Offce No 1050

in the appointments of Goods agent at the Salt Cotaurs.

No. 1367-68 Rd/12-9-90

I have the honour to be,
Sir,
Your most Obedient Servant

P. Abraham
Dy Examiner
~~Sec~~ Under Secretary

Document accompanying
Nil.

A No. 1850 R. dt/20 Novr 90.

Communicated to the
Consulting Engineer for Railways
with reference to Rep: No. 1367 R A - No 1850 R dt/20 Novr 90.
dt 12 Sept: 1890.

Bs. R

To The Consulting Engr for Rys
& Ex Gr. Rys Madras

C No 60805

Govt. of 18 Madras.

PUBLIC WORKS.

Dated 21/11/90

Recd. Encl.

G.O., 20. XI. 1890 No. 1850R.

Proceedings.

Letter from the Govt of India sanctg with remarks the promotion of Messrs J. L. Taylor and W. H. Johnston to 2d & 3d grade Assistant Traffic Managers, M Ry, respectively, commund to the C. E. M Ry.

60/21

D.C. 20. XI

GOVERNMENT OF MADRAS.

PUBLIC WORKS DEPARTMENT.

Railway.

Read again the following paper:—

Read the following Resolution of the Government of India, Finance and Commerce Department (Statistics and Commerce—Statistics), dated Simla, 12th May 1890, No. 2341.

Read—

Office memoranda from the Legislative Department, Nos. 551 and 625, dated the 19th and 28th March 1890, respectively, transferring for disposal—

(1) a letter from the Bombay Chamber of Commerce, dated the 11th February 1890, urging legislative action on its proposal that railway receipts should be recognised as negotiable and transferable instruments carrying a title to property in the same way as bills of lading;

(2) a letter from the Madras Chamber of Commerce, dated the 25th February 1890, and a memorial from the leading native merchants and commission agents in Bombay supporting the proposal.

Resolution—Considering the strong expressions of opinion in support of the proposal contained in the communications cited above and the equally strong opinions adverse to it which have been received by Government, it seems desirable that the question should be again fully considered by the mercantile community generally. For this purpose the papers on the subject have been printed in convenient form, and copies of the collection should be transmitted to all Local Governments and published in view to eliciting as wide an expression of public opinion as possible on the question at issue. The Government of India also wishes to obtain the opinion of Local Governments and Administrations.

Order—Ordered, that copy of the foregoing Resolution and of the collection of papers be transmitted to all Local Governments and Administrations and to the Public Works and Legislative Departments.

(Signed) J. E. O'CONOR,
Asst. Secy. to the Govt. of India.

ENCLOSURE.

Proposal that railway receipts should be declared to be transferable and negotiable instruments carrying a title to property like bills of lading.

This proposal was first made by the Bombay Chamber of Commerce in a letter addressed to the Legislative Department of the Government of India. The Chamber's proposal was afterwards supported by the Chambers of Madras and Bengal. The letters of the Chambers are printed below:—

Bombay Chamber, dated the 10th November 1886.

No. 1.] I am directed by the Committee of the Chamber to represent to Government the unsatisfactory condition of the existing law relating to railway receipts in India with the hope that His Excellency the Governor-General in Council may see fit to initiate such legislative

action as may be necessary, not only to regulate more definitely than at present the respective rights and liabilities of the public and the various Railway Administrations under these documents, but also to render them transferable and negotiable instruments carrying a title to property in the same way as bills of lading.

Of late years the use of railway receipts has been so widely extended that they have become practically indispensable to merchants as a basis on which to finance the rail-borne trade of the country, and for that purpose a practice has grown up of utilizing them in the same manner as bills of lading by attaching them to drafts as collateral security. So long as all parties to the transactions so financed continue solvent and adhere to the spirit of their contracts, the system works well; but a few months ago the failure of a number of dealers engaged in the grain trade between Bombay and the interior showed the danger involved. Merchants who had paid for produce in transit on the security of the railway receipts found it impossible to obtain possession of it, while, in one instance at least, a Railway Company who had delivered a consignment to the holder of the receipt was held by the Court liable to the consignor for the value.

The risks attendant on dealing with railway receipts as carrying a title to property having thus been fully exposed, their use has latterly been in some measure restricted; but even now, with a full knowledge of the danger incurred, merchants find it impossible to entirely dispense with them, and there is little doubt but that in the keen competition of business they will at no distant date be restored to their former position, only to lead to fresh trouble and disaster when their powers of security again come to be tested. The simple fact is that the distances in India over which merchandise has to be transported by rail are so great, and the time occupied in transit is so long, that without the means of finance which railway receipts are made to afford all but the largest firms, with exceptional monetary resources, would be precluded from trading. In other words, as the law now stands, the issue lies between a restricted trade, or one based on inherently unsound conditions, while by conferring on railway receipts the powers and rights pertaining to bills of lading both drawbacks could be entirely obviated.

My Committee are so strongly convinced of the advantages to be derived from such a change in the law as they have indicated, that they consider only very serious objections should be allowed to stand in the way of immediate legislative action, and these, so far as they are able to judge, do not exist. Before approaching Government on the subject, they deemed it advisable to acquaint themselves as fully as possible with the legal aspect of the question, and they desire me to submit, for the information of Government, a copy of the opinion expressed by the Solicitors to the Chamber, Messrs. Craigie, Lynch and Owen of this city. This, it seems to the Committee, so clearly demonstrates the absence of any legal difficulty that they feel justified in asking that Government may be pleased to give the matter the earliest possible consideration, and either by framing an amendment to the Indian Contract Act or the Bills of Lading Act (IX of 1856), or passing a Railway or Inland Carriers Receipts Act, remedy what is undoubtedly a defect in the law from a commercial point of view and detrimental to the interests of the general community.

Opinion of the Solicitors referred to in the Bombay Chamber's letter.

No. 2.] We beg to state, as requested by you, our opinion on the advisability of the Chamber's addressing Government "with a view to obtaining such alteration or modification of the law as to render railway receipts transferable and negotiable instruments carrying a title to property in the same way as bills of lading."

Whilst expressing our opinion in the matter, we understand that we are desired to point out the distinctions which exist in law between bills of lading and railway receipts, as also the causes for the existence of such distinctions and the reasons which may occur to us for or against invoking the interference of the Legislature in order to place railway receipts on the same footing as bills of lading.

As regards the distinctions existing between bills of lading and railway receipts, it seems obvious that both documents in their origin or primary significance are of similar import; that is to say, both are receipts given by carriers acknowledging that goods have been entrusted to them for carriage or transport, in the one case by land, and in the other by water.

Further, both documents usually include (together with the acknowledgment of receipt of the goods for carriage from one specified place to another) the terms and conditions upon which the goods are to be carried and delivered.

So far, therefore, a bill of lading and a railway receipt resemble each other.

As to their respective special or distinctive characteristics, we will now take each document separately, and, first, as to—

THE BILL OF LADING.

Its most valuable features are—

(1) that it is negotiable and transferable by endorsement and delivery or transmission;

(2) that endorsement and delivery or transmission of the bill of lading transfers the property in the goods to the endorsee (in the absence of a contrary intention on the part of endorser and endorsee);

(3) that it may be endorsed either specially or in blank;

(4) that the holder of a bill of lading may by negotiating, endorsing, or tranferring the same to a *bonâ fide* transferee defeat the vendor's right to stop *in transitu*.

The above special characteristics were not conferred upon bills of lading by any legislative enactment, but were brought into use by merchants and continued in use until they become of established custom, and so acquired the force of law.

In England this custom of merchants in regard to bills of lading was recognised by the courts of law at a very early period, although such recognition was not perhaps a matter of clear authoritative record until the year 1793, when, by the decision of the leading case of *Lickbarrow* v. *Mason*, the existence of the custom of merchants in regard to bills of lading was placed beyond the limits of contention, and the principle that a vendor's right of stoppage *in transitu* is defeated by the *bonâ fide* assignment of a bill of lading by a consignee to a third person for valuable consideration was definitely established.

The custom of merchants in regard to bills of lading also received the recognition of the Legislature by the Act XVIII and XIX Vic., Cap. 3 (commonly called "the Bills of Lading Act.")

The preamble of that Act recognises that by the custom of merchants, the endorsement of a bill of lading *may* pass the property in the goods to the endorsee, and the Act then provides that every consignee named in a bill of lading, and every endorsee thereof to whom the property in the goods therein mentioned shall pass by reason of the endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities as if the contract contained in the bill of lading had been made with himself.

The Act also provides that nothing therein contained shall affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper, owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

And the Act, lastly, provides that every bill of lading in the hands of a consignee or endorsee for valuable consideration shall be conclusive evidence of the shipment of the goods therein mentioned as against the master or other person signing the bill of lading, notwithstanding that such goods, or some part thereof, may not have been shipped, unless the holder of the bill of lading shall have had notice at the time of receiving the same that the goods had not been in fact laden on board. The only exception or reservation is that of the master or other person signing the bill of lading being able to show that the goods, or part thereof, had not been laden on board owing to default on his part, and that their non-shipment was due to fraud on the part of the shipper or holder of the bill of lading.

It being considered, as we presume, that this Act did not extend to India, its provisions have been made applicable to India by Act IX of 1856, which is word for word the same as the English Bills of Lading Act.

It will be noticed that in the preamble to the Bills of Lading Act, it is affirmed that the endorsement of a bill of lading *may* pass the property in the goods; and as to this it remains to be stated that such endorsement does not of *necessity* operate in every single case without exception to "pass the property," and will not pass the property within the meaning of the Act in cases where it is the actual or implied intention of the parties that the property shall not pass.

As, for instance, where the shipper of goods having endorsed the bill of lading in blank, deposits the same with his bankers by way of *security* for money advanced.

The law in such case has been clearly laid down in a recent decision of the Court in England (*Burdick* v. *Sewell*, *10 Q. B. D.*, 365; *13 Q. B. D.*, *159*; and 10 *Ap. Ca.*, *74*.)

As regards right of stoppage *in transitu*, section 102 of the Indian Contract Act provides that the right of stoppage ceases if the buyer, having obtained *a bill of lading* or *other document showing title to goods*, assigns it, while they are in transit, to a second buyer who is acting in good faith, and who gives valuable consideration for them.

And section 103 of the same Act further provides that where *a bill of lading* or *other instrument of title* to any goods is assigned by the buyer of such goods by way of pledge to secure an advance made specifically upon it in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods *in transitu*.

(It may be remarked parenthetically that if the words "other document showing title to goods" and "other instrument of title" included railway receipts, these would, of course, secure the benefits or immunities conferred by the sections above referred to. We shall state further on our reasons for considering that "railway receipts" are neither "documents" nor "instruments" of title within the meaning of those sections.)

Lastly, section 108 of the Indian Contract Act provides that no seller can give to the buyer of goods a better title than he has himself, except in certain cases; and one of those cases is that when any person is, by consent of the owner, in possession of a bill of lading, he may transfer the ownership of the goods to which such bill of lading relates 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, &c.

It will be seen from what we have above stated that the position of bills of lading as to their negotiability and in other respects is clearly ascertained and defined by law both in England and in India; but turning now to

RAILWAY RECEIPTS,

it will be found that the case is altogether different, their position and effect being ill-defined and ambiguous with reference to negotiability, and with reference to the right which they confer as between the holder or endorsee and the carrier and consignor.

In the first place, if any custom of merchants has grown up, whether in England or in India, in relation to the negotiability or otherwise of railway receipts, such custom has never, we believe, been established in a court of law.

Next, there is not any Act of the Legislature, either here or in England, which defines or recognises any status or effect on the part of railway receipts in regard to negotiability or otherwise.

Speaking generally, and subject to what is hereafter stated, a railway receipt is—

(1) neither negotiable (in the legal sense of the word),

(2) nor capable, when endorsed, of passing the property in goods,

(3) nor is it when in the hands of a *bonâ fide* endorsee for valuable consideration of effect to defeat the consignor's right to stop in transit.

It is true that so far back as the year 1833 (in the case of *Hall* v. *Griffin*, *10 Bing*, *246*), it was held by the court sitting in Banc that the delivery of a *wharfinger's* receipt upon an advance of money "was a symbolical transfer of the property, and might be considered the same as if the goods had passed from hand to hand;" and this case was in recent times relied upon by the plaintiff *in a suit brought in Calcutta* against the East Indian Railway Company. It was there argued on the plaintiff's behalf, upon the authority of the case of *Hall* v. *Griffin*, that a railway receipt is customary evidence of title, and that although it may not have the full power of a bill of lading, yet that it is an instrument which confers upon the holder thereof a right to deal with the goods.

Eagleton v. the East Indian Railway Company, 8 B.L.R., 581.

The Court of Appeal (Couch, C. F., and Macpherson, F., reversing the decision of the lower court) seem to have approved the ruling of *Hall* v. *Griffin*, and to have considered it applicable to a railway receipt, and it was held that the Company was bound to deliver the goods to the holder of the receipt notwithstanding a request to the contrary on the part of the consignor.

But in that case not only had the receipt been sent by the consignor or himself to the holder for the purpose of enabling him to receive the goods, but it also appears that the goods were delivered to, and accepted by, the Railway Company *for the express purpose* of being sent to the plaintiff, and *therefore* the court held that the property and right to possession passed to the holder of the receipt, and that the consignor could not revoke the authority which he had given to the holder to receive the goods.

