
(1976) 04 DEL CK 0016

In the Delhi High Court

Case No : Civil Revision Appeal No's. 60 and 64 of 1972 and Second Appeal No. 30 of 1973

Union of India

APPELLANT

Vs

Jashan Mal and Co.

RESPONDENT

Date of Decision : 08-04-1976

Acts Referred:

Citation : AIR 1976 Delhi 335 : (1976) 2 ILR Delhi 615 : (1976) RLR 298

Hon'ble Judges : H.L. Anand, J

Bench : Single Bench

Advocate : M. Wadhvani, P.K. Jaitely, Madan Bhatia, V.P. Gupta and D.K. Khanna, for the Appellant;

Judgement

H.L. Anand, J.

(1) This judgment would dispose of C.R. 60/72, C.R. 04/72 and S.A.O. 30/73, which raise a common question as to the circumstances in which a consignee may sue the Railways for compensation on account of loss and/or damage to the goods, while in transit.

(2) C.R. 60/72 arises out of a suit filed by the respondents, M/s. Jashan Mal & Co., fruit and vegetable Merchants, Subzimandi, Delhi for compensation on account of damage caused to a consignment of mangoes booked from Vizianagaram Station to New Delhi over the Northern Railway. The plaintiff was the consignee mentioned in the railway receipt. The suit was resisted on behalf of the Union, inter alia, on the ground that the plaintiff, though a firm of commission agents and a consignee mentioned in the receipt, was not the owner of the goods and could not sue. The suit was decreed by the Judge Small Cause Court, Delhi. On the question of locus standi, the trial Court held, relying on the case of Jalan and. Sons, Ltd. Air 1949 EP 190 and the case of Ghamandi Lal Naneh Mal, R.F.A. 18-D/1958 decided on March 1, 1967(2) that the plaintiff "being a consignee can bring this suit for damages against Union of India". Aggrieved by the decree, the Union of India has brought up the matter on a

revision.

(3) C.R. 64/72 arises out of a suit filed by M/s. B. Prahlad & Company, fruit and vegetable merchants, Subzimandi, Delhi for compensation in identical circumstances and the plea on behalf of the Union as to the locus standi of the plaintiff was repelled for the reasons that prevailed in the above suit. The judgment and decree of the trial Court is challenged by the Union in revision.

(4) S.A.O. 30/73 arises out of a suit filed by M/s. Lal Chand Madhev Das, fruit & vegetable Merchants, Subzimandi, Delhi, a consignee. The plea of the Union that the plaintiff had no locus standi to file the suit, being a bare consignee, prevailed with the trial court and the suit was accordingly dismissed. Relying on the case of Ghamandi Lal (supra) and that of The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI), , the trial court held that an endorsee of a railway receipt for valuable consideration could maintain a suit in his own name. The plea of the plaintiff was, however, turned down on the ground that although the plaintiff produced "Some evidence of having advanced some money to the consignor" but the evidence could not be looked into "in the absence of a plea" to the effect that the plaintiff had property in the goods. The judgment and decree of the trial court was, however, reversed in appeal and the suit was decreed and it was held, on the authority of the case of Jalan and Sons (supra) and that of Ghamandi Lal (supra) and of The Union of India (UOI) Vs. Lakshmi Ratan Cotton Mills Ltd. and Others, , that the plaintiff having "advanced the price of the consignment to the consignor" had the "right to institute the suit in his own name". The case was accordingly remanded to the trial court for decision on merits. The Union has brought up the matter on a Second Appeal.

(5) At the hearing of these matters, it was not disputed that the respondents were, during the material time, commission agents. It was, however, not disputed on behalf of the respondents that, although in the suit out of which S.A.O. 30/73 has arisen, some evidence was produced to show that the plaintiff in that case had advanced certain amounts to the consignor, there was no averment in any of the three complaints that the plaintiffs were commission agents or that they had advanced any money to the consignors or that they were consignees for consideration or had any title to or property in the goods, either as owners or otherwise. It was, Therefore, understood that the plea of the respondents, as to their locus standi to maintain the suits, would have to be decided in the context of the contention that a bare consignee, to whom the goods are consigned for the purpose of sale on commission, was entitled to maintain a suit.

(6) The only question that, Therefore, requires consideration is whether a person to whom goods are consigned by the owner for the purpose of sale on commission can be said to have sufficient property or interest in the goods so as to entitle him to maintain a suit against the Railways for compensation on account of loss or damage to the goods, while in transit.

(7) Shri R. H. Dhebar, who addressed the main arguments on behalf of the Union, contended that with the decision of the Supreme Court in the case of *West Punjab Factories*, 1966 Supreme Court 395,⁽⁵⁾ the law with regard to the right to sue a carrier of goods for compensation could be said- to have been crystallised and that ordinarily the consignor could sue the Railways, unless he was not the owner and was acting as an agent of the owner, in which case the owner of the goods could maintain such an action. He further contended that the right to sue arises either out of the contract of carriage or is founded in the title to the goods and that it was either a person who was a party to such a contract or the owner of the goods who could maintain such an action. He urged that the respondents in the present case, even though commission agents, had no *locus standi* to file the suits because they were neither the owners of the goods nor parties to the contracts of carriage and the only interest they could be said to have in the goods was a prospect to earn a commission on sale thereof on behalf of the consignor, which alone could not entitle them to sue.

(8) Shri Madan Bhatia, who led the defense on behalf of the commission agents, traced the entire history of the judicial controversy on the question, sought to widen the scope of the right to maintain an action, and urged that the railway receipt was not only a document of title but had been judicially assimilated to a bill of lading "for all purposes" and the consignee named in the railway receipt, where he was different from the consignor, would be the repository of not only the title to the goods to which the receipt relates but also of all the benefits of the contract of carriage represented by it and was, Therefore, entitled to maintain an action for compensation against the Railways merely by virtue of being such a consignee. He further contended that the fact that the respondents were admittedly commission agents, reinforces their case to maintain an action because of a well-known custom in the trade and, Therefore, on the principle of *law merchant* which treat the railway receipt as being symbolic of the goods. He, Therefore, urged that in any event a commission agent had sufficient interest in the goods which would entitle him to sue and that to hold to the contrary, in the words of Suhba Rao J. in *Morvi Mercantile Bank* (*supra*), "would be a retrograde step and would paralyse the entire mechanism of finance of our internal trade.....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." He relied on a number of decisions of the various High Courts which concede to the consignee and an endorsee the right to maintain such an action. He also sought to spell the right of a consignee, who was a commission agent, to sue, from his status as a bailee of the goods for the consignor and contended that a consignment to a commission agent for sale squarely fell within the meaning of the term "bailment" for it was none other than a delivery of goods for a specific purpose, namely, sale on behalf of the consignor. According to his contention, the ratio of some of the earlier decisions which had found a right in a consignee or an endorsee to maintain an action because the railway receipt had been assimilated to a bill of lading for all

purposes had since been sanctified by the observations of Subba Rao J. extracted above and the legal position that thus emerged had not in any way been whittled down by the decision of the Supreme Court in the case of West Punjab Factories (supra).

