements of the section.

15. It is, however, argued on behalf of the Plaintiffs that the word must be construed in a restricted and technical sense, as has been decided in a line of cases beginning as far back as 1873, and that Kerr Tarruck & Co. were not in possession of the goods, within such restricted meaning, at the time of the pledge. It becomes necessary, therefore, to examine these decisions. *Greenwood v. Holquette* (1873) 12 Beng. L.R. 42. was decided in 1873, shortly after the Act came into operation. It was a case referred for the opinion of the High Court from the Calcutta Small Cause Court, and, therefore, not in the nature of an appeal, and it concerned the sale of a piano let out on a hire-purchase agreement. It was a case, therefore, u/s 108 of the Act, which so far as is material to the present discussion, is as follows:

No seller can give to the buyer of goods a better title to those goods than he has himself, except in the following cases:

Exception 1.-When any person is, by the consent of the owner, 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 other documents showing title to goods, he may transfer the ownership of the goods of which he is so in possession, or to which such documents relate, to any other person, and give such person a good title thereto, notwithstanding any instructions of the owner to the contrary: provided that the buyer acts in good faith, and under circumstances which are not such as to raise a reasonable presumption that the person in possession of "the goods or documents has no right to sell the "goods.

16. The case was not argued by counsel and the decision was probably one of

the first under the new Act. Couch C.J. held that:

In construing this Act, which is to be the law of contract for India, we must not adopt as a rule of "construction, that it was intended to make the contract law of India the same as the law of England. "Indeed, there are reasons for thinking that the "legislature intended that in some respects there "should be a different law for India; and therefore "we cannot refer to any English case as a guide and that the words "notwithstanding any instructions of the owner to the contrary" indicated an unqualified possession and not restricted otherwise than by the owner giving instructions to the person who has it, such for example as that of "a factor or agent where the owner of the goods "although he has parted with possession may give "instructions to the person in possession what to do "with the goods, Which is the kind of possession that an owner has, and that the section did not apply to a person who has only a qualified possession such as a hirer of goods or where the possession is for a specified purpose, because in such cases the owner has no right to give instructions.

17. I agree respectfully with the method of construction laid down by the learned Judge. We must look at the words of the section itself and of the Act of which it forms part, and apply ordinary and unrestricted meanings to them, unless it is made clear in the section or in the Act that extraordinary or restricted meanings are intended. The word "possession" has an ordinary and natural meaning, and also a restricted and technical meaning. It is a word of ambiguous meaning and its legal senses, meaning thereby its senses in English law, do not coincide with the popular sense. "Possession is said two waies, either actual "possession or possession in Law." (*Termes de la Ley*). It may mean physical control, sometimes called *de facto* possession or detention or it may mean legal possession, which may exist with or without *de facto* possession and with or without a rightful origin. It may also mean the right to possession, which may amount to ownership, or may be of a temporary or special character. In my opinion, therefore, when construing an Indian Act, words should be given their widest possible meaning, consistent with the context, unless there is something in the Act itself to indicate that they are intended to be used in the artificial and technical sense which they have acquired in English, law, or in any other restricted sense.

18. But I disagree, as respectfully, with the conclusion which the learned Judge has drawn, that the words to which he referred indicate that "possession" must be restricted to the kind of possession which a factor or agent has. All that they indicate is that such possession is included, not that all other kinds of possession are excluded. That is to say, they indicate that the provisions of the Factors Acts (XIII of 1840 and XX of 1844) are included in Sections 108 and 178, not that these sections are co-extensive only with those Acts, which referred specifically only to factors and agents entrusted with goods or documents of title to goods. See *Ramdas Vithaldas Durbar v. Amerchand & Co.* ILR (1916) 40 Bom. 630; L.R. 43 IndAp 164. See also *Le Geyt v. Harvey* ILR (1884) 8 Bam. 501, 509., where

Sargent C.J. says:

The language of this proviso is, doubtless, very general, and the omission of the expressions "agent" and "entrusted with" used in the repealed "Factors Acts" doubtless gives the section a larger scope than those Acts possessed as construed by the Courts in England.