And in the case of *Hall* v. *Griffin* not only was the receipt of the wharfingers at Stockton (whence the goods were to be despatched to London) handed to the claimant of the goods, but the consignor also addressed and ordered to his agents (also wharfingers) in London to deliver the goods upon arrival to the receipt holder, and further those agents promised to deliver the goods to him on arrival.

It follows, in our opinion, that so far as this case and the Calcutta case decided that property in goods passes by transfer of a wharfinger's or railway receipt, they only so decided *having regard to special circumstances which had happened in each case*, and not that they decided as a general principle that the passing of the property was a matter inherent in all cases to the delivery or transfer of a wharfinger's or railway receipt.

And neither case can be regarded as an authority to show that the endorsement of a railway receipt to a third party for valuable consideration will protect the holder from consignor's right of stoppage *in transitu*.

With the exception of the cases above referred to, we are not aware of any reported decisions bearing upon the effect of the transfer or endorsement of a railway receipt.

In a case lately disposed of by the Bombay High Court (*Gunesh Shundiram and others* v. *the Bombay, Baroda and Central India Railway*), the Company had, notwithstanding objection notified to them by the consignor, delivered the goods to the holder of the railway receipts; but the receipts had not been endorsed to the holder, and the Court found that he had obtained possession of them *by fraud*, and ordered the Company to refund to the consignor the value of goods delivered by them to the receipt holder. It appeared that the receipt in this instance comprised a condition (printed thereon) that the same should be produced by the consignee, or that the goods would not be delivered, and that "if he did not attend himself to take delivery, he must endorse a request for delivery to the person to whom he wished it made." As already stated, the receipt had not been endorsed, but it was proved that the Company had frequently, during a period of 21 years, delivered goods to holders of such receipts unendorsed. The court held in effect that this practice could not exonerate the Railway Company, and that, even if it were a recognised custom, consignors at a distance from Bombay could not be held bound by it.

Whether the court would have held the Company justified in delivering the goods supposing the receipt had been endorsed by the consignor (in accordance with the condition) is not clear.

We apprehend not, as the holder of the receipts had obtained the same by fraud, and notice of the fraud had been given to the Company.

There remains to be considered the question whether the words "document of title" used in section 102 of the Indian Contract Act, the words "instrument of title" used in section 103, or the words "document showing title" used in section 108 include within their meaning respectively a railway receipt.

We do not think that this question has ever been decided by a court of law; at all events we are not aware of any reported decision on the subject.

We apprehend, however, that there can be but little doubt that a railway receipt is neither a "document of title," nor an "instrument of title," nor a "document showing title"

Such a receipt is, of course, evidence (though not necessarily conclusive evidence) that the Railway Company who have granted the receipt have actually received the goods for carriage. But what evidence is such receipt that the goods belong to the person who produces it? And if the receipt in no way evidences ownership, then how can it be said to be a "document showing title to the goods?"

We have examined the forms of receipt used by all the principal railways in India, and we find that a very large number of them contain a clause to the effect that the "consignee" must produce the receipt, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. A receipt so framed is doubtless a document evidencing the right of the person therein named as consignee to *receive* delivery of the goods from the Railway Company. But there is a very wide distinction between a document which shows "a right to receive" goods from the carriers thereof and a document which shows title (*i.e.*, a right of ownership and of disposal) to the goods themselves.

It may be said that, judged from this point of view, a bill of lading should be no better than a railway receipt.

But the answer is that the established custom of merchants recognised by the courts of law and by the Legislature has invested a bill of lading with the character of document showing title, whereas no such established and recognised custom exists as regards railway receipts.

Further, it is noticeable that section 108 of the Indian Contract Act, to which we have before referred, expressly includes not only bills of lading, but also "dock-warrants," a "warehouse-keeper's certificates," and a "wharfinger's certificate or warrant or order for delivery," but "railway or carrier's receipts" are not mentioned.

We have now shown that there is a very material distinction between the value for commercial purposes of a bill of lading and a railway receipt, the latter enjoying few, if any, of the special advantages and privileges which attach to the former.

The reasons for this are not far to seek.

The Western trade of former days was almost entirely carried on by water. Railways are comparatively of modern date, and distances in the United Kingdom so short that goods may arrive at their destination as soon as the railway receipt granted at the place of their despatch; possibly for this reason not very much would be gained by making railway receipts negotiable so far as the United Kingdom is concerned. That such receipts have not acquired the same advantages as bills of lading is probably due to the circumstance that it may not have been hitherto worth the merchants' while to secure those advantages for railway receipts.

But in India the case is different: goods travel long distances by rail, and are often several days on the road. It seems obvious that commercial transactions must be greatly facilitated if, under such circumstances, a railway receipt can be made to afford the same or as good security as a bill of lading.

As a matter of fact, considerable transactions in the way of negotiation of railway receipts take place in India, and especially in Bombay; and such transactions facilitate, and indeed are, we believe, often necessitated by the lawful operations of trade.

As matters stand at present, a merchant who buys a railway receipt, say, for 100 bales of cotton is exposed to the risk of the goods being stopped in transit, or claimed in the case of an insolvency by the Official Assignee, or claimed on the ground that the consignor was not the true owner of the goods.

Why should the negotiator of railway receipts be compelled to incur these risks?

It appears to us to be a hardship and an anomaly that risks of the kind should attend the negotiation of railway receipts whilst the negotiation of bills of lading is practically free from them; and the very fact that such risks exist in connection with railway receipts seems calculated to operate in restraint of trade.

It may well be that a mercantile custom is even now growing up, if it be not already in existence, to treat railway receipts on the same footing as bills of lading.

If this be the case, then it is of all the more importance that such custom should be recognised and established by law.

The application by the Legislature to railway receipts of the law which governs bills of lading would not, we think, be a matter of any difficulty.

This object could, we submit, be effected by an amendment of the Indian Contract Act or of the Bills of Lading Act (IX of 1856), or by passing a "Railway or Inland Carriers Receipts Act."

Such amendment of the law might with advantage be made applicable also to "canal" receipts, and perhaps to other carriers' receipts.

We are of opinion that to place railway receipts upon an equal footing with bills of lading is desirable, not only in the interests of traders, but of all the community generally.

It follows, therefore, that in reply to the question put to us, we are of opinion that "it is advisable that the Chamber should address the Government with a view to obtain such alteration or modification of the law as will render railway receipts transferable and negotiable instruments carrying a title to property in the same way as bills of lading," and (we may add) as will secure to railway receipts the same privileges in all respects as bills of lading enjoy.

Madras Chamber, dated the 8th December 1886.

No. 3.] I have the honor to state, for the information of the Government, that this Chamber has been favored by the Bombay Chamber with a copy of the letter which it addressed to you on the 10th ultimo, asking that legislative action may be taken to place railway receipts on the same footing as bills of lading.

The opinions expressed by the Bombay Chamber are shared by the mercantile community of Madras, and I am desired to say that this Chamber entertains the hope that the Government will be pleased to take the legislative action that has been proposed.

Bengal Chamber, dated the 29th April 1887.

No. 4.] I am to say that this Chamber is generally in favor of the proposals set out in the letter of the Bombay Chamber of 10th November last. They can see no reason why railway receipts should not be placed on the same footing as bills of lading. Small parcels and packages could be covered as now by parcel receipts.

2. The proposal was referred by the Government of India to its Law officers, and the case stated for the Advocate-General by the Government Solicitor and the Advocate-General's opinion are printed below :—

Case stated by Mr. H. A. Aitkin, Officiating Solicitor to the Government of India.

No. 5.] The questions raised in the accompanying papers and on which the Government of India desire the opinion of the Honorable the Advocate-General are, as it appears to the Government Solicitor, (1) whether the application of the Bombay Chamber of Commerce to the Government of India in the Legislative Department makes out a sufficient case for the initiation of legislation with a view to placing receipts granted by Railway Administrations to consignees for goods entrusted to such administrations for conveyance by railway on the same footing as bills of lading ; (2) whether any practical objections suggest themselves to the initiation of such legislation ; and (3) the form which such legislation should take.

These questions are, of course, based on the assumption that, as the law of India at present stands, railway receipts are not negotiable instruments ; and as to this, it appears to the Government Solicitor that the letter from Messrs. Craigie, Lynch and Owen appended to the letter from the Secretary of the Bombay Chamber of Commerce makes out a conclusive case. Unless, however, the Honorable the Advocate-General concurs in this view, the questions, as above stated, will not arise.

The considerations urged by the Bombay Chamber and their Solicitors in support of their application appear to be very strong, and no reasons occur to the Government Solicitor (who concurs in the views expressed in Messrs. Craigie, Lynch and Owen's letter) against the proposed legislation.

The Honorable the Advocate-General will please advise on the questions stated above.

Opinion by Mr. G. C. Paul, Advocate-General.

No. 6.] The letter from Messrs. Craigie, Lynch and Owen to the Secretary of the Bombay Chamber of Commerce, I think accurately enunciates the principles of law relating to bills of lading and railway receipts respectively. I am further of opinion that the Bombay Chamber of Commerce has made out a strong case for legislative action. If railway receipts are put on a *par* with bills of lading, doubtless the legal responsibility of the Government either as owners or principal proprietors of railways will be increased in cases where unpaid vendors can legally exercise their right of stoppage *in transitu*. The question for the Government to decide is whether, in view of the great advantages to trade which would be afforded by railway receipts being put on a *par* with bills of lading, an additional legal responsibility should not be incurred by the Government. This is a question of expediency and policy which is beyond my province as the Legal Adviser to the Government. But if my advice is sought on this subject, I would be disposed to view favorably the change in the law recommended by the Bombay Chamber of Commerce.

3. The proposal was then referred to the Agents of Guaranteed and the Managers of State Railways for their opinions, the Agents being instructed to send their opinions to their London

Boards. It was also suggested to the Secretary of State that the question should be discussed with the Boards of Directors of Indian Railway Companies. The opinions received are reproduced in substance below :—

BENGAL-NAGPUR RAILWAY.

From the Manager, dated the 8th June 1887.

No 7.] In my opinion the custom on the subject requires alteration, and that a railway should be justified in handing over goods at any time to any one producing their receipts for the same, and that, having done so, they are free of all responsibility in the matter.

2. It is not universally admitted by legal authorities that a special legislation is necessary. Macpherson on Law of Indian Railways and Common Carriers, page 37, would lead to the opinion that all that is required is a receipt in the form of a special contract approved by the Governor-General in Council, as has been done with risk notes, and that such a contract could not be altered by the Civil Courts.

BILASPUR-ETAWAH STATE RAILWAY.

From the Manager, dated the 5th June 1887.

No. 8.] Officially no instance of the difficulties attended on the non-negotiability of railway receipts has ever occurred to me. I, however, am fully aware of the truth of what the Secretary of the Bombay Chamber of Commerce puts forward, and do not anticipate any difficulties likely to accrue to Railway Administration by giving effect to the suggestions.

BURMA STATE RAILWAY.

From the Manager, dated the 17th June 1887.

No. 9.] The matter was discussed at an official meeting held at this office on Monday the 13th instant, when the Examiner of Railway Accounts pointed out that the following endorsement appears on Goods Receipt Form No. S. N. 36 :—

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

It was therefore resolved that in reply to the reference, it be pointed out that the above-quoted rule, which is issued under the authority of the Government, evidently constitutes the document concerned a negotiable instrument, and that, as far as State Railways are concerned, no legislative action appears necessary.

EASTERN BENGAL STATE RAILWAY.

From the Manager, dated the 24th June 1887.

No. 10.] The legal aspect of the question appears to have been fully dealt with by Messrs. Craigie, Lynch and Owen, Solicitors to the Bombay Chamber of Commerce, and these gentlemen, after setting forth arguments in favor of the proposal, state—

"This object could, we submit, be effected by an amendment of the Indian Contract Act or of the Bills of Lading Act (IX of 1856), or by passing a Railway or Inland Carriers Receipt Act."

I have referred to this, as I consider from a railway point of view that, in the event of the Legislature favoring the proposal, the manner in which the object is effected is of some importance. In my opinion the latter alternative is the best.

I do not follow the Advocate-General where he seems to imply that if railway receipts are put on a par with bills of lading, an additional legal responsibility will fall on Government as owners or principal proprietors of railways. It seems to me that the responsibility of the railway as a carrier should not extend beyond the delivery of the goods to the consignee or endorsee, as the case may be. In this connection, I may remark that the right of stoppage *in transitu* is very rarely exercised, and there appears no valid reason why railway receipts should differ from bills of lading in this respect.

TIRHOOT STATE RAILWAY.

From the Manager, dated the 15th June 1887.

No. 11.] I see no material objection to this as far as the railways are concerned, assuming that the projected legislation to effect this protects railways from loss or undue responsibility.

The endorsement to a consignee, for instance, which would give him right of property in the goods, should at the same time involve responsibility to the railway for freight and undercharges, though we may still have to hold consignors responsible for fraudulent or mistaken description of goods. Due account should also be taken of the difference between the station staff on Indian Railways and those who have to deal with ordinary bills of lading used in shipping.

It is to be noted that the correspondence received with your letter under reply shows that the supporters so far of the proposal are those who would be buyers or consignees of goods to be dealt with under these negotiable receipts. It would be well to take the views of sellers on the matter. It would possibly be found that they were not so favorable to the proposal, and that the anticipated increase of trade among the smaller firms at ports, which it is urged or implied as likely to follow on the realisation of this proposal, would not be fulfilled unless the operation is protected by greater security to the consignor at the station of consignment. In any case consignors would desire, I think, that railway receipts are not made generally negotiable, but only when endorsed, or, better still, when granted and executed on a separate form intended for such negotiable receipts.