(9) Now a railway receipt is basically a simple document. In the first instance, it contains an acknowledgement by the carrier of the receipt by it of goods for "the purpose of carriage to a specified destination. In the second instance, it incorporates a contract of carriage whereby the carrier accepts the obligation to carry the goods to a specified destination and to deliver it to a named consignee or his agent i.e. the endorsee. It carries a legal obligation for the carrier to take as much care of the goods in transit as a prudent person would of his own. The right to sue the carrier for damages on account of loss of or damage to the goods, while in transit, has, however, been subject matter of fierce judicial controversy and the examination of the question by the various courts has produced a sharp conflict of judicial opinion not only between the various courts but even within certain High Courts and have over the years led to an unfortunate uncertainty into the law relating to the right to sue the Railways on the basis of a railway receipt. The only relieving feature has been that the controversy has produced some brilliant judgments by eminent judges, and I say so with respect.

(10) Generally speaking, the right to sue a carrier may have its genesis either in the relationship between the plaintiff and the contract of carriage or in the relationship between the plaintiff and the goods, forming subject matter of the contract. Under the ordinary law of contract it is only the contracting party who would be competent to sue on a contract on an application of doctrine of privity of contract. What is true of an ordinary contract is equally true in respect of a contract of carriage. There may, however, be exceptions where, for example, the party entering into the contract of carriage is not the principal but acting for another. In such a case the principal would be deemed to be the party to the contract and be entitled to sue. There may be yet another exception where on the date the party enters into the contract of carriage, property in the goods has already passed in course of a sale. In such a case also, the party that enters into the contract would be deemed to be the agent of the true owner. Another instance may be where the goods are consigned by the owner under some arrangement, other than sale, which envisages that they would be in transit at the risk of the consignee. In such a case also, the consignee would be deemed to be the party to the contract and would be entitled to sue. Similarly, the right to sue may arise out of the plaintiff's relationship with the goods. Ordinarily, the owner of the goods would be entitled to sue for any injury to the goods independently of the contract of carriage. Such a right may also arise where the plaintiff has other actionable right in the goods short of being its full owner. Such cases would arise where the plaintiff has some special property in the goods. In such cases also, the plaintiff would be entitled to sue by virtue of having an actionable right or property in the goods. Such cases may arise where the party

seeking to sue is, for example, a pledgee of the goods. If one were to apply the two-fold test as to the relationship between the plaintiff and the contract of carriage and as to the relationship between the plaintiff and the goods, forming subject matter of the contract, there would perhaps have been very little difficulty. What has really created complication is that in the course of ordinary mercantile practice a railway receipt has been treated as a document of title and considered as representing the goods and in dealing with such a document the mercantile community has more or less assimilated it to a bill of lading, which by virtue of the provisions of law merchant and the statutory provisions, both in England and in India, has assumed an unusual status as a document of title so that any endorsement of a bill of lading or mention in it of the name of a person as a consignee has the effect of not only transferring the property in the goods to the endorsee or the consignee but also amounts to an assignment of all the rights of the endorser or the consignor in the contract which the bill of lading incorporates. What further complicates the situation is that certain provisions of the Sale of Goods Act, [S. 2(4)] and the Transfer of Property Act, (S. 137) have assimilated a railway receipt to a bill of lading for certain purposes and it has been described in statutory provisions as being a document of title with the result that considerable controversy has centered round the question if the mention of a person as a consignee in a railway receipt or an endorsement on a railway receipt by the consignor or the consignee, for consideration or otherwise, had the effect of either transferring the property in the goods in favor of the consignee or endorsee or assigning the benefit of the contract of carriage in favor of the assignee or the consignee. Courts have taken conflicting views as to the legal effect of mentioning a person as a consignee and as to the endorsement of a railway receipt by the consignor or the consignee on the right of such a consignee or endorsee to maintain an action against the carrier.

(11) If Before examining, the validity of the various contentions, It would be useful to review the leading English and Indian decisions touching the question as to the right to sue the carrier.

(12) In England the controversy as to who may sue for loss of or injury to goods while in transit was started as far back as the year 1770 and the earliest case on the point is *Eves v. James*, (1770) 5 Burr 2680. By 1859 the legal position had more or less been crystallized with the decision in the famous case of *Dunlop v. Lambert*, (1839) 6 CI & Fin 600. Halsbury in Halsbury's Laws of England, 4th edition, has digested all these cases and some of the later decisions and summarised the legal position in his inimitable pithy style in paras 452, 453 and 454 :

""452. Where goods have been delivered to a carrier, and they are lost or injured, the owner of the goods is the proper person to sue for damages. A consignor who consigns only as agent, and has no property in the goods, has no right of action unless it is given to him by the terms of the contract. Nevertheless where the goods are at the consignor's risk until delivery to the consignee, the

consignor may have a special property in the goods, as bailee, sufficient to entitle him to sue. When, in pursuance of a contract of sale, the seller is authorised or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, to be carried to the buyer, is prima facie delivery of the goods to the buyer; and where the seller thus delivers the goods to the carrier he is deemed to have unconditionally appropriated the goods to the contract unless he reserves the right of disposal. Hence, as a general rule delivery of goods by a seller to a carrier for conveyance to the buyer places the goods at the consignee's risk and Therefore the consignee is the proper person to sue in the event of loss or damage. Whenever goods are sent by a seller to a buyer by a carrier, to whom the consignee's name is made known, the ordinary inference is that the contract of carriage is between the carrier and the consignee, and that the consignor is merely the agent of the consignee to make the contract." * * * *

"453.Delivery to a carrier, does not necessarily vest the property in the goods in the consignee; and so, if the property in the goods has never passed to the consignee, the consignor should sue for any loss or damage. Where goods are sent to the consignee on approval, the consignor alone has a right to sue if the goods are lost or damaged in transit." * * * *

"454.The general principle that the owner is the proper person to sue may be varied by special agreement between the parties. Thus by agreement between the consignor and the consignee the risk of the foods may remain with the consignor until delivery, and, by agreement between the consignor and the carrier, the carrier may be liable to the consignor. Further, if the consignor has made a special contract with the carrier for the carriage of goods or if the consignor has delivered them to the carrier as agent for the consignee, the consignee in the person to sue, even though the property in the goods has not passed to him, and this may be the case even though the consignor has paid the carrier, for, in the absence of any arrangement to the contrary, the consignor is always liable ro pay the carrier."

(13) The course of judicial determination of the right to sue a carrier has not been so smooth in India.