19. The learned Judge went on to say that it would be straining the expression "by consent of the owner" beyond its plain meaning if it were held applicable to cases where the possession was entirely beyond the control of the owner of the goods. However, whether I am right in this view or not, the present case comes u/s 178, which contains neither the words referred to nor the words by the consent of the owner." Moreover, the possession of a person under a hire-purchase agreement is quite different from that of a vendor of goods who remains in possession, so much so, that the latter has been brought specifically within similar provisions in both the English Factors Act, 1889 and the Sale of Goods Act, 1893, whereas the former has not. And lastly it is clear that the possession of Kerr Tarruck & Co. would pass the tests of both Couch C.J. and Sargent C.J., for the goods were not entirely or at all beyond the control of the Plaintiffs, who had every right to give instructions to Kerr Tarruck & Co. about them, and who could have asked for and obtained delivery at any time up to the date of the insolvency. In *Biddomoye Dabee Dabee v. Sittaram and Biddomoye Dabee Dabee v. Soobul Das Mullick* ILR (1878) Cal. 497., goods had been left in a house in charge of a servant during the owner's temporary absence, and he had pledged them. These cases therefore came u/s 178 and were stated for the opinion of the High Court by the Judge of the Calcutta Small Cause Court. No one appeared for the Defendants. Garth C.J. observed that Section 178 was intended to embody the Factors Act, 5 & 6 Vic. C. 39 and that it was never intended to alter the existing law, but to meet the case of an agent entrusted with goods. The learned Judge does not state his sources of information upon which this statement is based, and it was not necessary for his decision; as he points out, the distinction between possession and custody is referred to in the section. The servant never possessed the goods but had only the bare custody of them. The goods remained in the possession of the Plaintiff.

20. In my opinion this case is clearly distinguishable. No one would think of describing such goods as being in the servant's possession. The goods were kept in the mistress's house, and it would be as great a misnomer to say that they were in the servant's possession, as it would be to say that the house was in the servant's possession while his mistress was out shopping. Both goods and house remained in both the de facto and de jure possession of the mistress, who retained effective physical control over them. Neither the servant nor any one else had any right to prevent her from entering the house and taking the goods at any moment. Sir James Stephen in his *Digest of the Criminal Law*, 7th Ed., Article 401, says that a moveable thing is in the possession of the husband of any woman or the master of any servant who has the custody of it for him and

from whom he can take it at pleasure.

21. In *Shankar Murlidhar v. Mohanlal Jaduram* ILR (1887) 11 Bom. 704., a buffalo calf had been left to be taken care of and had been sold by the gratuitous bailee. West J. held that Section 108 does not extend to every detention of chattels with the owner's consent but has particular relation to persons allowed by the owners to have the indicia of property or possession under such circumstances as may naturally induce others to regard them as owners, and constituting some degree of negligence or defect of precaution imputable to the true owners. In this case also the learned Judge advanced no reasons and quoted no authority for putting this extensive gloss upon the plain words of the section. But he held on the authority of *Greenwood v. Holquette* (1873) 12 Beng. L.R. 42. that detention for a particular limited purpose, as he described the bailment of the buffalo, was not such a possession as is contemplated by the section. It should be noticed, however, that the possession in this case would have fulfilled both the requirements of instructions given by and being within the control of the owner, which Couch C.J. and Sargent C.J. had laid down as their reasons for excluding possession taken for a specific purpose. This only shows in what difficulties and desperate devices one becomes involved in trying to qualify the plain words of a section in such a way as to make it fit one's own preconceived notions of what the law ought to be, or what one thinks the legislators ought to have said, or intended to say. It is sufficient, however, to observe that this was a decision u/s 108 and the detention, whether it amounted to possession or only to bare custody, was altogether different from the possession with which we are concerned in the present case.