NORTH-WESTERN STATE RAILWAY.

From the Examiner of Accounts, dated the 9th June 1887.

No. 12.] The proposals are apparently that the railway receipts should be made in law an instrument of the same nature as a bill of lading, the most valuable features of which are stated to be—

(1) that it is negotiable and transferable by endorsement and delivery or by transmission;

(2) that endorsement and delivery or transmission of the bill of lading transfers the property in the goods to the endorsee (in the absence of a contrary intention on the part of the endorser and endorsee);

(3) that it may be endorsed either specially or in blank;

(4) that the holder of a bill of lading may by negotiating, endorsing, or transferring the same to a *bonâ fide* transferee defeat the vendor's right to stop *in transitu*.

The bill of lading is also seemingly, with certain reservations as to fraud, &c., conclusive evidence of the receipt of the goods as against the carrier

The State Railway form of receipt, after providing that it must be produced by the consignee, further provides that—

"If the consignment or this railway receipt is sold one or more times, the endorsement must be a distinct written order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face hereof, each order must bear a stamp."

This would seem to indicate an intention to recognise the receipt as a negotiable document and instrument showing title to the goods, and the proposed legislation would apparently define and legalise its position in these respects.

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(1) An endorsement in blank.

(2) The *bona fides* of a transfer being questioned, and the consignor seeking in consequence to exercise a right of stoppage *in transitu*.

But I am inclined to think that, so far as the railway is concerned, the receipt should be specially endorsed, and that its production duly endorsed should be accepted as sufficient evidence of title and delivery made thereupon, except in case of an interdict from a court.

Any increase in the responsibility of the railway is, I think, to be deprecated, and probably the requirements of the mercantile community might be sufficiently met without adding to the liability of the railway.

With reference to the remarks of the Bengal Chamber of Commerce, it would probably be desirable to have a distinction between the parcels and goods receipts.

The proposals have been made in the interest of the export trade, but there is also a large internal trade to be considered, and I am unaware whether the proposed charges are such as would commend themselves to the large body of native merchants who chiefly carry on the internal trade of the country. Steps might perhaps be taken to ascertain this. If necessary, there might be two sets of forms—one for the export, and the other for the internal trade, to be used at the option of the consignors; but, except upon very strong grounds, it would seem undesirable to have forms of different legal nature for the same railway purpose.

From the Traffic Superintendent, Punjab Section, dated the 17th June 1887.

No. 13.] It would, I think, be expedient to obtain a full explanation of the extent to which the legal responsibility of a Railway Administration is increased.

The Advocate-General implies that this increased responsibility will be incurred *only* in cases where unpaid vendors can legally exercise this right of stoppage in transition.

The clauses of the Contract Act which affect the case are—

99. "A seller who has parted with the possession of goods and has not received the whole price may, if the buyer becomes insolvent, stop the goods while in transit to the buyer."

101. "The seller's right of stoppage does not, except in the case hereinafter mentioned, cease on the buyer re-selling the goods while in transit and receiving the price, but continues until the goods have to be delivered to the second buyer, or to some person on his behalf."

102. "The right of stoppage ceases if the buyer, having obtained a bill of lading, assigns it, while the goods are in transit, to a second buyer who is acting in good faith, and who gives valuable consideration for them."

To take the cases given in the Contract Act: *A* sells and consigns certain goods to *B*, and sends him the bill of lading. *A* being still unpaid, *B* becomes insolvent and assigns the bill of lading for cash to *C*; *C* either knows or does not know that *B* is insolvent. In the former case the transaction is not in good faith, and *A* can stop the goods in transit. In the latter case the transaction is in good faith, and *A* cannot stop the goods in transit.

But the Railway Administration is not in a position to know whether the transaction between *B* and *C* is in good faith, and, in the absence of such knowledge, must of necessity be placed in a dilemma if *A* orders the goods to be stopped in transit.

If the Railway does not act on *A's* instructions and allows the goods to be delivered to *C*, and it subsequently turns out that the transaction between *B* and *C* was not in good faith, it becomes liable to *A* for the value of the goods. If, on the other hand, the Railway stops delivery of the goods, and it turns out that the transaction between *B* and *C* was conducted in good faith by *C*, then *C* can sue the Railway for loss of market.

If my interpretation is correct, there is no question that Railway Administrations will incur a very serious responsibility; and the question is, whether the facilities given to merchants would be likely to increase trade to an extent which would compensate railways for the increased risk incurred.

On the whole, I am doubtfully disposed to believe that the prospect of extending trade is worth the risk, and to recommend that we declare in favor of the proposed legislation.

From the Manager, Punjab Section, dated the 28th June 1887.

No 14.] Before we are called upon to express a definite opinion, some explanation is required of the extent to which our responsibility would be increased by the proposed legislation.

The wording on the form of receipt in use on State Railways would appear to imply that we already consider the receipt as a document showing title to the goods by the person to whom it has been last duly transferred by endorsement. I cannot, however, say under what responsibilities the Railway actually labors in the case of an endorsement in blank or in the event of the *bona fides* of a transfer being disputed by the consignor, and his instructions received to stop delivery. The responsibility would seem to depend upon whether the transfer was made in good faith between the parties concerned; but how the Railway is to ascertain this before it may be too late is in no way indicated.

If the proposed legislation will remove this difficulty, or at all events place us in no worse a position than we are now, I would willingly advocate the acceptance of the assimilation of bills of lading and railway receipts which the mercantile community appear to desire; but the opinion of the Honorable the Advocate-General distinctly indicates increased responsibility in certain cases, and we ought to know what the extent of this responsibility is likely to be.

From the Traffic Superintendent, Sind Section, dated the 14th June 1887.

No. 15.] There can be no doubt that to place railway receipts on the same footing as bills of lading will be an immense convenience to merchants and bankers.

At the same time it is equally certain that the responsibility of the railway carrier will be largely increased, especially so if the consignee is allowed to retain his right to stop goods while in transit, and while the present practice of delivering goods on indemnity bonds remains in force. These considerations, however, cannot be allowed to outweigh the great convenience that would be afforded to traders, and I think it would be well if railway receipts were rendered negotiable documents.

From the Manager, Sind Section, dated the 1st July 1887.

No. 16.] I concur in the general opinion that a railway receipt should be a negotiable document. But as this will virtually prohibit delivery without production of the receipt, it may possibly be advisable to restrict its application either to—

(1) certain trading localities;

(2) to consignments of certain value or quantity;

(3) to certain classes of goods, and allow all other traffic to be conducted on ordinary principles. A form of indemnity bond will also be necessary to meet cases of lost negotiable receipts.

The endorsement to a consignee, for instance, which would give him right of property in the goods, should at the same time involve responsibility to the railway for freight and undercharges, though we may still have to hold consignors responsible for fraudulent or mistaken description of goods. Due account should also be taken of the difference between the station staff on Indian Railways and those who have to deal with ordinary bills of lading used in shipping.

It is to be noted that the correspondence received with your letter under reply shows that the supporters so far of the proposal are those who would be buyers or consignees of goods to be dealt with under these negotiable receipts. It would be well to take the views of sellers on the matter. It would possibly be found that they were not so favorable to the proposal, and that the anticipated increase of trade among the smaller firms at ports, which it is urged or implied as likely to follow on the realisation of this proposal, would not be fulfilled unless the operation is protected by greater security to the consignor at the station of consignment. In any case consignors would desire, I think, that railway receipts are not made generally negotiable, but only when endorsed, or, better still, when granted and executed on a separate form intended for such negotiable receipts.

NORTH-WESTERN STATE RAILWAY.

From the Examiner of Accounts, dated the 9th June 1887.

No. 12.] The proposals are apparently that the railway receipts should be made in law an instrument of the same nature as a bill of lading, the most valuable features of which are stated to be—

(1) that it is negotiable and transferable by endorsement and delivery or by transmission;

(2) that endorsement and delivery or transmission of the bill of lading transfers the property in the goods to the endorsee (in the absence of a contrary intention on the part of the endorser and endorsee);

(3) that it may be endorsed either specially or in blank;

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(2) The *bona fides* of a transfer being questioned, and the consignor seeking in consequence to exercise a right of stoppage *in transitu*.

But I am inclined to think that, so far as the railway is concerned, the receipt should be specially endorsed, and that its production duly endorsed should be accepted as sufficient evidence of title and delivery made thereupon, except in case of an interdict from a court.

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With reference to the remarks of the Bengal Chamber of Commerce, it would probably be desirable to have a distinction between the parcels and goods receipts.

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To take the cases given in the Contract Act: *A* sells and consigns certain goods to *B*, and sends him the bill of lading. *A* being still unpaid, *B* becomes insolvent and assigns the bill of lading for cash to *C*; *C* either knows or does not know that *B* is insolvent. In the former case the transaction is not in good faith, and *A* can stop the goods in transit. In the latter case the transaction is in good faith, and *A* cannot stop the goods in transit.

But the Railway Administration is not in a position to know whether the transaction between *B* and *C* is in good faith, and, in the absence of such knowledge, must of necessity be placed in a dilemma if *A* orders the goods to be stopped in transit.

If the Railway does not act on *A's* instructions and allows the goods to be delivered to *C*, and it subsequently turns out that the transaction between *B* and *C* was not in good faith, it becomes liable to *A* for the value of the goods. If, on the other hand, the Railway stops delivery of the goods, and it turns out that the transaction between *B* and *C* was conducted in good faith by *C*, then *C* can sue the Railway for loss of market.

If my interpretation is correct, there is no question that Railway Administrations will incur a very serious responsibility; and the question is, whether the facilities given to merchants would be likely to increase trade to an extent which would compensate railways for the increased risk incurred.

On the whole, I am doubtfully disposed to believe that the prospect of extending trade is worth the risk, and to recommend that we declare in favor of the proposed legislation.

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If the proposed legislation will remove this difficulty, or at all events place us in no worse a position than we are now, I would willingly advocate the acceptance of the assimilation of bills of lading and railway receipts which the mercantile community appear to desire; but the opinion of the Honorable the Advocate-General distinctly indicates increased responsibility in certain cases, and we ought to know what the extent of this responsibility is likely to be.

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At the same time it is equally certain that the responsibility of the railway carrier will be largely increased, especially so if the consignee is allowed to retain his right to stop goods while in transit, and while the present practice of delivering goods on indemnity bonds remains in force. These considerations, however, cannot be allowed to outweigh the great convenience that would be afforded to traders, and I think it would be well if railway receipts were rendered negotiable documents.

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(1) certain trading localities;

(2) to consignments of certain value or quantity;

(3) to certain classes of goods, and allow all other traffic to be conducted on ordinary principles. A form of indemnity bond will also be necessary to meet cases of lost negotiable receipts.

There are also certain small consignments for short distances, the freight on which will scarcely cover the cost of printing and filling in the numerous forms which now complicate and retard the business of a railway, and I would venture to suggest, while the alteration of the law is under consideration, the advisability of still further altering the law and making it legal for railways to book small consignments at owner's risk without either a consignment note, receipt, or invoice, the fact of their entry in a receipt book and of a signature on a delivery book being considered conclusive evidence of receipt or delivery.

EAST INDIAN RAILWAY.

From the Agent to the Board of Directors, dated the 10th September 1887.

No. 17.] My own opinion is that before any change in the law is considered, the alleged inconvenience to the public should be fully ascertained and established. If from the circumstance of railway goods receipts not possessing the legal status of bills of lading the inconvenience to trade should be found to be considerable, I am of opinion that Railway Administrations should be prepared to accept the increased risk and responsibility which a change in the law would entail. Correspondence is enclosed.

From the Board of Directors to the Agent, dated the 25th November 1887.

No. 18.] I am desired to hand to you the enclosed copy of a report from Messrs. Freshfields and Williams, the Company's Solicitors, in which the question of the proposed legislation is fully discussed from a legal point of view.

For the rest, you are aware how anxious the Board have always been to grant the utmost facilities to traders using the East Indian Railway Company's system or that of other Companies in connection therewith.

It appears, however, to the Board that the alterations now suggested by the Bombay and other Chambers of Commerce, if carried out, must entail increased, and probably onerous, responsibilities upon the East Indian Railway Company, and they therefore feel their inability to arrive at any judgment upon the question until they are able clearly to understand what course of legislation the Government of India would propose.

Should the Government, therefore, decide to proceed to any legislative enactment to alter the present status or force of the existing railway receipt for goods, you are directed to take the earliest opportunity of apprising the Board thereof, and to forward for their consideration (in conjunction with their legal advisers) the full terms of any measure to be introduced into the Legislative Council. You will further, at the same time, most urgently represent to the Government of India the Board's request that they may have ample time to consider any such legislation on a matter which appears to them of vital importance to the East Indian Railway Company before its final adoption.

From Messrs. Freshfields and Williams (the report mentioned in the foregoing letter).

No. 19.] We collect from the correspondence and papers that, as a matter of practice, the East Indian Railway Company already treat the railway receipts to a certain extent as bills of lading, and deliver the goods at their destination to any endorsee of the receipt appearing thereon entitled to such goods. This practice, it is clear, is carried on at the Company's own risk.