(14) In the case of Amar Chand & Co., Air 1914 Bom 290 a division bench of the Bombay High Court was called upon to consider the question whether a railway receipt, being assignable by endorsement under the conditions printed on the back thereof, was an instrument of title to the goods u/s 103 of the Contract Act. The railway receipt in that case was a document under which the goods were received for a mixed transit by land and sea. It was pointed out that u/s 103 of the Contract Act it was not only a bill of lading but any other instrument of title to goods which may be assigned with the same effect as results from the assignment of a bill of lading. It was, Therefore, held that "on the special facts of these cases the railway receipt, if assignable by endorsement, would be an instrument of title to the goods u/s 103 of Contract Act". This decision was

followed by another decision of that court in the case of Dolatram Dwarkadas, Air 1914 Bombay 178, (9) and it was held in a very brief judgment that "it must be taken as settled law that a railway receipt is a mercantile document of title. That being so we think it necessarily follows that the endorsee of such a railway receipt has sufficient interest in the goods covered by it to maintain an action of this kind." There is no further discussion in this judgment. In the case of Ramdas Vithaldas Durbar, Air 1916 PC 7 which arose out of the decision of the Bombay High Court in the case of Amar Chand & Co. (supra) the Judicial Committee had to consider if a railway receipt was an instrument of title within the meaning of section 103 of Contract Act. On a consideration of the various provisions of the law of contract and of the English Factors Act, 1842, Lord Parker, who delivered the judgment of the Board, held that:

"Whenever any doubt arises as to whether a particular document is a "document showing title" or a "document of title" to goods for the purposes of the Indian Contract Act, the test is whether the document in question is used in the ordinary course of business as proof of the possession or control of the goods or authorising or purporting to authorise, either by endorsement or delivery, the possessor of the document to transfer or receive the goods thereby represented."

It was further pointed out that the word "title" in both the expressions, namely, instrument of title or document of title, can relate only the right to receive the delivery of the goods to which the instrument or document relates and that "it can have nothing to do with ownership". The learned Judge further observed that "the only point in which a bill of lading differs from the other documents of title is that its assignment, whether upon a resale or by way of pledge, operates as a constructive delivery of the goods to which it refers and that there is no other document of title with this peculiarity. " In AIR 1934 246 (Privy Council) the question before the Judicial Committee was whether the pledge of a railway receipt was tantamount to a pledge of the goods represented by it or was merely a pledge of the document. On an examination of the provisions of Sections 102, 103, 172 and 178 of the Contract Act and following the decision in the earlier case of Ramdas Vithaldas (supra) it was held that a railway receipt was a document of title within Section 178 of the Contract Act; that the Section, as it stood then, entitled the owner as well as the mercantile agent to make a pledge; and pledge of the document amounts to a pledge of the goods. In AIR 1947 169 (Bom.) Bhagwati J., as he then was, held that even though a railway receipt was a document of title to goods, a mere endorsement of it was not by itself enough to transfer the property in the goods and that a bare endorsement merely constituted the endorsee an agent of the consignee for the purpose of taking delivery; that the endorsement created rights, if any, between the endorser and the endorsee inter se but none between the endorsee and the carrier as the property in the goods were never transferred to the endorsee, the consignor who entered into the contract of carriage alone was competent to sue; that the consignee would have been entitled to sue if the property in the goods had passed to the consignee when the contract of carriage was entered into; that a

person not a party to the contract could not sue on the contract unless the case was covered within the recognised exceptions to the principle of privity of contract. It was further pointed out that the railway receipt and other documents enumerated in Section 2(4) of the Sale of Goods Act had been assimilated to a bill of lading for purposes of stoppage in transit u/s 103 of the Contract Act and a pledge u/s 178 of the Contract Act and not for all purposes. This is how the learned Judge put his conclusion :

"IT is only by reason of the enactment of the Bills of Lading Act, 1855 (18 & 19 Vie. 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. [See also Bills of Lading Act 9 (IX) of 1856 in India]. Even though as observed by their Lordships of the Privy Council in 18 Bom. L. R. 670 and 37 Bom. L.R. 130 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, the effect of those decisions is not to assimilate the railway receipt to a bill of lading for all purposes whatsoever. The position of these documents is the same as it was at common law and that position is not affected at all by the enactment of S. 2, sub-s. (4), Sale of Goods Act, or the enactment of provisions analogous to Ss. 103 and 178, Contract Act therein."

In *Jalan and Sons Ltd.* (supra) a Division Bench of the Punjab High Court held that since a railway receipt was a mercantile document of title, the endorsement of it vested the endorsee with a valuable right and that such an endorsee was not only competent to take delivery but also give a complete discharge and that, it followed, Therefore that he was competent to bring a suit against the Railways for damages. In the case of *Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain*, a Full Bench took the view, relying on the case of *Air 1914 Bom 178; Firm Peare Lal-Gopi Nath Vs. The East Indian Railway Company*, and *Air 1949 EP 190*, and overruling an earlier decision of that Court in *1954 Allahabad 747*, that a consignee, who was not the owner of the goods, but to whom the goods were consigned for the purpose of sale on commission basis, was entitled to maintain a suit for loss in respect of damage caused to the goods while in transit. *Kidwai J.* who spoke for the Court expressed the view that the railway would be primarily liable to the consignor, who alone was party to the contract, and that the owner of the goods "as such does not come to the picture at all": that according to Indian law not only the parties to the contract but even "persons who are entitled to a benefit under it or to whom the right had been conferred by transfer can also sue. It appears from the judgment that on behalf of the Railways it was conceded that in case of non-delivery it was the consignee or the person in whose favor the railway receipt had been endorsed, who could sue. This judgment has, however, been subject matter of considerable criticism in the later decisions of some of the High Courts. An interesting feature of this case is that the decision primarily turned on the

admission by the counsel for the Railways on the question as to the right of a consignee to sue and although a number of judgments are referred to, it is not possible to spell out of it the principles on which the decision is based. The case of *Shah Mulji Deoji*, Air 1957 Nagpur 31 is a decision of considerable importance. In that case, the goods were consigned to self and the consignor had endorsed the railway receipt, which was followed by successive endorsements. The plaintiff was the last endorsee. The suit was resisted on the ground that the plaintiff had no locus standi to sue. Following two questions were referred to the Division Bench by a learned Single Judge :

"(1)When goods are consigned to self under a railway receipt and the receipt is endorsed in favor of another can the endorsee, merely by reason of the endorsement in his favor, institute a suit against the railway administration for damages either for non-delivery or short delivery of the goods covered by the railway receipt ?

(2)Where there are a series of endorsements on the railway receipt, can the last endorsee institute a suit in his own name on mere proof of the fact that he paid consideration to the prior endorsee or is it necessary for the former to establish that the title to the goods represented by the railway receipt passed from the original consignee through the intermediate endorsees to him?"