22. In *Seager v. Huhma Kessa* ILR (1900) 24 Bom. 458. , a wife who lived with her husband had pledged jewellery belonging to him. This again was a case stated by the Chief Judge of the Small Cause Court. Jenkins C.J. held that to come within Section 178 the pledgor must have juridical possession and not mere custody. The word "juridical" does not appear in Stroud's Judicial Dictionary, but the expression seems to be only our old friend "legal possession" in a more impressive form. In my opinion, the wife in this case never had possession, either de facto or de jure, any more than she could be said to have had possession of her husband's table silver during his daily absence from home. Possession, both in fact and law, was always in the husband, until the jewellery was removed from his possession by means of an offence such as is indicated in the second proviso to the section. The position of the wife was the same as that of the servant in *Biddomoye Dabee Dabee v. Sittaram* ILR (1878) Cal. 497.

23. In *Naganada Davay v. Bappu Chettiar* ILR (1903) Mad. 424., a jewel had been hired for four days and then pledged. Boddan J. held that "possession" meant the same thing in both sections in spite of the difference in wording, that "possession" in Section 178 was distinguished from "custody," and meant such possession as an owner has, and not a qualified possession, such as a hirer of

goods has; while Subrahmania Ayyar J. held that, though the hirer undoubtedly had legal possession, it was not the kind of possession contemplated by Section 178. The learned annotators of Indian Contract and Specific Relief Acts, 5th Edn., at page 638, are driven to admit that the hirer surely had possession and not bare custody, though they think it impossible to hold that the Act meant to authorise a pledge where the hiring was for only four days and they observe that the language of the Act seems incautiously wide. In my opinion, there is nothing to indicate whether its width is due to lack of caution or to intention on the part of those who drafted it and passed it. But the same annotators at page 523 say that the clauses corresponding to Section 108 in the Contract Bill drafted by the Law Commissioners provided in effect that a purchaser acting in good faith and in the absence of suspicious circumstances might acquire a good title from any person in possession of goods; in other words, that every place in India should be a market overt. The Select Committee to which the Bill was referred objected to this clause, the ground of objection being substantially that the provision would make British India an asylum for cattle stealers from the Native States. The clause, after a good deal of controversy, was ultimately moulded in its present form and in *Ramdas Vithaldas Durbar v. Amerchand & Co.* ILR (1916) 40 Bom. 630; L.R. 43 IndAp 164., their Lordships of the Judicial Committee said that the Act was an amending as well as a consolidating Act, and that they saw no improbability in the Indian Legislature having taken the lead in a legal reform, for which England had to wait for several years. This was said with reference to the inclusion of a railway receipt within the meaning of an "instrument of title" in Section 103, but it would apply equally to the validation of a sale pledge or other disposition made by a vendor of goods who continues in possession, for which reform England had to wait until the Factors Act of 1889. However that may be, in *Administrator-General of Bengal v. Premlal Mullick* ILR (1895) Calc. 788; L.R. 22 IndAp 107., their Lordships directed that proceedings of the Indian Legislature cannot be referred to as legitimate aids to the construction of the Act in which they result.

24. In *Nandlal Thakersey Vs. The Bank of Bombay*, , a muccadam entrusted with goods had pledged them, and Bachelor J., while admitting that the language of Section 178, is very wide and that the Judges in trying to define the exact extent of the section had not adopted the same canon in all cases, held that as the legislature had acquiesced in those restrictive interpretations, and the Judges were agreed at least that mere possession is not enough, the principle of stare decisis ought to be applied, and though he thought that the kind of possession intended was such as a factor has, he refused to attempt to lay down the exact limits of Section 178. He relied, inter alia, upon the so-called distinction, which other Judges had observed, drawn by the legislature between possession and mere custody. But it is not easy to discover the exact meanings of "lawful owner" and "lawful custody" in the section. "Unlawful custody" and still more "unlawful ownership" is difficult to envisage, and it seems that possession, whatever meaning is intended, may be obtained not only from the owner, but from any one

having mere custody of the goods, in the absence of offence or fraud.