The question then arises, what effect would the proposed legal assimilation of railway receipts with bills of lading have on the liability and responsibility of the Company in the carriage of goods.

We may here observe that it is not quite clear in what way the promoters of legislation propose to make the new law obligatory on the Railway Companies.

At present the system of railway receipts adopted by the Company is an entirely voluntary arrangement.

We understand that, under the Indian Contract Act, the sole duty of the Railway Companies as carriers is to deliver goods to the original consignees, and that the Company is not bound to issue railway receipts at all, nor to recognise or act upon endorsements, and consequently the Company can depart from or modify their present practice in any particular case when it may be convenient or prudent to do so.

If the law were altered so as to place railway receipts on the same footing as bills of lading, and a statutory form of bill of lading were prescribed and made obligatory on the Companies, they would become liable for the proper delivery of the goods to the party entitled under the bill, whether as endorsee or otherwise.

As a consequence of this, the Railway Company would have to take into consideration questions as to irregular and forged endorsements, and in the event of goods being delivered even to an innocent holder for value when a previous endorsee's signature had been forged, the Company would be liable to the right holder whose signature was forged for the goods so delivered.

In addition to this, further inconvenience would arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*.

At present, when a consignor and consignee stand in the relation of unpaid seller and buyer, and before the delivery of the goods the consignor finds out that the consignee is insolvent, the former has a right to stop the delivery of the goods to the consignee; but, in the case of a bill of lading, the consignor cannot stop the goods *in transitu* if the consignee has parted with the bill of lading and it is has passed into the hands of a *bonâ fide* holder for valuable consideration.

It follows that if railway receipts were turned into bills of lading, questions of the good faith, &c., of the holder would have to be considered when an unpaid consignor attempted to stop goods *in transitu*.

Whether or not, in the interests of trade, it would be advisable for the Government of India to impose upon Railway Companies the additional risk and responsibility which we have pointed out, it is not for us to express an opinion; but in our opinion the proposal is at least open to the criticisms and objections passed upon it and urged against it in the letters of Mr. Macpherson and Messrs. Morgan, and we think that, as pointed out by Mr. Macpherson, if any alteration of the law takes place in the direction now contemplated, it is essential that it should only apply to consignments above a certain fixed weight or value; otherwise a wide field would be opened for petty frauds on the Railway Companies, and we think that some provision for protecting Railway Companies against forged endorsement should, as suggested by Messrs. Morgan, be introduced into the Bill. We prefer to defer giving any more definite opinion until we see the exact terms of the proposed legislation.

GREAT INDIAN PENINSULA RAILWAY.

From the Board of Directors to the Agent, dated the 11th November 1887.

No. 20.] The object which the Chambers have in view is understood to be to give further facilities to traders in the conduct of their business, and, in as far as it may be possible to secure that object, the Board recognise that the proposal is of a character deserving their support. It is not necessary for the Board to go at present into details as to the manner in which the arrangement suggested might affect the Railway Companies as carriers, but it must be remembered that there are in that respect circumstances which could not be overlooked in any proposed legislation.

That with this reservation, and with the understanding that it is not contemplated by means of the proposed legislation to affect unduly responsibilities at present attaching to the Railway Companies as carriers, the Board will be ready to give their best consideration and assistance to any Bill which may be introduced into the Legislative Council on the subject, and which they assume will be proceeded with in the Council in a way to afford the Railway Companies the fullest time for considering it and representing their views in the matter.

BOMBAY, BARODA AND CENTRAL INDIA RAILWAY.

From the Agent to the Board of Directors, dated the 6th January 1888.

No. 21.] The change which the Bombay Chamber of Commerce advocates is one which confers certain advantages upon the mercantile communities of the ports of exportation, and it does not appear, from the opinion expressed by the Solicitors to the Bombay Chamber of Commerce, that the interests of the inland traders, or that the increased risks and responsibilities which would be entailed upon Railway Administrations by the introduction of the proposed change, have been dealt with in connection with the subject.

It is pointed out in the correspondence that difficulties would be likely to arise with respect to the stoppage of goods in transit in the case of the loss of railway receipts and with regard to the lien that Railway Administrations now have upon the goods of a consignee who has become insolvent, as well as in connexion with forged endorsements on railway receipts Delivery without the production of railway receipts would involve the Railway in increased risks, and to insist on the production of railway receipt would often delay delivery and so block up storage accommodation. This would specially affect the short distance traffic, such as our cotton traffic from Guzerat and Kathiawar, which often arrives at Bombay before the railway receipt can reach the consignee through the post.

The negotiability of bills of lading is doubtless in complete conformity with all existing legislation regarding shipping matters, while the extension of the same principle to railway receipts might necessitate many alterations in law as now affecting Railways; but in the main I agree with the opinion expressed by the Agent, East Indian Railway (copy attached, with copies of opinions of East Indian Railway officers), that if sufficient necessity is shown for the introduction of the proposed change, or the interests of trade and commerce are to be promoted thereby, I would not oppose the introduction of legislation to make railway receipts negotiable, provided that it is accompanied by safeguards to protect Railway Administrations against undue risks and responsibilities.

From the Board of Directors to the Agent, dated the 17th February 1888.

No. 22.] This subject is one of much importance, and in the opinion of the Board should not be legislated upon without full previous enquiry as to the nature and real extent of the disadvantages to traders and others alleged by the Bombay Chamber of Commerce, with the concurrence of the Bengal Chamber of Commerce, to result from the present status of railway receipts as untransferable and unnegotiable instruments not carrying a title to property in the same way as shipping bills of lading. The Board concur in the view expressed by yourself and the Agent of the East Indian Railway Company to the effect that, if a change in this status is advisable in the interests of trade and commerce, the Railway Companies should not oppose a necessary alteration therein, provided that in any legislation undertaken with a view to this end, the Railways are fairly protected against undue risks and responsibilities, and are not unreasonably hampered in the prompt conduct of their business as common carriers.

BHAVNAGAR-GONDAL RAILWAY.

From the Manager, dated the 15th December 1887.

No. 23.] The Traffic Superintendent of this Railway reports that no complaints have been received from merchants or traders of any inconvenience arising from the railway receipt not being a legalised document in the same sense as the bill of lading is, but at the same time he has no doubt that the railway receipt being placed on the same footing in point of law as the bill of lading would be a convenience generally to the trading community, and in this opinion I concur.

4. About this time the Secretary of State had under consideration certain claims for compensation preferred by an officer of the army on account of injuries received, and the question of the liabilities and obligations of railways owned by the State was discussed. The opinions of the Legal Advisers of the India Office on this question and on the question of the negotiability of railway receipts were sent to the Government of India for consideration in connection with the Railway Bill which was then under preparation. The opinion on the latter point was as follows:—

Note by the Legal Adviser of the India Office on bills of lading, dated the 29th June 1887.

No. 24.] I do not think there is much legal aspect in this case, though the general considerations which apply to it are important. For I do not quite see why the legal responsibility of the Government would be increased by the proposed change as suggested by the Advocate-General, and, if it would be, provision could be made in the proposed legislation for negativing such responsibility.

The general considerations applying to the case are as follow:—

The negotiability, &c., of bills of lading was brought about by custom or the law merchant, they being ancient mercantile documents applicable to goods at sea shipped in one bottom, which, if sold, could not be delivered by reason of being on the sea. If the bill of lading was not negotiable, the species of property to which it applied would be locked up, and, in the old sailing days, for long periods.

It may be doubtful whether the existing law as to bills of lading would have grown up and taken root so as to be recognised with judicial sanction in these days of quick voyages. And at all events the principle on which the negotiability of bills of lading is based, viz., that for a long period the goods, and the captain in charge of them, cannot be communicated with, does not apply to railway carriage with telegraphic communication.

However, in the words of Mr. Justice Buller in *Lickbarrow* v. *Mason*: "In all mercantile transactions, one great point to be kept uniformly in view is to make the circulation and negotiation of property as quick, as easy, and as certain as possible," and if land carriage and water carriage were on all-fours, the proposed legislation might be beneficial.

But so far from being on all-fours, there are important distinctions applying to them.

In water carriage, to which bills of lading apply, all the goods up to thousands of tons go in one bottom from port to port.

In railway carriage only part of the goods probably can go by each goods train, which would necessitate a separate receipt for each load, giving enormous trouble to the carriers; for a bill of lading is an acknowledgment by the captain of having received the goods on board his ship, and it will be a fraud by the captain to sign a bill of lading if he had not received the goods on board. And it appears to me that it would be improper to interfere with a vendor's rights, at all events until the goods were in actual transit, that is, not whilst they were lying at the railway station to be loaded for transit. For a bill of lading would not apply to goods on a wharf awaiting shipment.

And instead of one bottom carrying the goods, they would possibly have to pass over several systems of rails, the officer at the starting point who gave the receipt having no authority from the Company at the station of delivery.

On the whole, I think the question requires very careful consideration, and I doubt whether it can be properly dealt with until a system of through booking is established.

I may add that Lord Blackburn, in dealing with this question in his book on the Contract of Sale, says:—

"There have been some attempts made to give the same effect to the endorsement of dock warrants, wharfingers' receipts, delivery orders, and similar documents as is given to the endorsement of a bill of lading.

"These documents are generally written contracts by which the holder of the endorsed document is rendered the person to whom the holder of the goods is to deliver them, and in so far they greatly resemble bills of lading; but they differ from them in this respect, that when goods are at sea, the purchaser who takes the bill of lading has done all that is possible in order to take possession of the goods, as there is a physical obstacle to his seeking out the master of the ship and requiring him to attorn to his rights; but when the goods are on land, there is no reason why the person who receives a delivery order to dock warrant should not at once lodge it with the bailee and so take actual or constructive possession of the goods. There is, therefore, a very sufficient reason why the custom of merchants should make the transfer of the bill of lading equivalent to an actual delivery of possession, and yet not given such an effect to the transfer of documents of title to goods on shore."

5. It was then decided on consideration of these opinions to discuss the question in the Legislative Council on the Railway Bill, and the Chambers of Commerce were so informed on the 1st November 1888. The Statement of Objects and Reasons, which was circulated with the Bill, contained the following remarks on the subject:—

Railway Bill: Statement of Objects and Reasons.

No. 25.] *Sections* 57, 58 *and* 59.—The first of these sections legalises the existing practice with respect to the disposal of unclaimed property. The second and third of them have been suggested partly by existing practice, partly by the case of *Eagleton* v. *the East Indian Railway Company* (8 B. L. R., 581), and partly by the proposal to give railway receipts the same effect as bills of lading.

The proposal to give such an effect to railway receipts has not been adopted in the Bill because Railway Administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere.

6. In discussing the Bill, the Chambers of Commerce of Bengal and Bombay wrote as follows on this question:—

Bengal Chamber, dated the 7th August 1888.

No. 26.] In this connection, however, I am to invite your attention to my letter of 29th April 1887, in which this Chamber gave its adhesion to the suggestion of the Chamber of Commerce, Bombay, that railway receipts should be placed on the same footing as bills of lading. This question appears to the Committee to be one which might be discussed by such a body as a Railway Conference with great advantage, and they would suggest that the papers submitted to Government by the Bombay Chamber may form one of the subjects to which the attention of the Conference will be invited by Government.

Bombay Chamber, dated the 13th October 1888.

No. 27.] In dealing with the proposal of the Chamber for giving to railway receipts the status of negotiable instruments carrying a title to property conveyed by railways similar to that conferred by bills of lading on goods transported by sea, the "Statement of Objects and Reasons" attached to the Bill says that "the proposal to give such an effect to railway receipts has not been adopted in the Bill because Railway Administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere." As to whether, and for what reasons, the majority of the Railway Administrations are averse to the proposed change of the law relating to railway receipts, the Committee are not in a position to speak, the latest information at their disposal being conveyed in the Government of India's letter to the Chamber, dated 17th May 1887, when it was stated the question had been submitted to the Secretary of State for discussion with the Boards of Directors of the Indian Railways. The representative of the Great Indian Peninsula Railway, however, expresses himself as strongly in favor of the Chamber's suggestion; and as the Chambers of Commerce of Bengal and Madras have also supported it, the Committee would deprecate the omission of the provision regarding the altered power of railway receipts from the Bill until opportunity has been afforded the Chamber of ascertaining the extent and character of the opposition. That the change is not justified by existing legislation elsewhere is not, in the opinion of the Committee, sufficient ground for rejecting the amendment of the law in India, as the conditions of railway traffic in this country are admittedly widely different from those prevailing in England and Continental Europe. The length of time occupied in the transit of a large portion of the railway traffic in this country renders some means of intermediate finance, as between interior markets and the sea-board, absolutely essential to avoid restriction of trade, and it is impossible to imagine a better basis for it than the

mode suggested by the Chamber of giving to railway receipts the same power and effect as bills of lading. The legitimate rights of the consignor and consignee would thereby be effectually safeguarded, while the liabilities of the Railway Administrations would be immensely simplified and diminished. The mere fact of its being an innovation on the existing practice in other countries should not, the Committee respectfully submit, be allowed to stand in the way of the adoption of what the commercial community regard as a much-needed reform.

7. The Honorable Sir Dinshaw Manockjee Petit also wrote:

Sir D. M. Petit, dated the 27th November 1889.

No. 28.] The Chamber of Commerce of Bombay wish to provide about the negotiability of railway receipts as bills of lading. The Great Indian Peninsula Railway and North-Western Railway are in favor of such suggestion. I do not think that any Railway Company can have any possible objection to the same.