Kaushalendra Rao & Hidayatullah Jj, who constituted the Division Bench, differed with the result that the matter was referred to a third learned Judge. On a review of the decided cases. Rao J, proposed the answer to the first question in the negative and felt that in that view the second question did not survive. It was held that if the endorsee was to be regarded as an assignee of the contract then he would, in the absence of usage, be subject to the rule that the assignee must prove his title to sue through all the intermediate assignees, if any. The learned Judge reviewed the leading decisions and pointed out that the source of authority of the decisions which had answered the first question in the affirmative could be traced back to the decision of the Bombay High Court in the case of *Amarchand & Co.* (supra), which was not concerned with the right of an endorsee of a railway receipt to maintain an action against the Railways and that the point that arose for consideration in that case was about the right of stoppage in transit by an unpaid vendor. The learned Judge then pointed out that the railway receipt had more than one aspect to it, in that primarily it was a receipt for the goods accepted for carriage. Secondly, it was a document of title in terms of Section 2(4) of the Sale of Goods Act and lastly it was evidence of the contract of carriage and cautioned that unless these aspects are clearly kept distinct confusion was bound to result. The learned Judge expressed the view that where an action was founded on contract of carriage, the proper question to ask was with whom was the contract entered into and if the consignor consigns the goods to self he retained the property in the goods and he was the person who was party to the contract, and, Therefore, a proper person to sue in the absence of a special contract to the contrary. It was, Therefore, held that a mere endorsement

can be considered as Constituting the endorsee an agent of the consignee for the purpose of taking delivery. The learned Judge distinguished the bill of lading by virtue of the provisions of the Bill of Lading Act from documents of title other than a bill of lading and held, following Air 1916 P.C. 7 (supra) and AIR 1934 246 (Privy Council) that the railway receipt and other documents of title mentioned in Section 2(4) of the Sale of Goods Act are assimilated to a bill of lading for the specified purposes of right of stoppage in transit u/s 103 of the Contract Act and a pledge u/s 178 of the Contract Act. The learned Judge, Therefore, expressed his approval of the decision of Bhagwati J. in 1947 Bom 169, and held that an endorsement by itself was not enough to constitute an endorsee either as a bona fide pledgee for value or a bona fide transferee for value of the goods represented by the railway receipt and that without anything more it only constituted the endorsee an agent of the consignee for the purpose of taking delivery and that the endorsement by itself did not create any rights between the endorsee and the railway company. The ultimate conclusion of the learned Judge is set out in para 46 of the judgment which is in the following terms :

" Though the cases have accumulated in favor of an affirmative answer to the first question, I am constrained to say with the utmost respect, the propositions on which they rest cannot bear scrutiny. The fact that the railway receipt is a document of title or that the endorsee who has become the owner of the goods covered by it has a sufficient interest in the goods does not by itself establish that he can sue on the contract of carriage to which he was not a party. It is one thing to say that because a railway receipt is a document of title to the goods it may be dealt with as the goods themselves and quite a different thing to lay down that any one in possession of the document as an endorsee authorised to take delivery can sue the carrier when the goods agreed to be carried under the receipt are not forthcoming at the destination."

Hidayatullah C.J., as he then was, however, took a contrary view and proposed an affirmative answer to the first question and held on the second question that the last endorsee was entitled to sue in his own name without proving that he was a holder for value. *Tambe J.* to whom the matter was referred for decision concurred with Hidayatullah C.J. and according to the majority view an unqualified endorsement on a railway receipt has the effect of not only transferring to the endorsee property in the goods covered by the railway receipt but also of transferring to him the right and benefit of the contract of carriage with the result that such an endorsee would have a right to maintain an action to enforce its performance in his own name and to sue for damages on account of failure to perform it. It was further held that the title to the railway receipt passes to the endorsee by virtue of the endorsement and the endorsee has a right of action and that a railway receipt was in effect clothed with all the essential characteristics of negotiability though it may not be a negotiable instrument in a strictest sense and that assuming that it did not have the characteristic of negotiability, the matter has become so settled that it is unnecessary to prove that they are treated as negotiable by the custom in the

trade. It was accordingly held that where there were series of endorsements on a railway receipt, the last endorsee had a right to institute a suit in his own name without proving that he was a holder for value since that would be presumed unless rebutted. In the final analysis, this judgment raised the railway receipt to the position that a bill of lading occupies both in England and in India after the statutory provisions which have clothed them with a peculiar status in law. In *Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd.* and *Another*, a Division Bench of the Calcutta High Court was, inter alia, concerned with the question whether the plaintiffs, who were consignees in respect of some of the consignments and endorsees from the consignee in respect of the others, were entitled to maintain the actions against the carrier. It was a common case of the parties that the plaintiffs were not the owners in all the consignments. In respect of some of the consignments in which the plaintiffs were mentioned as consignees, they were acting as shipping agents for the ultimate foreign buyers of the goods. In respect of the other consignments, the consignors, who were also consignees, had forwarded the railway receipt to the plaintiffs in order that the plaintiffs, as their agents, could clear the goods from the Railways and ship them to certain foreign destinations. The plaintiffs had not paid any money in respect of any of the goods before the loss. Two questions were, Therefore, mooted before the Division Bench, namely, (a) is the consignee named in a railway receipt entitled to sue the railway for non-delivery of the goods ? and (b) is a buyer endorsee of railway receipt entitled to sue the railway ? Mukherjee J. in a very elaborately drawn opinion, answered both the questions in the negative. Bachawat J. by a separate opinion, concurred. Mukherjee J. reviewed practically all the English and Indian decisions, examined the question on principle and held that even though the effect of the decision of the Privy Council in *Air 1967 P.C. 7* and *AIR 1934 246 (Privy Council)* was that the railway receipt and other documents mentioned in Section 2(4) of the Sale of Goods Act are assimilated to the bill of lading for the purpose of Section 103 and 178 of the Contract Act, these documents could not be treated on the same footing as bills of lading "for all purposes" and that this limitation was inherent in the decisions of the Privy Council themselves. It was further pointed out that it would not be correct to ascribe to a railway receipt the various properties and attributes which belong only to a bill of lading by virtue of its peculiar position in the law merchant and also by reason of the statutory provisions, both in England and in India, on the subject. It was further pointed out that from the point of view of negotiability, a railway receipt was more or less comparable to a bill of lading as it was at common law before the passing of the Bills of Lading Act, 1855 in England and the enactment of the Bills of Lading Act. 1856 in India and that the properties and incidents of a railway receipt and the effect of endorsement and delivery of it in India would be *pari materia* with the properties and incidents of a bill of lading before the statutory protection given to it. The learned Judge, Therefore, came to the conclusion that an endorsee of a railway receipt could not sue the railways on the contract evidenced by the railway receipt merely because the property or the interest in the goods has been transferred to him, and that

such a person could sue only for conversion or negligence and that without such property or interest, he has only the right to receive the delivery of the goods and would be in the same position as a bare consignee who has no right or property in the goods. The learned Judge characterised some of the decisions as having taken wrong view of the law and dissented from the view expressed in *Mohammad Safique Vs. Union of India (UOI) and Others*, . The learned Judge subjected to severe criticism the decision of the Full Bench of the Allahabad High Court in *Dominion of India as owner of G.I.P. Rly. and Another Vs. Gaya Pershad Gopal Narain*, . Bachwat J, while concurring with the opinion of Mukherjee J, added an interesting postscript expressing a virtual wish that the law was otherwise than the learned Judge found it to be so. This is contained in para 120 of the judgment which could be appropriately reproduced:

"I was inclined to hold, if I could, that every consignee named in the railway receipt as also every endorsee of it by the named consignee are entitled to sue the railway administration concerned for loss or injury to the goods. The existing commercial practice favors such a right of suit and I was inclined to uphold the practice, if I could. But on the authorities, and on principle, I am compelled to hold otherwise. I regret this conclusion, because it will encourage technical defense by the railway administrations. In the interest of commerce, the Legislature should intervene and sanction the existing commercial practice."