25. In *Leon Saubolle v. K.V. Seyne & Bros.* (1918) 23 C.W.N. 352., which was another case of Hire-Purchase, Greaves J., while he was of opinion that such came within the provisions of Section 178 considered that he was bound by the decision in *Greenwood v. Holquette* (1873) 12 Beng. L.R. 42., though in *Abdid Hassan Khan v. Rangilal* (1902) Punj. Rec. (Judicial) 129., where there was no default in the payment of instalments, the Punjab Chief Court had held that the section applied. The learned annotators, above referred to, admit that the possession in this case was certainly "juridical," and say that the terms of the Act make it difficult to hold otherwise, whatever its framers may have intended. The same Court in *Framji v. McGregor* (1902) Punj. Rec. 107., held that Section 108 applied to a case where a vendor of certain horses was allowed by the vendor to remain in possession of them.

26. In *Profulla Kumar Bose v. Nabo Kishore Rai* (1919) 23 C.W. N. 907., Defendant No. 1 employed Defendant No. 2 to take delivery of a parcel of jute which Defendant No. 1, had despatched, consigned to himself. The railway receipt was made out in his own name as consignee, and without endorsing it he entrusted it to Defendant No. 2, for the purpose of obtaining delivery. Defendant No. 2 endorsed it in the name of Defendant No. 1, and pledged it to Plaintiffs who took delivery and on the security of the goods made a loan to Defendant No. 2. Defendant No. 2 was not an agent whose ordinary business it was to sell or pledge goods. The learned Judges, Richardson J. and Shamsul Huda J. referred to the "sweeping provisions" of Section 178, and said that apart from authority, and if the section were construed as it stands, it would at least be a possible view that the word "possession" is used in its ordinary and natural sense and that the draftsman or legislature intended to include all possession recognised as such by the law, and to leave it to the two provisos to limit the scope of the general rule enacted in the first clauses

and they held that as Defendant No. 2 had the indicia of possession which he had acquired under such circumstances, that the owner could give instructions to him as to their disposal, he fulfilled the test laid down in *Greenwood v. Holquette* (1873) 12 Beng. L.R. 42. and came within Section 178. The learned Judges would seem to have misunderstood the tests suggested in that, and the other cases already referred to. It is quite clear that whether what Defendant No. 2 had, was possession or mere custody, it was not possession such as a factor has, nor was it unqualified, nor such as an owner has. If anything, it was a qualified possession or possession given for a specific purpose, or perhaps only the mere custody of a servant.

27. In *Roopchand Jankidas v. The National Bank of India, Ltd.* ILR (1918) Cal. 342., certain share certificates and a blank deed of transfer were handed by the Bank to an employee for the purpose of getting the shares registered, and he sold them. Chaudhuri J. held that this was qualified possession given for a particular purpose, and according to the authorities, not within Section 108. But,

in my opinion, as the certificates were on the Bank's premises they were in the Bank's possession, both de facto and de jure, and when the employee removed them with the intention of defrauding his employers he brought himself within the second proviso.

28. In *Katta Ramasami Gupta v. Kamalammal* ILR (1921) Mad. 173., jewels were lent gratuitously and pledged by the borrower after having them a considerable time. It was held that the possession was qualified and for a specific purpose and, therefore, according to the authorities, outside of Section 108.

29. In considering the effect of these cases, I make, in the first place, the general observation that however much I may respect the reasoning and decisions of the learned Judges who tried them, none are binding upon this Court. Secondly, that a careful perusal of their judgments indicates how difficult they found the task of construing these sections, and what doubts they felt about the soundness of the conclusions to which they had come. Thirdly, that a large number of the decisions are upon Section 108, which is very differently worded to Section 178; and lastly that in not one of the cases was the position of a seller who remains in possession considered, and certainly not the position of an unpaid seller, as in the present case.

30. In *Bank of England v. Vagliano Brothers* [1891] A.C. 107., Lord Herschell in the House of Lords laid down in memorable words, the proper way to approach the construction of a statute which is intended to be a code of law. I think the proper course is in the first instance to examine the language of the statute and "ask what is its natural meaning, uninfluenced by any consideration derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered, to see if the words of the enactment will bear an interpretation in conformity with this view.

31. No difficulty is experienced in construing these sections if the natural meaning is given to the words. The difficulties arise when one begins to have regard to the previous law, or to technical and artificial meanings to which the words have been restricted by English lawyers.