It may be mentioned that an unpaid consignor had filed a suit in the Bombay Court of Small Causes against an assignee of a railway receipt who had advanced moneys on the same, and that the Chief Judge of that Court had held that railway receipts are negotiable under section 102 of the Indian Contract Act; but it is understood that an appeal is intended to be preferred to the High Court against this judgment.

The Bombay Cotton Trade Association at their meeting held on the 4th September 1889 passed a resolution on this subject, and it will, I think, be better if I quote it here:—

"That, in the opinion of the Cotton Trade Association, the practice of advancing money on railway receipts in the present state of the law is most unadvisable; but as it appears impossible to alter at present the custom of buying produce from the North-West, the Association desires to signify its approval of the action the Chamber of Commerce has taken in requesting Government to legislate for the purpose of rendering railway receipts negotiable instruments, carrying a title to property similar to bills of lading, and that the Secretary be requested to prepare a representation to Government in support of the Chamber's proposals."

The law which at present exists operates as a source of restraint on the thriving trade of this great country. On the railway receipt in its present form, a trader cannot get an advance on his goods as he can do on a bill of lading, and consequently the money invested in the goods remains locked up until he is able to sell the goods.

From my experience as a merchant, I am of opinion that if the railway receipt be made negotiable, as represented by the Bombay Chamber of Commerce, not only there will be great facility to the trade, but the same will be much developed and increased; for if the receipt will be negotiable, the merchant will be able to obtain advances on his goods, and thus, by free circulation of his money, he will be able to invest the money received by him as advances in the purchase of other goods. This will greatly increase the traffic, and the Railway Companies also will thereby derive great benefit.

8. Meanwhile the question had been submitted to a Railway Conference which sat at Simla in the summer of 1888, with the result stated in Resolution No. 110 of the Conference, which was as follows:

Railway Conference: Meeting of 24th September 1888.

No. 29.] Proposed by Mr. Carter, seconded by Mr. Hanna.

That, with reference to the proposal of the Bombay Chamber of Commerce to place railway receipts on the same footing as bills of lading, the Conference is of opinion that as such a course would increase the responsibility of Railway Administrations without any corresponding advantage, the proposed legislation is unadvisable.

The Committee divided:—

Ayes—47 *votes.*		*Noes*—10 *votes.*	
W. S. Betts (South Indian Railway)	4 votes.	H. Conder (Great Indian Peninsula Railway)	6 votes.
G. F. O. Boughey (Bengal Railways)	5 "	W. B. Wright (Indian Midland Railway)	4 "
N. St. L. Carter (East Indian Railway)	6 "		
L. Conway-Gordon (State Railways)	6 "		
R. Gardiner (Bhavnagar-Gondal-Junagarh-Porbandar Railway) ...	3 "		
F. B. Hanna (Madras Railway) ...	4 "		
A. Izat (Bengal and North-Western and Rohilkhand-Kumaun Railways)	5 "		
J. Lightfoot (North-Western Railway)	7 "		
I. O'Callaghan (Bombay, Baroda and Central India Railway)	7 "		

[Messrs. Constable (Bengal-Nagpur Railway) and Craik (Southern Mahratta Railway) did not vote.]

Proposal *agreed to.*

9. When moving on the 25th October 1888 for leave to introduce the Railway Bill, the Honorable Mr. Scoble stated why the proposal had not been embodied in the Bill, and was followed by the Honorable Sir Charles Elliott:

Railway Bill: Mr. Scoble's remarks in Council, 25th October 1888.

No. 30.] It may be convenient, in connection with this question of responsibility, to refer to a proposal to give railway receipts the same effect as bills of lading. This proposal has not been adopted. The two classes of documents stand upon an entirely different footing. The principle upon which the negotiability of bills of lading is based, namely, that for a long period the goods, and the captain in charge of them, cannot be communicated with, does not apply to railway carriage with telegraphic communication. Indeed, it may be doubted whether in these days of quick voyages the law as to bills of lading would ever have come into force. If the law were altered so as to place railway receipts on the same footing as bills of lading, and a statutory form of delivery order were prescribed under which Railway Administrations were subjected to the same responsibilities as shipowners, they would become liable for the proper delivery of the goods to the party entitled under the order, whether as endorsee or otherwise. As a consequence of this, the Railway Company would have to take into consideration questions as to irregular and forged endorsements, and, in the event of goods being delivered even to an innocent holder for value when a previous endorsee's signature had been forged, the company would be liable to the right holder whose signature was forged for the goods so delivered. In addition to this, further inconvenience would arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*. At present, when a consignor and consignee stand in the relation of unpaid seller and buyer, and before the delivery of the goods the consignor finds out that the consignee is insolvent, the former has a right to stop the delivery of the goods to the consignee; but, in the case of a bill of lading, the consignor cannot stop the goods *in transitu* if the consignee has parted with the bill of lading, and it has passed into the hands of a *bonâ fide* holder for valuable consideration. It follows that if railway receipts were turned into bills of lading, questions of the good faith and so forth of the holder would have to be considered when an unpaid consignor attempted to stop goods *in transitu*.

These are among the inconveniences which would result from the adoption of the proposal, and the Government of India has not deemed it advisable to impose this additional risk and responsibility on the railways in the absence of similar legislation of the subject in England.

Sir C. Elliott's remarks.

No. 31.] My honorable friend the Law Member in his speech has referred to the impossibility of bringing railway receipts under the law which affects bills of lading given by seagoing vessels. It may be worth while to mention in connection with this that section 81 of the Bill proposes to give one very desirable convenience to exporters from this country, in that it facilitates the through booking of goods from India to England, and *vice versâ*, and will thus help to remove the difficulties which have been met with in carrying out the arrangements which Colonel Conway-Gordon has made between the North-Western Railway and the Hall Line of steamers for the through booking of goods between England and the Punjab. I hope that the encouragement thus given to this system will tend to its development and spread on other Railway Administrations.

10. When moving in Council on the 21st March 1890 that the report of the Select Committee on the Bill be taken into consideration, the Honorable Mr. Scoble again stated his opinion, being supported on this occasion by Sir Alexander Wilson, the representative of the Calcutta mercantile community:

Railway Bill: Further remarks by Mr. Scoble, 21st March 1890.

No. 32.] In connection with this Chapter, I may notice another proposal which has been made, that railway receipts should be given the same effect as bills of lading. This proposal has not been adopted by the Select Committee.

In introducing the Bill, I stated the objections which to my mind stood in the way of the acceptance of such a proposal. One of these was the inconvenience likely to arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*. A recent case which has been decided by the High Court at Bombay affords a good illustration of this difficulty. A firm at Bijapur sold to a firm in Bombay three parcels of wheat, and received from the purchaser *hundis* payable at sight for the purchase-money. The railway receipts were thereupon handed to the purchaser, who promptly endorsed them for value to a third party. The *hundis* were dishonored on presentation, and the purchasing firm became insolvent. The endorsees of the railway receipts claimed the goods, and actually obtained delivery of a portion of them: the delivery of the residue was stopped on a telegram from the original vendor. The High Court held that the railway receipts were not instruments of title within the meaning of section 103 of

the Indian Contract Act, and that the unpaid vendor was therefore not deprived of his right to stop the goods in transit by reason of the endorsement of the receipts to secure a specific advance. The endorsee in this case seems to have been an innocent holder; but it is easy to see what a door would be opened to fraud under a different state of facts; and I am not surprised that a very large majority of the members of the Railway Conference which assembled at Simla in 1888 came to the conclusion that it was not desirable to give the same legal effect to railway receipts as to bills of lading.

Sir Alexander Wilson's remarks.

No. 33.] A proposal has been brought forward that the Bill should incorporate a provision to give railway receipts the same effect as bills of lading. This proposition has not been adopted, and wisely so, I think, looking to the wide difference between a consignment of goods in wagons passing over, it may be, various lines of railway under different administrations, and a shipment of goods on board a vessel in one port bound to another.

I cannot see that any provision of the kind would have materially benefited the export trade, and certainly not on this side of India, and would have been a departure which did not commend itself to the Railway Administrations, and which does not seem justified by existing legislation elsewhere.

11. While the Bill was still before the Council, the Bombay Chamber of Commerce again wrote to the Government on the subject of railway receipts, the letter being as follows:

From the Bombay Chamber, dated the 11th February 1890.

No. 34.] In a letter, dated 10th November 1886, this Chamber had the honor to represent to Government the unsatisfactory condition of the existing law relating to railway receipts in India, and expressed the hope that His Excellency the Governor-General in Council might see fit to initiate such legislative action as might be deemed necessary, not only to regulate more definitely the respective rights and liabilities of the public and the various Railway Administrations under these documents, but also to render them transferable and negotiable instruments, carrying a title to property in the same way as bills of lading.

2. The representation, as the Chamber understands, was duly considered by Government, and, further, referred to the discussion of Her Majesty's Secretary of State for India in conference with the Boards of Directors of Indian Railways in London. As to the result of these deliberations, however, the only information which has come to the Chamber was the remark in the Statement of Objects and Reasons attached to the draft Railway Bill for India (1888), that "the proposal to give such an effect (the same effect as "bills of lading") to railway receipts has not been adopted in the Bill, because Railway Administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere." In reporting to Government on the provisions of the draft Railway Bill under date of 13th October 1888, the Chamber ventured to express the opinion that these reasons were neither adequate nor sufficient grounds on which to come to a final conclusion regarding such an important question, and the Committee of the Chamber again desire to approach Government in the hope that their proposal may receive further consideration in conjunction with the deliberations now in progress on the new Railway Bill.

3. It is unnecessary to repeat here at length the reasons formerly adduced by the Chamber for soliciting the suggested legislation. I am now directed to say that in the interval which has elapsed, these reasons have materially gained in strength, and the urgency for legislation has been more clearly demonstrated by the difficulties which traders have experienced, and the unsatisfactory character of the litigation which has taken place with regard to railway receipts. In a recent judgment delivered by the Honorable the Chief Justice of the Bombay High Court and the Honorable Mr. Justice Scott—a copy of which, for convenience of reference, I am directed to annex—any doubt which formerly existed as to whether railway receipts were documents showing title to goods within the meaning of those expressions as used in sections 103 and 108 respectively of the Indian Contract Act is finally settled.

4. The judgment also disposes of the possibility of any custom having grown up or being in existence by which railway receipts could be treated on the same footing as bills of lading, and in so doing concludes with the following words:

"If this be thought by the commercial community to be an unsatisfactory state of the law, it will be necessary, in our opinion, that the desired change should be made by the Legislature."

5. This Chamber, on behalf of the commercial community, begs most respectfully but emphatically to repeat that it does consider the present state of the law unsatisfactory, and is strongly of opinion that a change should be effected by legislation. Such legislation, the Chamber would submit, could be shortly and effectually dealt with in the new Railway Bill now under consideration; but should the legal advisers of Government object to this course, my Committee venture to express the hope that His Excellency the Governor-General in Council will be pleased to sanction the required amendment of the Indian Contract Act, or the introduction of a Railway or Inland Carriers Receipts Act.

Law Report referred to in the Chamber's letter.

No. 35.] BOMBAY HIGH COURT.—ORIGINAL SIDE.

[Before Sir CHARLES SARGENT, Chief Justice, and Mr. Justice SCOTT.]

The Great Indian Peninsula Railway Company *versus* Hanmandas Ramkissen and another.

This was a reference to the High Court by Mr. Hart, Chief Judge of the Small Causes Court, upon a point of general interest to mercantile men in relation to the liability of a Railway Company as carriers.

The Chief Justice, in delivering judgment, said:—The facts out of which this reference by the Chief Judge of the Small Causes Court arises are fully set out in the case stated by the Court. With respect to the third question, whether there was such a delivery to Chinn Deokarn's agent at Bijapur as to deprive the first defendant of his right of stoppage, we agree with the Chief Judge that it must be answered in the negative. There was no actual delivery to the agent of that firm at Bijapur, and the wheat therefore remained *in transitu* in the hands of the Railway Company until delivery to the consignee.—*James* v. *Griffin*, 2 M. and W. 632, where Parke, J., says—

"The vendor has a right if unpaid, and if the vendee be insolvent, to retake the goods before they are actually delivered to the vendee, or some whom he means to be his agent to take possession, and keep the goods for him."