In *Ibrahim Isaphai Vs. Union of India (UOI) and Another*, a Division Bench of that Court held that the railway receipt was a document of title in the limited sense of a right to receive or take delivery of the goods", that an endorsement and delivery of a railway receipt does not by itself pass title to the goods", that an endorsee was not entitled to sue the railway by reason of an endorsement: that an endorsement did not affect the property in the goods; that the right of a consignor under the railway receipt was not an actionable claim and was, Therefore, not transferable; that the benefit of a contract was assignable but the assignee did not get the right to sue which vested in a party which was privy to the contract; that the Railway Administration could not enter into a contract for the benefit of a third person and the mere fact that the consignee was a "pucca Adatia" did not entitle him to institute a suit for damages unless he shows that the goods represented by the railway receipt had been transferred to him as owner or any interest therein had been created in his favor.

(15) In the case of *The Morvi Mercantile Bank Ltd. and Another Vs. Union of India (UOI)*, the Supreme Court had an opportunity to resolve the conflict and to introduce an element of certainty into this branch of law when it was called upon to consider two questions, namely, if a valid pledge had been created in favor of the bank, inter alia, by the endorsement of the railway receipt in its favor and by the delivery of it to the bank, and, if not, whether the bank could maintain an action for compensation on account of loss of or damage to the goods by virtue of being an endorsee for consideration. Unfortunately, as it now appears, the Bench hearing the matter was divided on the first question. While Subba Rao J.

as he then was and who spoke for himself and for Raghubar Dayal and Bachawat JJ. held that a valid pledge had been made in favor of the Bank on the ground that the owner of goods could make a valid pledge of them by transferring the railway receipt representing the said goods, Ramaswami J. as he then was, and who speaking for himself and for Mudholkar J. expressed the dissenting opinion, answered the question in the negative on the ground that by virtue of the provisions of new Section 178 of the Contract Act, a mercantile agent alone was competent to make a valid pledge of the goods without the possession of the goods. The majority opinion noticed that the second question was a larger question "on which there is a conflict of opinion" but in the view that they took of the first question, they did not feel any obligation to deal with the larger question. Subba Rao J., however, expressed his satisfaction for having arrived at a happy conclusion and made certain observations which may be said to give some sanctity to the reasoning on which the line of decisions which have construed the railway receipt rather liberally could be said to be based. It is these observations which, to my mind, have inspired the wide contention urged before me on behalf of the commission agents. This is what Subba Rao J. said :

"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."

Ramaswami J., however, went into the larger question, since he had answered the first question in the negative. The learned Judge dispelled the contention that the bank was entitled to sue by virtue of being an endorsee of the railway receipt. The learned Judge pointed out that as in law a bill of lading was not negotiable like a bill of exchange so as to enable the endorsee to maintain an action in his own name, the effect of the endorsement being only to transfer the property in the goods but not the contract itself and that the documents like the railway receipt were in the same position as the bill of lading was before the Bills of Lading Act 1856 and that it was only by reason of the enactment of the said statute that the issue or transfer of a bill of lading operated as a delivery to the buyer of the goods shipped and the consignee of the bill of lading was entitled to sue upon the contract contained in the same, a position that obtains in India vis-a-vis the bill of lading after the Act of 1856. The learned Judge further observed that even though the railway receipt and all other documents enumerated in Section 2(4) of the Sale of Goods Act were assimilated to bill of lading for the purposes of the right of stoppage in transit u/s 103, Contract Act but it could not be said that the railway receipt has been assimilated to a bill of lading "for all purposes whatsoever". It was, Therefore, observed that "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 Section 2, sub-section (4) of the Sale of

Goods Act, or the enactment of provisions analogous to Ss. 103 and 178 of the Contract Act". It was, Therefore, held that there are no rights created by mere reason of endorsement of a railway receipt 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. It was further held that 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" and that "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 favor." The learned Judge approved the decision of Bhagwati J., as he then was, in AIR 1947 169 (Bom.) , as representing the true legal position. The argument that to hold contrary to the contention of the bank would be a "retrograde step" and would cause considerable hardship, which prevailed with Subba Rao J, and which were the basis of expression of a satisfaction by him in the passage quoted above, did not appeal to the learned Judge. This is how the contention was repelled :

"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 *Sutlers v. Briggs*, 1922 1 Ac 1 Lord Birkenhead stated :

"The consequences of this view of S. 2 of the Gaming Act, 1835 will no doubt be extremely inconvenient to many person. 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."

(16) In the case of *Punjab Factories Ltd.*, 1966 SC 395, (Supra) the Supreme Court had yet another opportunity to examine the larger question as to the right of a consignee to sue the carrier. The appeals before the Supreme Court arose out of two suits. One suit was by the consignor, the original owner of the goods, while the other was filed by the endorsee. The contentions of the Union as to the right of the plaintiffs to maintain actions were dispelled and the suits were decreed. The decrees were affirmed in appeal. One of the contentions raised

before the Supreme Court was that the suits were not maintainable. The contention in the first case on behalf of the Union was that the consignee being different from the consignor, the original owner of the goods could not bring the suit and the consignee alone could maintain it. It was held that ordinarily, it is the consignor who could sue because he was party to the contract of carriage and that where the property in the goods has passed from the consignor to someone else that other person may be able to sue. The contention on behalf of the Union was that the railway receipt was a document of title to goods by virtue of provisions or Section 2(4) of the Indian Sale of Goods Act and as such it was the consignee who had the title to the goods where the consignor or the consignee were different, interestingly enough, a contention which is being raised in the present case on behalf of the consignees, and has throughout been emphatically resisted on behalf of the Union. It was held that even though a railway receipt was a document of title to goods covered by it, it did not follow that where the consignor and consignee are different, the consignee is "necessarily the owner of goods and the consignor in such circumstances can never be the owner of the goods" and that the mere fact that the consignee is different from the consignor "does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title to goods has passed to the consignee will have to be decided on other evidence." It was pointed out that it was quite possible for the consignor to retain title in the goods himself while the consignment is booked in the name of another person. The right to sue appears to have been made dependant on the title to the goods and the test enunciated was in whom the title to the goods vested during transit. It was found that in terms of the contract between the parties the goods would be dispatched by Railways at the seller's risk. until the destination of the goods at the godowns of the consignee and the property in the goods had not, Therefore, passed to the consignee until the goods had reached the destination. The suit of the consignor was, therefore, held to be maintainable because the consignor retained the title to the goods when the loss occurred. The conclusion of the Court in respect of the first of the two suits is set out in para 10 of the judgment which is reproduced below :