32. No definition of the word "possession" is given in the Act itself, and I can find no clear and reliable indication in the context to show that the legislature intended any but the fullest and widest meaning to be given to it.

33. The word appears in the following sections:-Chapter VII: Sale of Goods, Sections 95, 97, 98, 99, 100, 104, 105 and 108, and Chapter IX: Bailment, Sections 148, 149, 178 and 180. I think it will lead to endless confusion if one meaning is to be placed on the word in Section 178, and a totally different one in Sections 95, 97, 98, 100, 104, 105 and 108.

34. According to the argument advanced by counsel on behalf of the Plaintiffs, the word should be replaced in Sections 95, 97 and 98 by "custody" or some

such expression, or at any rate that "a seller in possession "of goods sold" in Section 98 is not "a person who is "in possession of any goods" in Section 178, or a person who is "by the consent of the owner, in possession of any goods" in Section 108. I am unable to accept such a contention, and in my opinion, the Defendants in the present case were persons in possession of goods within the meaning of Section 178.

35. It is not perhaps strictly necessary for the purposes of this case to decide whether if they had sold, instead of pledged, the goods they would have come within Section 108; but, in my opinion, they would, and the word "possession" has the same meaning in both sections. Further, I consider that it is impossible, even if it were permissible or desirable, to limit or restrict the natural meaning of the word in these sections in any way which would be consistent with other sections of the Act, or could be based upon any clear, consistent and comprehensive principle. The extent of the sections should be limited only by giving to the word "possession" its fullest and widest meaning, both natural or ordinary and technical or artificial, and including both actual possession and possession in law, subject to the provisos therein contained. I agree with Mr. Sircar's argument on behalf of the Plaintiffs that Defendants cannot avail themselves of the warehouse certificates. These documents never belonged at any time to the Plaintiffs nor to any one except Kerr Tarruck & Co. In my opinion Section 178 contemplates documents which have a lawful owner other than the pledgor. This is shown by the second proviso. But I do not think that you can read into this section the words by the consent of the "owner" which occur in Section 108.

36. I have now to consider only the first proviso to Section 178, it being admitted that the second is not applicable to the facts of this case.

37. The Indian Penal Code, Section 52, defines good "faith" as follows:

Nothing is said to be done or believed in good "faith which is done or believed without care and "attention." and doubtless the standard required is such as is expected of a man of ordinary prudence. The "reasonable presumption referred to in the proviso may be regarded as explanatory of the words good "faith.

38. In approaching this question, it must be remembered that Kerr Tarruck & Co. were an old established firm of the highest commercial reputation, that the Defendants had had considerable dealings with them for many years, that the senior partner, Mr. B.N. Sircar, who negotiated this pledge, was a man of the highest repute, so much so, that he had been appointed by the Defendants to serve upon their advisory committee in Calcutta, and that not a breath of suspicion as to the financial stability of his firm had arisen at that time.

39. Their application for a loan, though passed by his colleagues on the advisory committee, all men of high commercial standing and business acumen, was referred by them to the head office for confirmation. They applied for a temporary loan of Rs. 50,000 for two months to be reduced as deliveries were

taken by buyers, but only Rs. 30,000 were ever taken up, and they already had a lien against piece-goods of Rs. 1,00,000 but had not availed themselves of it. Further, Defendants had previously lent money to Kerr Tarruck & Co., on pledge of goods and bonded warehouse receipts. It is suggested, however, that the Defendants were negligent because the Plaintiffs name appeared upon some of the invoices for these goods, and they omitted to make any enquiry to test the truth of Kerr Tarruck & Co.'s statement made in their letter of August 8th, 1927 that the goods belonged to them.