It is clear, therefore, that whether the first defendant be regarded as a factor and *quasi*-vendor, he was entitled to stop the 73 bags before they were delivered by the Company in Bombay.—*Feise* v. *Wray*, 3; *East and Ireland* v. *Livingstone*, 5, H. L., L. R. With respect to the fourth question, we think there was such a delivery of the 73 bags at the Wari Bunder to second defendant's servant as to determine the first defendant's right of stoppage *in transitu*. Section 105 of the Contract Act provides that the notice by the vendor to the carrier to stop the goods must be given to the principal in possession at such time and under such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant in time to prevent a delivery to the buyer. It is left in doubt by the case whether the Goods Traffic Inspector received the first defendant's telegram before all the 73 bags had been placed on the carts; but in any case we must assume that it did not arrive in time to prevent the bags being placed with the consent of the railway official on the second defendant's carts hired for the purpose; for it is plain that it was not till the loading the carts had been completed that the Company's servants interfered to prevent the second defendant's servant from removing the carts from the railway compound. Before that the freight for these 73 bags had been paid by the second defendant's servant to the Company, and the railway receipt had also been given up to the Company duly signed by the second defendant's servant. It remains to consider the first and second question as to the effect of the endorsement and delivery by the firm of Chinn Deokarn of the railway receipts to the second defendant as regards the remainder of the 181 bags. In *Trikam Panachand* v. *Bombay, Baroda and Central India Railway Company*, Mr. Justice Farran held that the railway receipts in that case, which are in the same form as those which are issued by the Great Indian Peninsula Railway Company, were not documents of title, being in form simple receipts with a notification that "the Company reserve the right of delivering the goods without the production of the receipt," and therefore not distinguishable from wharfingers' certificates and mates' receipts, which were held not to be documents of title in *Bolchaw* v. *Vaughon & Co.*, L. R. 10 ch App. 491, and *Laing* v. *Laden*, 17 Eq. 92. However, in *Chinulal Jadhag* v. *the Great Indian Peninsula Railway Company* the same learned Judge had under consideration a railway document signed by the Rajputana-Malwa Railway officials in the same form as that of the present goods receipt note, and which is, we are informed, the one in use on all the State Railways, and is somewhat differently worded from the goods receipt in the former cases. It runs thus:—

"Received from the consignor the undermentioned goods for conveyance to *C.*, Banda Station, by goods train. Consignee, Chinn Deokarn. Description, 181 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered. If he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment of this railway receipt is relied on one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appears on the face hereof, each order must bear a stamp. For conditions of contract, see back.—*Signature* ( )."

The learned Judge expressed the inclination of his opinion that such a goods receipt was an instrument of title within the contemplation of section 103 of the Contract Act; but added that he did not intend to decide the question whether he should have held them to be such without some evidence that they were so treated by merchants and the trade, as he had come to a conclusion on another part of the case which made it unnecessary for him to do so. There can be no doubt, we think, that such a document or endorsement would not have been treated in the

English Courts as a document or instrument of title to exclude the vendor's right of stoppage *in transitu* when the Contract Act came into force in September 1872. The decision of the Exchequer Court in 1846 in *Farina* v. *Home*, 16 M. and W. 119, was then in force (see *Benjamin on Sales*, para. 803), by which a delivery warrant signed by a wharfinger, whereby the goods were made deliverable to the plaintiff "or his assignee by endorsement, was held to be" no more than a token of authority to receive "possession." "Blackburn on Sales, page 297," or as Mr. Baron Parke states it—

"Only an engagement by the wharfinger to deliver to the consignee or any one he may appoint, and that until the wharfinger has attorned to the assignee, and agreed with him to hold for him, there was no constructive delivery to the assignee."

That decision was never overruled, and authoritatively determined the legal effect of such documents—at any rate until the passing of the Factors Act of 1877, 40 and 41 Vict., Cap. 39, the language of the goods receipt in question scarcely affords so strong an indication of an authority to the assignee by endorsement to receive the goods as that of the document before the Court of Exchequer, and the document therefore is in no higher degree "a symbol of the goods" so as to exclude the right of stoppage than the wharfinger's certificate in the above case. It may be that both of them would have that character by virtue of section 5 of the English Factors Act of 1877, which, as pointed out in "Benjamin on Sales," page 708, assimilates all documents of title as defined by section 4 of the previous Factors Act 5 and 6 Vict., Cap. 39, to bills of lading for the purposes of defeating the right of stoppage. But that Act has not been extended to India. In *Trikam Panachand* v. *Bombay and Baroda Railway Company*, Mr. Justice Farran seems to have thought that, in the absence of any definition of a document of title on the Contract Act itself, section 4 of Act 20 of 1844, by which the English Factors Act 5 and 6 Vict., Cap. 39, was extended to India, might be properly accepted as a guide to the meaning of the expressions "documents showing title to goods" or "instruments of title to goods" in sections 108 and 103 of the Contract Act; but it appears to us that, however much that definition might assist in construing the expression "document showing title" in section 108 of the Contract Act, which was virtually substituted for the Factors Act, and is in *pari materiâ*, it cannot be properly used in construing the expression "instrument of title" in section 103, which relates to an entirely different subject matter from the Factors Act, and that it is therefore more reasonable to presume that in a matter of such general commercial importance, the framers of the Contract Act intended to leave the term "instrument of title" in section 103 to be construed with reference to the decisions then in force in the English Courts. The case of the *Merchant Banking Company of London* v. *Phœnix Bessemer Steel Company*, 5 Ch. Div., which was decided before that Act came into force, was referred to as bearing on the question. There doubtless the Master of the Rolls, Sir G. Jessel, decided against the right of stoppage, but it was on special grounds (see page 217)—first, on account of the general custom of the iron trade; and, second, because he thought he ought to impute to the vendors special notice and special knowledge that the warrant was intended to be used for the purpose of raising money on it, and having that knowledge they issued the document in that particular form. In conclusion, he adds:

"Vendors purposely issued a second document of title with a view to its being used for a special purpose."

In the present case no custom has been proved, and there are no special circumstances from which the intention could be inferred that the goods receipt should be used for pledging the bags. We must therefore answer the first and second questions in the negative. If this be thought by the commercial community to be an unsatisfactory state of the law, it will be necessary, in our opinion, that the desired change should be made by the legislature. Costs of this reference to be costs in the case.

12. The Chamber's representation was again supported by the Madras Chamber in the subjoined letter:

From the Madras Chamber, dated the 25th February 1890.

No. 36.] I have the honor to state that this Chamber has been afforded the opportunity of seeing the memorial of merchants and others carrying on business in Bombay to the Viceroy and Governor-General, praying that a short Act may be passed declaring railway receipts in India to be instruments or documents of title under the Indian Contract Act, or that other provision may be made, as may be thought expedient, for effecting this object.

This Chamber addressed you on the subject on the 8th December 1886, and it was informed by the Secretary, Public Works Department, Government of India, on the 1st November 1888 that the question would shortly be discussed in the Viceregal Legislative Council, and that the action taken would be published in the proceedings of the Council.

The Chamber is not aware that any action has yet been taken; and as it shares the opinion of the Bombay memorialists that the recognition of railway receipts as instruments of title, or that such documents should be placed on the same footing as bills of lading, is desirable, it

entertains the hope that the Government will be pleased to give the subject the consideration which it has for several years seemed to the mercantile community to deserve.

13. Lastly, with a letter dated the 26th February 1890, from Messrs. Chalk, Walker and Smetham, Solicitors, of Bombay, was received the subjoined memorial from "nearly all" the leading native merchants and commission agents of Bombay in grain, seed, cotton, and opium:

Memorial from Native Merchants in Bombay.

No. 37.] Your petitioners are grain, seed, and cotton merchants and commission agents trading in Bombay, and in the ordinary course of their business are in the habit of borrowing and advancing large sums of money upon the security of railway receipts, which are assigned over by or to them by simple endorsement, it being the universal practice among the mercantile community of Bombay to treat these receipts as documents of title transferable by endorsement.

2. The question whether this practice is such a sufficient legal assignment as will preclude an unpaid vendor from stopping the goods *in transitu* has been frequently before the Courts, but the decisions thereon have, until the decision mentioned in para. 3 hereof, been of so conflicting a nature (although in the main holding that railway receipts are not documents of title) that your petitioners have been advised to discontinue the practice until legislative provision is made to meet the case.

3. There has been for some time past great uncertainty as to the legal effect and value of these documents in the hands of a merchant advancing money upon them, and this question has recently been carefully considered by the 1st Judge of the Court of Small Causes at Bombay in the case of the *Great Indian Peninsula Railway Company* v. *Hanmandas Ramkissen and Veerjee Hansraj*, who was of opinion that in the case brought before him, the railway receipts were documents of title and valid securities in the hands of a *bonâ fide* holder for value. A copy of his judgment wherein the authorities are reviewed, the custom of the trade cited, and the subject most ably dealt with, is hereunto annexed for your Excellency's information, and marked A.

4 Upon the application of the unpaid vendor and first defendant in the above-mentioned suit, a case was stated for the opinion of the High Court by His Honor the 1st Judge of the Court of Small Causes at Bombay, the first question therein propounded being "whether the receipt of the Southern Mahratta Railway Company in the form thereunto annexed, was, in the circumstances set forth in the said case, an instrument of title within the meaning of section 103 of the Indian Contract Act." The receipt in question was a receipt in the form given in the Public Works Code for use on all Guaranteed State Railways, and a copy thereof is hereunto annexed, and marked B. A copy of the said case is also hereunto annexed, and marked C. The said case came on for argument before the Honorable Sir Charles Sargent, Chief Justice, and the Honorable Mr. Justice Bayley, when they decided that the said railway receipt was not a document of title within the meaning of the section. A copy of the judgment on the said reference is hereunto annexed, and marked D.

5. The question of the negotiability of railway receipts has been for several years under consideration by the Bombay Chamber of Commerce, and their views on the matter, as well as those of the Chambers of Commerce of Bengal and Madras, are entirely in favor of receipts being recognised as instruments of title, and put on the same footing as bills of lading, as appears from para. 3 of a letter addressed by the Bombay Chamber to the Secretary to the Government of India on the subject of the draft Bill to consolidate, amend, and add to the law relating to Railways in India under date the 13th of October 1888. A copy of the said paragraph is hereunto annexed, and marked E. The reasons set forth in the said paragraph are entirely in accordance with your petitioners' views, and offer, they humbly submit, strong grounds for the legislative changes herein prayed for. For convenience of reference, your petitioners have also hereunto annexed (marked F) copies of the correspondence upon this subject which was communicated to the public press in Bombay by the Chamber of Commerce, and published in the local newspapers on the 6th day of September 1889.

6. Your petitioners submit that the custom referred to in para. 1 of this petition is one of universal acceptance among all merchants in Bombay, and that, therefore, it is of the most vital importance to the whole of the mercantile community that your Excellency in Council should pass a short Act with as little delay as possible putting the railway receipts of all Railway Companies on the same footing as bills of lading, and declaring them instruments or documents of title under sections 102 and 103 of the Indian Contract Act, 1872, or make provision for the use of a uniform railway receipt in India that shall come within the said sections of the said Act.

Your petitioners therefore pray that a short Act may be passed as soon as possible declaring the railway receipts of all Railways in India instruments or documents of title under sections 102 and 103 of the Indian Contract Act, or that provision may be made for the use of a uniform railway receipt in India that shall come within the said sections of the Contract Act, or that

such other provision may be made as your Excellency in Council may think expedient or desirable for effectuating the objects of this petition.

Order—dated 30th May 1890, No. 744 R., Public Works.

Communicated to the Consulting Engineer for Railways with the request that the opinions of the Agents of the Madras and South Indian Railways may be obtained and submitted, with his views thereon, for transmission to the Government of India.

2. These papers will be communicated to the Chambers of Commerce and published in the *Fort St. George Gazette*.

(True Extract.)

(Signed) R. R. E. DRAKE-BROCKMAN, Lt.-Col., R.E.,
Ag. Joint Secy. to Govt., P.W.D.,
Railway Branch.

Read also the following papers:—

From the Chairman, Chamber of Commerce, Cocanada, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Cocanada, 16th June 1890.

I have the honor to acknowledge the receipt of G.O., No. 744, Railway, dated the 30th May 1890, with enclosures, regarding a proposal by the Bombay Chamber of Commerce that railway receipts should be placed upon the same footing as bills of lading, as transferable and negotiable instruments; and with reference thereto, I am desired to inform you that, after a careful perusal of the papers dealing with the subject, this Chamber entirely concurs with the views expressed by the Bombay Chamber of Commerce, and earnestly trusts that the Government may see fit to legislate accordingly.

From the Secretary, Chamber of Commerce, Cochin, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Cochin, 19th June 1890.

I have the honor to acknowledge receipt of your order No. 744 R., of 30th May, enclosing copy of Government of India Resolution No. 2341, together with a compilation of opinions, &c., on the subject of a proposal made by the Bombay Chamber of Commerce that "railway receipts should be declared to be transferable and negotiable instruments, carrying a title to property like bills of lading," and, in reply thereto, I am directed to inform you that, as this port is unconnected with any railway, and the Chamber being in no way associated with, or interested in, railway receipts, it regrets, in the absence of any practical experience, being unable to submit an expression of opinion on the question at issue.

From the Chairman, Chamber of Commerce, Madras, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 23rd July 1890.

The Chamber has had under its consideration the papers issued by the Government of India, that accompanied the Government order of the Madras Government, dated the 30th May 1890, No. 744 R., on the proposal that railway receipts should be declared to be transferable and negotiable instruments, carrying a title to property in the same manner as bills of lading. The Chamber has already intimated its approval of the proposal. I am requested, however, to state that it would seem that

the State Railway forms provide for the transfer of receipts by one or more endorsements and that as a matter of practice finding that trade demanded it, many of the Railway Administrations treat their receipts, to a certain extent, as bills of lading and deliver to endorsees. The Chamber, therefore, thinks it would be an advantage to legalise this practice. The Chamber realises the force of some of the objections advanced by the Railway Companies, but is of opinion that the advantages to trade would outweigh them. The fact, moreover, that railway receipts are practically treated in many quarters as bills of lading seems to show that the objections are rather strained and exaggerated. The Risk Note clause in the Bill, to which the Chamber objected in its letters of the 18th December 1888 to the Government of Madras and the 7th March 1890 to the Government of India, will, however, have to be modified, for no Bank will regard as a negotiable document a receipt which purports to free the issuer from liability for the full delivery of packages entrusted to him.