"The contention of the appellant with respect to five of the consignments in the suit of the factory was that as the consignee of the five railway receipts was the J. C. Mills, the consignor (namely, the factory) could not bring the suit with respect thereto and only the J. C. Mills could maintain the suit. Ordinarily, it is the consignor who can sue if there is damage to the consignment, for the contract of carriage is between the consignor and the railway administration. Where the property in the goods carried has passed from the consignor to someone-else, that other person may be able to sue. Whether in such a case the consignor can also sue does not arise on the facts in the present case and as to that we say nothing. The argument on behalf of the appellant is that the railway receipt is a document of title to goods [sec S. 2(4) of the Indian Sale of Goods Act, No. 3 of 1930], and as such it is the consignee who has title to the goods

where the consignor and consignee are different, it is true that a railway receipt is a document of title to goods covered by it, but from that alone it does not follow, where the consignor and consignee are different, that the consignee is necessarily the owner of goods and the consignor in such circumstances can never be the owner of the goods. The mere fact that the consignee is different from the consignor does not necessarily pass title to the goods from the consignor to the consignee, and the question whether title to goods has passed to the consignee will have to be decided on other evidence. It is quite possible for the consignor to retain title in the goods himself while the consignment is booked in the name of another person. Take a simple case where a consignment is booked by the owner and the consignee is the owner's servant, the intention being that the servant will take delivery at the place of destination. In such a case the title to the goods would not pass from the owner to the consignee and would still remain with the owner, the consignee being merely a servant or agent of the owner or consignor for purposes of taking delivery at the place of destination. It cannot therefore, be accepted simply because a consignee in a railway receipt is different from a consignor that the consignee must be held to be the owner of the goods and he alone can sue and not the consignor. As we have said already, ordinarily, the consignor is the person, who has contracted with the railway for the carriage of goods and he can sue; and it is only where title to the goods has passed that the consignee may be able to sue. Whether title to goods has passed from the consignor to the consignee will depend upon the facts of each case and so we have to look at the evidence produced in this case to decide whether in the case of five consignments booked to the J. C. Mills, the title to the goods had passed to the Mills before the fire broke out on March 8, 1943. We may add that both the courts have found that title to the goods had not passed to the J. C. Mills by that date and that it was still in the consignor and therefore the Factory was entitled to sue. We may in this connection refer briefly to the evidence on this point."

In the second of the two suits, the plaintiff claimed the right to sue the Railways on the ground that he was the owner of the goods and relied on the endorsement in his favor by the consignor even though it was consigned to self in support of his title to the goods. It was also contended that in any event the plaintiff was entitled to maintain the suit as a bare endorsee to a document of title. The trial Court found that the plaintiff was not only the owner of the goods and was, therefore, entitled to sue but that he was also entitled to sue by virtue of being the endorsee of a document of title. The High Court confirmed the finding and held that the plaintiff was not only the owner of the goods but was the "endorsed consignee" and in that capacity had the necessary locus standi to sue. The High Court also observed that the correctness of this proposition was not challenged before it. It was in these circumstances that the Supreme Court held that in view of the concurrent finding of the two Courts below that the "plaintiff was the owner of the goods and that was why the railway receipt was endorsed in his favor" "he is certainly entitled to maintain the suit". An

interesting feature of this decision. is that the judgment makes no reference to the almost perennial controversy raised in Courts in India with regard to the right of a consignee or an endorsee to file a suit nor is there any reference to the earlier decision of the Supreme Court in the case of Morvi Mercantile Bank (supra). Interestingly enough, even the majority judgment in the earlier case merely noticed the larger controversy and, Therefore, felt relieved of the duty to deal with the various decisions and left it to the minority to deal with the question in view of the way the minority looked at the first question. Unfortunately, however, and I say so with respect, the minority opinion also did not consider the various decisions touching the question so as to stabilise the legal position, to the extent it was possible for a minority opinion to do so.

(17) Shri Bhatia, learned counsel for the respondents/plaintiffs, urged that the decisions of the various High Courts which had found that a bare consignee and an endorsee would be competent to sue by virtue of only being a consignee and endorsee, being based on the principle that the railway receipt was a document of title and was to be assimilated to a bill of lading for all purposes, are clearly sanctified by the observation of Subba Rao J. in the case of Morvi Mercantile Bank (supra) and as a result of this decision the railway receipt has been sublimated to the position of a bill of lading without the statutory prop like the Bill of Lading Act, which conferred that higher status on the bill of lading both in England and in India. He contended that the observations of Subba Rao J. clearly raised the railway receipt to that position and with that judgment holding the field, it was no more possible to disputes the proposition that a mere consignee or an endorsee of a railway receipt is not only the repository of title to the goods but is the assignee of the contract of carriage as well and has, Therefore, the necessary locus standi to sue the railways in his own name. He claimed that in the case of West Punjab Factories (supra) the Supreme Court was called upon to consider a limited facet of the problem of the right to sue and that there was nothing in the conclusion of the Supreme Court in that case which could be said to have, in any manner, whittled down the effect of the observations of Subba Rao J. in raising the status of a railway receipt and in lending to it the unusual negotiability, a conclusion on which the learned Judge felt so elated. Shri Dhebar, who appeared for the Union, however, vehemently challenged this contention and urged that the observations of Subba Rao J. have no such effect and that the observations must be seen in the context in which they were made and be confined to that. He further urged that with the decision in the case of West Punjab Factories (supra) the law relating to the right to sue the railways has more or less become crystallised and that the effect of the judgment was that the right to sue must have relation either to the contract of carriage or to the title to the goods and where the consignee or endorsee claims such a right, he must establish either that he was a party to the contract or was an assignee of the rights of the parties to the contract or had title to the goods and that a person who did not have either was not competent to sue.

(18) Is there any conflict between the two decisions of the Supreme Court ? If

so, which one would prevail ? If not, what exactly is the law with regard to the right to sue the Railways and what are the circumstances in which a consignee or an endorser