40. In the first place it is to be observed that the invoices were not submitted to Defendants as documents of title, but merely to show the value of goods upon the security of which the loan was to be advanced. The invoices were those of German firm of cutlery manufacturers at Solingen and were addressed to Kerr Tarruck & Co., who were the purchasers. Upon some of them (eight out of twenty) under the indent number the Plaintiffs' name appeared; in the others this space was blank, and they bore dates from the 19th November, 1926 to the 14th April, 1927. If the indent name had been observed by the Defendants, and if they had deduced therefrom that Plaintiffs had an interest in the goods, and had made enquiry of Mr. Sircar, it is hardly likely that he would have been unable to give a plausible explanation. Doubtless large quantities of goods are imported by importing firms such as Kerr Tarruck & Co., under indents which for one reason or another are not taken up by the firms ordering them, and it can hardly be suggested that the Defendants ought to have communicated with Kerr Tarruck & Co. Moreover, it is very unlikely that Defendants' attention would be drawn to the indent name at all, as they had no reason whatever for doubting the integrity of Mr. Sircar or his firm.

41. Further, it is urged that as the Defendants negotiated some of the hundies accepted by the Plaintiffs on one at least of which the cutlery case numbers appeared they ought to have connected this circumstance with the invoices and their suspicion ought to have been aroused. These transactions were in respect of what are known as clean bills, as opposed to bills supported by documents. In my opinion, such care and particularity is beyond any standard which ought to be expected from business men of ordinary prudence and I find, therefore, that Defendants acted in good faith within the meaning of the proviso.

42. These conclusions to which I have come really dispose of the case and make it unnecessary for me to consider the other points which have been raised. As, however, they have been argued, and in view of the fact that my conclusions may be upset upon appeal, I will deal with them shortly.

43. Assuming that Kerr Tarruck & Co. do not come within the protection given by Section 178, then it is claimed that Defendants can avail themselves of the provisions of Section 179, which are as follows:

Where a person pledges goods in which he has only a limited interest, the pledge is valid to the extent of that interest.

44. I am not sure that the effect of this section is correctly stated by Scott C.J., in *Lakhamsey Ladha & Co. v. Lakhmichand Padamsey* ILR (1916) 42 Bom. 205., where he says:

Section 179 does not limit the scope of Section 178, but saves a pledge to the extent of the pledgor's "own interest notwithstanding the presence of "invalidating conditions falling under one of the provisions to Section 178. In other words, whenever "he has an interest, the person in possession of the "goods or documents has unconditional authority to "charge at least that interest.

45. The section does not refer to "possession" or to documents. But any person, having a limited interest in goods, may pledge them to the extent of that interest.

46. Assuming, therefore, that *Kerr Tarruck & Co.* do not come within the provisions of Section 178, had they a limited interest in the goods, which Plaintiffs have not paid for, and to that extent at any rate is the pledge valid ? They might have had such an interest, by reason of Clauses 4 and 5 of the agreement of 21st July, 1927, if such clauses were intended to apply at all to a sale of ready goods, and by reason of their inchoate right of lien as unpaid vendors upon credit and that interest might have passed to the Defendants as pledgees.

47. *Gunn v. Blockow, Vaughan & Co.* (1875) L.R. 10 Ch. 491, is an authority for the proposition that in the case of a sale upon credit, the vendor's lien revives when the credit expires without payment having been made, and it makes no difference if the vendors have negotiated the bills by means of which credit was given. The Plaintiffs having lost their right to immediate possession of the goods not paid for could not have maintained an action for them in conversion or detinue, which is founded upon that right, even against a wrong doer, *Lord v. Price* (1874) L.R. 9 Ex. 54. But the pledge itself was a wrongful conversion and Plaintiffs' right of action arose, therefore, at that time before the period of credit expired *M' Combie v. Davies* (1805) 6 East 538 : 102 E.R. 1393., and the conversion would itself extinguish any right of lien apart from the fact that a right of lien lasts only so long as the lien-holder continues in possession. I am of opinion therefore, that Defendants obtained no right or interest by reason of Section 179.

48. Upon the issue raised whether the Plaintiffs can maintain the action in view of their non-payment of customs and other charges for which they were liable to *Kerr Tarruck & Co.*, I find on the evidence that such dues were discharged as and when they arose by virtue of an agreement for adjustment of accounts made between the parties.

49. For these reasons, I am of opinion that the Defendants ought to succeed in this suit. Therefore, there will be a decree in their favour dismissing this suit with costs.