ENCLOSURES.

From the Chairman, Chamber of Commerce, Madras, to the Chief Secretary to Government, dated Madras, 18th December 1888.

The Chamber is glad to be afforded an opportunity of expressing the opinion that the Bill of the Government of India to consolidate, amend, and add to the law relating to Railways in India, which has been referred to it by the order of the Governor in Council of the 10th ultimo, No. 2329, Judicial, has derived so much advantage from the discussion which has taken place since the proposed legislation was mooted some years ago, that it leaves little to be desired. There are, the Chamber is informed, some details of comparatively small importance which may seem to the Railway executive susceptible of improvement, but they do not come within the scope of the Chamber's experience; and, without going so far as to say that the Bill may not in practice be found to need some modification, the Chamber entertains the opinion that, with one exception, it is well adapted to meet the requirements of the country, and, at the same time, to safeguard the interests of the Government and of the Companies concerned.

The exception referred to is as regards the responsibility of Railway Administrations as carriers, under chapter VII, sec. 72. It is proposed by the Bill that the responsibility of Railway Administrations for the loss, destruction, or deterioration of goods delivered to it to be carried by railway shall, subject to the other provisions of the Bill, be that of a bailee under the Indian Contract Act, but "(2) an agreement purporting to limit that responsibility shall, in so far as it purports to affect such limitation, be void, unless it (*a*) is in writing, signed by, or on behalf of the person sending, or delivering the goods, and (*b*) is otherwise in a form approved by the Governor-General in Council." It is also proposed that (3) nothing in the common law of England, or in the Carriers' Act, 1865, with respect to the carriage of goods, shall apply to their carriage by railway.

A case has recently come under notice in Madras which has led the Chamber to the conclusion that the protection of a Railway Administration from responsibility for loss that happens to goods while in its custody may be carried too far. 563 bags of ground-nuts were consigned from Arcot, per the Madras Railway, to a native merchant in Madras, but the railway delivered only 511 bags, and when the consignee claimed from the Company the value of the 12 bags short-delivered, the Company declined to entertain his claim, on the ground that, as the goods had been forwarded at reduced rates, under Risk Note, Form B, sanctioned by the Governor-General in Council, the Company was not responsible for any loss he may have sustained. According to that note, the party signing it does, "in consideration of such lower charge, agree and undertake to hold the said Railway harmless, and free from all responsibility for any loss, destruction, or deterioration of, or damage to the said consignment, from any causes whatever, during, and after transit over the said Railway, or other Railway lines working in connection therewith." The language is very precise, and probably warrants the refusal of the Company to pay the claim, but the Chamber submits that it is inexpedient to allow Railway Administrations to enjoy this great freedom from responsibility for the carelessness, or fraud of its servants. A consignor under a Risk Note takes the risk of damage, or loss of his goods, but if the Company accept 400 bags, and only deliver 200 bags of a consignment, without being able to explain where the missing bags have gone, it cannot be reasonably said to have fulfilled its part of the contract, which was to convey the consignment as a whole from one place to another.

Reference has been made by the Traffic Manager of the Madras Railway, in a letter on the subject with which he has favored the Chamber, to the case of Moheswar Das *v.* Carter, which was disposed of by the High Court of Calcutta, 12th March 1883. In this case the plaintiff alleged that, when 12 tins originally containing 6½ maunds of ghee, consigned from Agra to Ahmedpore were received, it was found that one had been cut open by a knife, and that 21½

seers of ghee were consequently deficient. He, therefore, claimed damages from the Railway Company; but his suit was dismissed on the ground that the Company was protected against liability by the terms of the Risk Note, which the plaintiff had signed. In the Madras case the Company similarly claims to be protected by the Risk Notes; but if this plea may be used with regard to 12 out of 563 bags, it might be equally well set up for the failure to deliver, and the inability to account for, any of the bags. The Chamber cannot agree that the words "for any loss" should relieve the Railway from liability to deliver the number of bags, or packages, entrusted to it, and for which it granted a receipt. A bill of lading expressly states that "weight and contents are unknown," but it does not indemnify the ship from responsibility for failure to deliver the number of packages that were shipped The stipulation contained in the Risk Note seems to the Chamber to be opposed to public policy. It is observed in the Statement of Objects and Reasons of the Bill, that "there have been very few complaints against the practical operation" of the rule under notice, "which is based upon a Judgment of the Bombay High Court," and that, "though the soundness of that Judgment has been questioned, the Government of India is of opinion that experience does not justify any material modification of existing legislation." The Chamber submits that as the legislation referred to involves the possibility of injustice to consignees, and is calculated to encourage departmental carelessness and dishonesty, the continuance to Railway Administrations of the extensive and undiscriminating immunity from responsibility that they now enjoy under Risk Notes should not be re-affirmed in the new Act.

From the Chairman, Chamber of Commerce, Madras, to the Secretary to the Government of India, Legislative Department, Calcutta, dated Madras, 7th March 1890.

This Chamber has studied with much attention the Railway Bill of the Government of India, as amended by the Select Committee of the Viceregal Legislative Council, which is to be discussed in Council on the 16th instant in view to its coming into law from the 1st proximo; and it has desired me to invite the attention of the Legislative Department to the circumstance that the exemption of Railway Administrations from responsibility in respect to goods carried under "Risk Notes" has not been modified by the Select Committee.

The Chamber addressed the Government of Madras on this subject on the 18th December 1888, and a copy of its letter was forwarded on the same date to the Secretary, Government of India, Public Works Department, by the Chamber, for information.

It is observed that the Bill limits the liability of Railway Administrations to the provisions of the Contract Act which imposes on the bailee the obligation (sec. 151) of taking "as much care of the goods bailed as a man of ordinary prudence would, under similar circumstances, take of his own goods;" relieves the bailee (sec. 152), in the absence of any special contract of responsibility for the loss, destruction, or deterioration of the thing bailed, if that amount of care has been taken; and ordains (sec. 161) that "if by the fault of the bailee the goods are not returned, delivered, or tendered at the proper time," the bailee "is responsible to the bailor for any loss, destruction, or deterioration of the goods."

This being the measure of liability, it seems to the Chamber unnecessary and impolitic to introduce clause 2 of sec. 72 of the Bill, or, in other words, the Risk Note system, which reduces the liability of a Railway Administration to a risk of a purely nominal character as against the public, and offers the temptation for the imposition of unnecessarily high rates as the full rate, thereby forcing the public to adopt the reduced rate which practically frees the Administration from all liability.

Under existing circumstances, Railway Administrations in India have two schedules of rate for the carriage of goods, both of which are sanctioned by the Government; namely, the full rates which impose upon a railway responsibility for the non-delivery of goods; and the reduced rates which are granted on the express condition that no such responsibility is incurred. The great bulk of the traffic of the Railways is carried at the reduced rates, which may be regarded, therefore, as the ordinary charge that the Railways can venture to make. The higher rates have, to a great extent, fallen into desuetude, presumably because the trade of the country could not afford to pay them, or because it would not be politic for the Railways to exact them. The public would not avail itself of the reduced rates if it did not, as a general rule, realise that the immunity of Railways from responsibility under the Risk Notes does not often result in the loss, or neglect of goods entrusted to the care of Railways. This redounds to the credit of the Railway Administrations, but it does not dispose of the objection that it is opposed to public policy to relieve public carriers from the customary responsibilities and penalties of the business of carriers. The great majority of persons who send goods by railway may have no cause for complaint, but cases of individual hardship may, and do result from the immunity conceded by the Government to the Railways. The withdrawal of that immunity would tend to diminish rather than increase instances of loss and neglect of goods, and to fix responsibility on those Railway servants who are blameworthy. It should, therefore, be for the good in the long run of the Railway Administrations that the responsibility should be enforced, and it seems to the Chamber but just that the public which employs the Railways should be protected against total or partial loss of goods entrusted to such Administrations, and forwarded at rates sanctioned by the Government The Chamber trusts, therefore, that His Excellency the Viceroy in Council will be pleased to cause sec. 72 of the Railways Bill to be modified in accordance with the views entertained by the Chamber.

From the Consulting Engineer for Railways, dated Madras, 20th August 1890, No. 567 C.

From the Examiner, Guaranteed Railway Accounts, Madras, to the Consulting Engineer for Railways, dated Madras, 18th July 1890, No. 1066.

With reference to your No. 1293, dated 24th June 1890, I have the honor to state that my opinion on the subject is identical with that of Honorable Mr. Scoble, the Law Member of the Governor General and Viceroy's Council, whose views on the subject are found as No. 30 on page 14 of the *Fort St. George Gazette* Supplement of 17th June 1890.

From the Acting Agent and Manager, Madras Railway Company, to the Consulting Engineer for Railways, dated Madras, 21st July 1890, No. 6976/792.

[Your No. 550, dated 24th June 1890]

In reply to your request for an expression of opinion as to the proposal of the Bombay Chamber of Commerce that railway receipts should be made transferable and negotiable instruments, carrying a title to property like bills of lading, I have the honor to submit a letter from this Company's Traffic Manager with the views in which I concur.

2. The proposed alteration in the law would appear to have the effect of transferring a portion of the legitimate risks of the buyers and sellers of goods to the carriers of them, and the alleged great facilities to trade to accrue from the change do not appear to be yet fully made out, as they possibly might be, by the citation of some examples in support of the general views put forward.

ENCLOSURE.

From the Traffic Manager, Madras Railway Company, to the Acting Agent and Manager, Ráyapuram, dated Madras, 7th July 1890, No. C. 822-A. and M./15016.

I have read the papers sent to me with your No. 6976/5809 of the 28th ultimo.

The proposal to extend the benefits enjoyed by the holders of bills of lading to the holders of railway receipts was very fully discussed at the Railway Conference held at Simla in 1888, and generally the opinion held by the members who attended the Conference was that we should follow the English Railways, and not attempt to legislate for conditions which had not been found necessary elsewhere.

Messrs. Freshfields and Williams, the legal advisers to the East Indian Railway, have correctly stated that the system adopted by Railways of issuing receipt notes is purely voluntary, and as you are doubtless aware it is not customary in England to grant receipts for parcels tendered at Railway stations for despatch.

In this country the practice of issuing receipt notes became necessary owing to so many natives holding the same names, and we have even now no guarantee that the holder of a receipt note granted in favor of P. Ramasawmy is the legitimate consignee. The custom is, however, to accept the receipt notes as proof of delivery and as relieving us from further liability.

In many cases in the practical working of this railway we depart from the practice of obtaining receipt notes before the delivery of parcels, and more especially is this the case when large consignments of fruit and other perishable articles arrive at stations in advance of the post. To detain such packages until the receipt notes are presented would mean loss of market to the owner, or a total loss of the value of his packages.

The mail trains with the brake vans heavily loaded with fruit, indigo and other perishable articles arrive at Madras in the early morning, and packages are at once sent out for delivery to the residences of the addressees. Post letters containing receipt notes are not usually delivered before 10 or 11 A.M., and when such letters are delivered in the suburbs of Madras the holders of receipt notes could not possibly apply for their packages until late in the afternoon.

Under our present rules, and as a convenience to consignees, we are content to accept written receipts for packages through our delivery books, but if receipt notes are to be endorsed with legal responsibility to a third party, we must necessarily hold packages in all cases until receipt notes have been duly presented to us.

Again, the danger will arise of fraudulent endorsement to receipt notes passing through the Post office, Railway receipt notes seldom being enclosed in envelopes, and in the event of our agreeing to accept indemnity notes from persons who are known to us, there will be delay in obtaining the necessary signatures, as in no case will a Railway Company consent to deliver a valuable package to the ordinary servant usually sent to clear goods.

The Traffic Superintendent of the Punjab Northern Railway (see reply marked 13, printed on page 8 of the official papers) has stated the very serious responsibility that the proposed change will place upon Railway Administrations, and I agree with him in thinking that the increased trade which it is supposed such a facility would give will not compensate Railways for the extra risk imposed upon them.

Practically all Railways in India are directly or indirectly the property of the Government, and the proposal while it seems to me to offer advantages to native traders with small capital, places an enormous risk upon the State, friction with *bonâ fide* merchants, delay in the delivery of goods, and increased cost to all Railways in providing extra storage room.

It is not stated in what way the legal advisers to the Government of India would restrict the responsibility that would fall upon Railways if the proposal that emanated from the Bombay Chamber of Commerce were adopted, and I have therefore considered the proposal as it would affect the Madras Railway without any restrictions, the law remaining as it is at present.

We have, as you know, been mulcted in heavy claims through accepting indemnity bonds in the absence of receipt notes.

From the Agent, South Indian Railway, to the Consulting Engineer for Railways, dated Trichinopoly, 4th August 1890, No. 1086.

Your letter No. 644 of the 24th June last. So far as regards the Southern districts of this Presidency, I believe that the bulk of the traders using the railway do not desire that railway receipts should be declared by law to be transferable and negotiable instruments, carrying a title to property like bills of lading. The introduction of such a regulation may be wished for by European houses of business, but the number of their consignments form a very small percentage of the total number of consignments dealt with. If, therefore, any measure of the kind sought for by the Bombay Chamber of Commerce be legalised I submit that it should be operative only with regard to those traders who, when they consign goods, apply to the Railway Company, on a form approved by the Governor-General in Council, for the issue of a bill of lading instead of an ordinary railway receipt note. The form of application should contain an undertaking to abide by the conditions which may be imposed by the Legislature for the protection of Railway Companies.