(19) On a review of the course of judicial decisions from 1914 Bom 290 to 1966 SC 395 spanning a period of over half a century, it appears that the law with regard to the right to sue the carrier could be said to have been fairly crystallised and some of the propositions could be treated as well settled. There is thus no doubt that a consignor would be entitled to sue both by virtue of being a party to the contract of carriage as indeed, a repository of title to the goods forming subject matter of such a contract, unless of course on the date the contract was entered into property in the goods had already passed to the buyer and the goods were, Therefore, handed to the carrier for delivery to the buyer in course of trade, in which case the consignor would be merely deemed to be an agent of the real owner and the real owner alone would be competent to sue. Another case in which the original consignor may not be able to sue is where there is a contract to the contrary which provides that the goods in transit would be at the risk of another, or where even though property in the goods had not transferred, there is a special agreement with regard to the right to sue, or the benefit of the contract of carriage has been assigned to another in accordance with law. It follows, a fortiori, that a consignee or an endorsee of a railway receipt to whom the property in the goods is passed would also be competent to sue. The judicial controversy, however, still continues and the legal position of a mere consignee or an endorsee in that behalf is not free from doubt. If a bare consignee to whom the railway receipt has been delivered or a person in whose favor the railway receipt has been endorsed, without anything more by the consignor, in case the consignment was consigned to self, or by the consignee, in the other case or by the previous endorsee from either of these would be entitled to maintain an action against the carrier in his own right and in his own name is still far from clear A reference to the decided cases would appear to indicate that a long line of cases in which such a proposition was negatived were based on the logic that even though the railway receipt was a document of title known as such to the mercantile community, has certain characteristics of negotiability, though not strictly speaking a negotiable instrument, and had, Therefore, been assimilated to a bill of lading for the purpose of section 103 of the Contract Act and Section 178 of the Contract Act, and for such other purposes, it could not be so assimilated" "for all purposes" because the peculiar characteristic claimed for bills of lading, both in England and in India, was not the result of any custom, usage in the trade or Law Merchant alone but had its foundation in the Bills of Lading Act, both in England and in India. It was pointed out in these decisions that there was no custom among the mercantile community that a mere consignment of goods in a railway receipt or mere endorsement of a railway receipt would transfer to the consignee or the endorsee anything more than a mere right to take delivery of the goods and to give a discharge to the carrier, and did not have the effect either of transferring property in the goods or of assignment of the

contract of carriage itself. It was also pointed out in these cases that with a view to facilitate merchantile dealings Bills of Lading Acts were passed both in England and in India as a result of which every consignee of goods named in a bill of lading and every endorsee of a bill of lading to whom property of the goods therein mentioned passed, upon or by reason of such consignment or endorsement shall have transferred to and vested in him all rights of suit, and be subject to the same liability in respect of such goods as if the contract contained in the bill of lading had been made with himself. This is exactly what section 1 of the Bill of Lading Act, 1856 provides in India and is in turn based on its counterpart in England. These decisions, Therefore, took the view that the railway receipt would be, at best, in the position in which a bill of lading was in England and in India before these enactments were made part of the statute book and that, even if the property in the goods may pass, there would be no assignment of the contract of carriage. That the courts would have gladly likened a railway receipt to a bill of lading in the peculiar position that the latter has come to acquire with the statutory projection given to it, if it was possible, in the absence of a statutory prop similar to the aforesaid statutes, remains without doubt obviously because such a course would facilitate the course of trade in India where goods have to travel long distances on the railway to reach from the point of production to the points of exchange and eventually to points of distribution and consumption. The wish expressed by Bachawat J. in *Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another*, which I have extracted above, would, to my mind represent an expression of almost universal judicial desire. What, however, prevented courts from doing this was what was considered by them to be a legal impediment and full expression was given to this by Ramaswami, J. in his minority opinion in the case of *Morvi Mercantile Bank (Supra)* when it was pointed out that counsel for the appellant had referred to possible inconvenience and hardship to merchants if such a practice was not judicially recognised "but the argument of inconvenience and hardship is a dangerous one and is only admissible in construction where the meaning of statute is obscure." It was further pointed out that "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."

(20) It, however, appears to me that however controversial the task of equating a railway receipt to a bill of lading for all purposes may be, and I must confess that there is considerable force in the contention that in the absence of a statutory provision on the lines of the Bills of Lading Act, such a fetal assimilation is not possible, my task has been made easier by the rather emphatic observation of Subba Rao J., and I say so with respect, in the case of *Morvi Mercantile Bank (supra)* while holding that a valid pledge had been made by the endorsement of the railway receipt and the delivery of it. Besides certain other things, with which I am not concerned, the learned Judge gave expression to a feeling of elation almost in the same strain in which Bachawat J. had expressed a

wish to hold. These observations, to my mind, do not contain any words of limitation and are not an expression of a mere wish but a considered conclusion that the railway receipt was a symbol of the goods and was to be assimilated to a bill of lading "for all purposes for which a bill of lading is so regarded in England". It must, Therefore, be considered settled, so far as this court is concerned, that the consignment of goods to a person, who is mentioned in the railway receipt as a consignee or an endorsement of a railway receipt in favor of another would have the effect of not only transferring property in the goods but also the rights under the contract of carriage represented by it, unless there is something in the language of the endorsement or in the manner in which a person is mentioned as the consignee which may deviate from this presumption. The contention that the observations of Subba Rao J. would appear to have lost much of their vitality with the later decision in the case of *West Punjab Factories* (supra) does not appear to me to be sustainable. As has been pointed out above, the appeal before the Supreme Court arose out of two suits. One suit was by the consignor, the original owner of the goods, while the other was filed by the endorsee. The contention of the Union as to the right of the plaintiffs to maintain the suits were dispelled and the suits were decreed. The decrees were confirmed in appeal. The contention in the Supreme Court in the first case was that the consignee being different from the consignor, the original owner of the goods, the consignor could not bring the suit and the consignee alone could maintain it. It was held that ordinarily it is the consignor who could sue because he was a party to the contract of carriage and that where property in the goods was passed from the consignor to someone else that other person may be able to sue. The contention of the Union was that a railway receipt was a document of title to goods by virtue of the provisions of section 2(4) of the Indian Sale of Goods Act and as such it was the consignee who had the title to the goods where the consignor and the consignee were different. It was pointed out that even though a railway receipt was a document of title to the goods covered by it, it did not follow that where the consignor and the consignee are different, the consignee is necessarily the owner of goods and the consignor in such circumstances can never be the owner of the goods and that the mere fact that the consignee is different from the consignor does not necessarily pass title to the goods from the consignor to the consignee and the question where title to goods was passed to the consignee will have to be decided on other evidence. It was also pointed out that it was quite possible for the consignor to retain title in the goods himself while the consignment is consigned in the name of the other person. The right to sue appears to have been made dependent on the title to the goods and the issue enunciated was as to the person in whom the title to the goods vested during transit. It was found in terms of the contract between the parties that the goods would be dispatched by railways at the seller's risk until the destination of the goods at the godowns of the consignee and the property in the goods had not, Therefore, passed to the consignee until the goods had reached the destination. The suit of the consignor was, Therefore, held to be maintainable because the consignor retained the title to the goods when the loss occurred. In the second of

the two suits the plaintiff claimed the right to sue the railway on the ground that he was the owner of the goods and relied on the endorsement in his favor by the consignor even though it was consigned to self. It was also contended that in any event the plaintiff was entitled to maintain the suit as a bare endorsee to a document of title. The courts below had returned a concurrent finding that the plaintiff was not only the owner of the goods but was the "endorsed consignee" and had the necessary locus standi to sue. It was in these circumstances that the Supreme Court held that in view of the concurrent finding of the two courts below that "the plaintiff was the owner of the goods and that was why the railway receipt was endorsed in his favor" he is certainly entitled to maintain the suit. In this case there is no reference to the almost perennial controversy in the courts in India on the question of the right to sue the carrier. The question raised before the Supreme Court was a limited one, whether the consignor, who admittedly was the original owner, had the right to sue when he consigned the goods to another or had endorsed the railway receipt in favor of another. In one case no claim was made by the consignee that he had the right to sue and, Therefore, the various questions that arose in the earlier decisions or the propositions on which they were considered did not arise. In the other set of cases also the right to sue was claimed by the endorsee on the basis that he was the owner of the goods and the right was upheld on the basis of concurrent finding of fact to that effect in his favor. Nothing in this decision, Therefore, to my mind, had any impact on the question as to the right of a bare consignee or of a bare endorsee to sue, nor were any of the propositions enunciated by Subba Rao, J. were either raised or examined. This decision, to my mind, is a mere reiteration, and I say so with utmost respect, of the well known principle that the consignor is ordinarily entitled to sue being party to the contract of carriage as well as being owner of the goods and transfer of property in the goods to another or of assignment of the contract of carriage in favor of another or a special contract with. the transferee alone could divest such a consignor- owner of the right to sue. It is also a re-affirmation of the well established legal position that where the consignee had, by virtue of the arrangement between the consignor and the consignee, become the repository of a title to the goods he was entitled to sue. The various other facets of the problem were left untouched.

(21) There is, however, an aspect of the matter which creates an insurmountable impediment in the way of the respondents. While likening the railway receipt to a bill of lading may have the effect of equating a consignee or an endorsee to the position of a consignee or an endorsee of a bill of lading by virtue of the provisions of the Bills of Lading Act in England and in India the basic premises of the right to sue from that is that the consignee and the endorsee are considered in law to be the repository of the property in the goods as well as the assignment of the contract of carriage. But what happens where the plaintiff on his own showing, as in the present case, states that he was a person to whom the goods had been sent by the owner not in the course of transfer by sale or otherwise or for consideration or by way of pledge, etc. but as a commission agent for

eventual sale on behalf of the consignor. The question arises if such a person would be within the rule that could be laid down by virtue of the observations of Subba Rao, J. It appears to me that such a person, on his own showing, would be beyond that rule because he claims to be a consignee not in his own right but as a consignee who has been entrusted with the duty to sell goods on behalf of the principal. Such a person could not, Therefore, claim by such a consignment any rights in relation to the property or in relation to the contract of carriage in addition to the bare right to receive the goods and to give a valid discharge. Shri Bhatia, however, raised an interesting argument that the respondents being commission agents to whom the goods had been entrusted by the owners for the purpose of sale, could maintain a suit because of two reasons, namely (1) they had sufficiently actionable interest in the property because they would have the prospect to earn commission on the sale of it; (2) they were constituted bailees of the goods by the owners and by virtue of the contract of bailment had a special property in the goods. None of these contentions, to my mind, can stand closer scrutiny. The prospect that a commission agent may have of earning commission on the sale of goods consigned to him by the owner cannot be said to be a right in the goods or any property in the goods. It only makes the commission agent, at best, a person who is interested in the goods. A mere prospect to earn commission on the sale of goods belonging to another does not confer any right or property in the goods which may be actionable so as to justify an action for damages against the railways. The plea of bailment is of no avail because there is nothing to indicate that a contract of bailment came into existence between the consignor and the consignee when the goods were handed over by the consignor to the carrier. If it had, then obviously when the goods were lost in transit or were damaged the consignee had actionable property in the goods because a bailee in law, being bound to take as much care of the property as he would of his own, or under an obligation to the consignor and there was, Therefore, the corresponding special property that he had in the goods. The goods were being sent of course for being sold on commission and the contract of carriage itself was a contract of bailment between the consignor and the Railway administration. The contract of bailment between the consignor and the consignee would have come into existence after the goods had been delivered to the consignee by the carrier. Until then there was no contract of bailment between the consignor and the consignee with the result that until such a time the consignee had no obligation to the consignor and could not, Therefore, have any special property in the goods as a bailee which would have entitled him to sue the Railway administration. In case property in the goods was intended to be passed to the consignee or the endorsee or where, for example, the consignee or the endorsee may have paid consideration for the sale, as in the case of *Ghaniandi Lal Nanhey Mal* (supra), the position of such a consignee or endorsee would be different. Similarly, if at the time of delivering the goods to the carriage the consignor intended to create a contract of bailment in favor of the consignee, the carriage of goods by the earner being at the risk of the consignee, such a consignee would also be in a different position. None of these

positions, however, obtain in the present case, in view of the limited relationship that is claimed by the respondents as a basis of the right to sue.

(22) In the result, while Mr. Bhatia succeeds on the broad proposition canvassed by him, the appeal and the revisions of the Union must be accepted, with the result that all the three suits would stand dismissed. In the peculiar circumstances of the case, however, there- would be no costs.

(23) Before parting with this case it is necessary to invite attention to two important aspects of the controversy that has been raging in the courts in India during the last over 50 years. In the first instance, it is useful to recall the observations made by Bachawat, 1. in *Commissioners for the Port of Calcutta Vs. General Trading Corporation Ltd. and Another*, which have been extracted above and in which the learned Judge added a forceful postscript expressing a strong wish that the law was otherwise than what the learned Judge was compelled to hold. This was followed by an equally emphatic expression of elation by Subba Rao, J. in the case of *Morvi Merchantile Bank (supra)* which has also been extracted above, putting a virtual seal of approval on the proposition that a railway receipt ought to be assimilated to a bill of lading for all purposes to facilitate the course of trade. Lastly the observations of Ramaswami, J. in the minority opinion in the above case, which have also been extracted above, also bring out in bold relief that the question whether a railway receipt was to be assimilated to a bill of lading for all purposes was not a matter for judicial determination but posed a problem for legislative consideration. It appears to me that the question as to the right to sue a carrier has been the subject matter of more than the necessary controversy and there is a strong case for consideration if legislative action on the lines on which the Bills of Lading Act, 1856 was passed is called for to put an end to the controversy and such a step would be consistent with the need to facilitate the movement of goods in the course of trade.

Secondly, review of the decisions spread over the last half a century brings out a very unfortunate feature of the litigation policy of the Railway Administration. The decided cases indicate that the Railway Administration had been taking absolutely inconsistent and diametrically opposite pleas depending on the case set up by the plaintiff. If a consignor filed a suit it was claimed that the consignee alone could sue merely by virtue of the fact that he was mentioned as the consignee in the railway receipt. Where, however, a consignee was the plaintiff the right to sue was found by the Railway Administration only in the consignor in spite of the nature of the transaction which led to the movement of the goods from "the consignor to the consignee. This only manifests a wholly unjustified anxiety to resist the claim exactly like an ordinary litigant would with a view to put off the evil day, as it were. This, to my mind, is a very unhealthy and unfortunate feature of the litigation policy of the Railway Administration. It has often been pointed out that in the field of employment the state and its various units must be ideal employers. In the same way it is proper and reasonable that in the field of litigation the state and its units must be ideal litigants so that the

various pros and cons of a defense are properly assessed before embarking on a course of futile litigation. The purpose of litigation is not to stall a valid claim but to seek an adjudication of real questions in controversy between the parties whether of facts or of law. There is, Therefore, a strong case for a proper reorientation of the litigation policy of the Railway Administration.