2. I submit that, in cases where bills of lading are issued, the Railway Companies should be legally safeguarded as under:—

(1) That one bill of lading only be issued (see remarks of L. J. Blackburn in Glynn Mills Currie and Company *v.* E. and W. India Docks Company, L.J. Reports Q.B., LII, p. 146) for each consignment, and that all such consignments be to original sender or his order.

(2) That a bill of lading be on a form approved by the Governor-General in Council, and that it be issued subject to the terms and conditions which now apply to the carriage of goods by railway.

(3) That if a bill of lading be endorsed over to and presented to the Railway Company by other than the trader in whose favor it is issued, the holder of the bill of lading be legally bound to the terms and conditions entered into by the sender of the consignment. In consideration of a reduced rate being charged by the Railway Company for the conveyance of certain consignments, sender undertakes to accept

risks of carriages as laid down in a form of contract approved by the Governor-General in Council.

(4) That the Railway Company be not held responsible for the genuineness of the signatures to endorsement on bill of lading.

Note by the Deputy Consulting Engineer for Railways, dated Madras, 7th August 1890.

1. The opinions of the Railway authorities, Madras Railway and South Indian Railway, on the proposed legislation regarding railway receipts is forwarded as directed.

2. I consider that the proposal of the Bombay Chamber of Commerce to render railway receipts transferable, and negotiable instruments carrying title to property in the same way as bills of lading, is fraught with considerable risks and responsibility to Railway Administrations. The proposed legislation, in that it offers increased facilities for speculative trade, would be undoubtedly convenient to the mercantile community, but it is not apparent that any advantage accrues to the Railway Companies. The latter, however, carefully safeguarded could hardly be secured immunity from loss through fraud, especially if the right of stoppage by an unpaid consignor during transit became legal. The proposal in its present form would, if carried into effect, subject Railway Administrations to the *onus* of investigating the delivery rights of consignees or endorsees, and of determining questions of good faith, &c., without conferring any commensurate advantages. Under any circumstances, the alteration in the status of railway receipts would not admit of general application. For short journeys it is not apparent what benefit would result, and in the case of perishable goods quoted by Traffic Manager, Madras Railway, the proposed charges are inadmissible.

Submitted to Government.

I do not think there is any officer in the Consulting Engineer's office sufficiently acquainted with trade requirements to enable him to offer an opinion of any value on the subject of making railway receipts negotiable instruments.

2. It does not appear to me that any comparison can be made between bills of lading and railway receipts. The former are generally made out by persons who have some knowledge of business and are usually signed by a fairly well-paid individual. The latter are usually made out by an ill-paid goods clerk who has no knowledge whatever of business requirements.

To the Chairman, Madras Trades' Association, dated 22nd August 1890, No. 669 D.

To the Chairman, Madras Trades' Association, dated 5th November 1890, No. 4538 C.

From the Chairman, Madras Trades' Association, to the Joint Secretary to Government, Public Works Department, Railway Branch, dated Madras, 10th November 1890.

I have the honor to reply to your several requests for the opinion of this Association on the proposal that railway receipts should be declared to be transferable and negotiable instruments carrying a title to property in the same way as bills of lading. The question was discussed by the members at a meeting held on the 31st ultimo, and I am directed to say that the Association see no objection to the making of railway receipts negotiable or transferable by endorsement.

Order—dated 20th November 1890, No. 1848 R., Public Works.

Ordered to be forwarded to the Government of India with reference to its Resolution No. 2341, dated 12th May 1890.

(Here enter No. 1849 R., dated 20th November 1890.)

(True Extract.)

(Signed) T. GRACEY, Lieut.-Colonel, R.E.,
Offg. Joint Secy. to Govt., P.W.D.,
Railway Branch.

To the Consulting Engineer for Railways.

Endorsement—dated 20th November 1890, No. 1849 R., Public Works.

Forwarded.

(By Order.)

(Signed) T. GRACEY, Lieut.-Colonel, R.E.,
Offg. Joint Secy. to Govt., P.W.D.,
Railway Branch.

Exd. P. L. Pereira.
Spare Copies

RAILWAY.

Govt. of {1890} Madras.

PUBLIC WORKS.

Dated November, 20th.

Recd. *Encl.*

G.O., 20th Nov. 1890, No. 1848, 1849 R.

NOVEMBER.

Railway Receipts

Forwarding correspondence regarding proposal that — should be negotiable and transferable.

No. 2341.

GOVERNMENT OF INDIA.

FINANCE AND COMMERCE DEPARTMENT.

STATISTICS AND COMMERCE.
Statistics.

RESOLUTION.

Simla, the 12th May 1890.

GOVERNMENT OF MADRAS
21 MAY 90
REVENUE DEPARTMENT

READ—

Office Memoranda from the Legislative Department, Nos. 551 and 625, dated the 19th and 28th March 1890 respectively, transferring for disposal—

(1) A letter from the Bombay Chamber of Commerce, dated the 11th February 1890, urging legislative action on its proposal that railway receipts should be recognised as negotiable and transferable instruments, carrying a title to property in the same way as bills of lading;

(2) A letter from the Madras Chamber of Commerce, dated the 25th February 1890, and a memorial from the leading native merchants and commission agents in Bombay, supporting the proposal.

RESOLUTION.—Considering the strong expressions of opinion in support of the proposal contained in the communications cited above, and the equally strong opinions adverse to it which have been received by Government, it seems desirable that the question should be again fully considered by the mercantile community generally. For this purpose the papers on the subject have been printed in convenient form, and copies of the collection should be transmitted to all Local Governments, and published in view to eliciting as wide an expression of public opinion as possible on the question at issue. The Government of India also wishes to obtain the opinion of Local Governments and Administrations.

ORDER.—Ordered, that copy of the foregoing Resolution and of the collection of papers be transmitted to all Local Governments and Administrations, and to the Public Works and Legislative Departments.

Asst. Secy. to the Govt. of India.

20 P.

B. No. 744 R dy 30th May/90.

Communicated
Ltr 29th May Referred to the
Consulting Engineer for
Railways with the re-
quest that the opinions
of the Agents of the Madras
& South Indian Railways
may be obtained and sub-
mitted with his views thereon
for transmission to the
Govt: of India.
2. These papers will be communicated to the
Chambers of Commerce and published
in the Fort St George Gazette.

Rud Buchanan
Lt Col: R.E.

Offg. Jt. Secy. to Govt. P.W. Dept.

G.O No. 396 R dy 30 May 1890.
To the Govt. of Fort St. G.
" Chairman Chamber of Commerce Madras
" Chamber of Commerce Cocanada
" — do — do — Cochin
" — do — Tuticorin Association
The papers must also be published
in the Gazette from date of
Chambers y Comm.

Gerald

Offg. 21/5
24 May
Hm. 23.5.90 R 25-5-90

Revenue 1890 Dept
P.W. Cat. 5-144.

GOVERNMENT OF INDIA.

FINANCE AND COMMERCE DEPARTMENT.

STATISTICS AND COMMERCE.
Statistics.

2 Sc
Rd 3-6-90
Enc 1 (+2 Sc).

RESOLUTION. No. 3652

To

ALL LOCAL GOVERNMENTS AND ADMINISTRATIONS.
THE PUBLIC WORKS DEPARTMENT.
" LEGISLATIVE DEPARTMENT.

No. 2341.

Dated Simla, the 12th May 1890.

Received 21 May/90

E. 1

B. No. 744 R dy 30th May/90.

Proposal that railway receipts should be declared to be transferable and negotiable instruments, carrying a title to property like bills of lading.

[G. C. F.] G. C. Press, Simla.—No. 158 C. F.—12-5-90.—315.

S°3/6

2 S. P.

GOVERNMENT OF INDIA.

FINANCE AND COMMERCE DEPARTMENT.

Enclosure to Resolution No. 2341 of 1890.

Proposal that railway receipts should be declared to be transferable and negotiable instruments, carrying a title to property like bills of lading.

1. This proposal was first made by the Bombay Chamber of Commerce in a letter addressed to the Legislative Department of the Government of India. The Chamber's proposal was afterwards supported by the Chambers of Madras and Bengal. The letters of the Chambers are printed below:

No. 1.] I am directed by the Committee of the Chamber to represent to Government the unsatisfactory condition of the existing law relating to railway receipts in India with the hope that His Excellency the Governor-General in Council may see fit to initiate such legislative action as may be necessary, not only to regulate more definitely than at present the respective rights and liabilities of the public and the various Railway Administrations under these documents, but also to render them transferable and negotiable instruments, carrying a title to property in the same way as bills of lading. *Bombay Chamber, dated the 10th November 1886.*

Of late years the use of railway receipts has been so widely extended that they have become practically indispensable to merchants as a basis on which to finance the rail-borne trade of the country, and for that purpose a practice has grown up of utilising them in the same manner as bills of lading by attaching them to drafts as collateral security. So long as all parties to the transactions so financed continue solvent and adhere to the spirit of their contracts, the system works well; but a few months ago the failure of a number of dealers engaged in the grain trade between Bombay and the interior showed the danger involved. Merchants who had paid for produce in transit on the security of the railway receipts found it impossible to obtain possession of it, while, in one instance at least, a Railway Company who had delivered a consignment to the holder of the receipt was held by the Court liable to the consignor for the value.

The risks attendant on dealing with railway receipts as carrying a title to property having thus been fully exposed, their use has latterly been in some measure restricted; but even now, with a full knowledge of the danger incurred, merchants find it impossible to entirely dispense with them, and there is little doubt but that in the keen competition of business they will at no distant date be restored to their former position, only to lead to fresh trouble and disaster when their powers of security again come to be tested. The simple fact is that the distances in India over which merchandise has to be transported by rail are so great, and the time occupied in transit is so long, that without the means of finance which railway receipts are made to afford all but the largest firms, with exceptional monetary resources, would be precluded from trading. In other words, as the law now stands, the issue lies between a restricted trade, or one based on inherently unsound conditions, while by conferring on railway receipts the powers and rights pertaining to bills of lading both drawbacks could be entirely obviated.

My Committee are so strongly convinced of the advantages to be derived from such a change in the law as they have indicated, that they consider only very serious objections should be allowed to stand in the way of immediate legislative action; and these, so far as they are able to judge, do not exist. Before approaching Government on the subject, they deemed it advisable to acquaint themselves as fully as possible with the legal aspect of the question, and they desire me to submit, for the information of Government, a copy of the opinion expressed by the Solicitors to the Chamber, Messrs. Craigie, Lynch & Owen of this city. This, it seems to the Committee, so clearly demonstrates the absence of any legal difficulty, that they feel justified in asking that Government may be pleased to give the matter the earliest possible consideration, and either by framing an amendment to the Indian Contract Act or the Bills of Lading Act (IX of 1856), or passing a Railway or Inland Carriers Receipts Act, remedy what is undoubtedly a defect in the law from a commercial point of view, and detrimental to the interests of the general community.

No. 2.] We beg to state, as requested by you, our opinion on the advisability of the Chamber's addressing Government "with a view to obtaining such alteration or modification of the law as to render railway receipts transferable and negotiable instruments, carrying a title to property in the same way as bills of lading." *Opinion of the Solicitors referred to in the Bombay Chamber's letter.*

Whilst expressing our opinion in the matter, we understand that we are desired to point out the distinctions which exist in law between bills of lading and railway receipts, as also the causes for the existence of such distinctions, and the reasons which may occur to us for or against invoking the interference of the Legislature in order to place railway receipts on the same footing as bills of lading.

As regards the distinctions existing between bills of lading and railway receipts, it seems obvious that both documents in their origin or primary significance are of similar

import; that is to say, both are receipts given by carriers acknowledging that goods have been entrusted to them for carriage or transport, in the one case by land, and in the other by water.

Further, both documents usually include (together with the acknowledgment of receipt of the goods for carriage from one specified place to another) the terms and conditions upon which the goods are to be carried and delivered.

So far, therefore, a bill of lading and a railway receipt resemble each other.

As to their respective special or distinctive characteristics, we will now take each document separately, and, first, as to

THE BILL OF LADING.

Its most valuable features are:

(1) that it is negotiable and transferable by endorsement and delivery or transmission:
(2) that endorsement and delivery or transmission of the bill of lading transfers the property in the goods to the endorsee (in the absence of a contrary intention on the part of endorser and endorsee):
(3) that it may be endorsed either specially or in blank:
(4) that the holder of a bill of lading may by negotiating, endorsing, or transferring the same to a *bonâ fide* transferee defeat the vendor's right to stop *in transitu*.

The above special characteristics were not conferred upon bills of lading by any legislative enactment, but were brought into use by merchants, and continued in use until they become of established custom, and so acquired the force of law.

In England this custom of merchants in regard to bills of lading was recognised by the courts of law at a very early period, although such recognition was not perhaps a matter of clear authoritative record until the year 1793, when, by the decision of the leading case of *Lickbarrow* v. *Mason*, the existence of the custom of merchants in regard to bills of lading was placed beyond the limits of contention, and the principle that a vendor's right of stoppage *in transitu* is defeated by the *bonâ fide* assignment of a bill of lading by a consignee to a third person for valuable consideration was definitely established.

The custom of merchants in regard to bills of lading also received the recognition of the Legislature by the Act XVIII and XIX Vict., Cap. 3 (commonly called "the Bills of Lading Act").

The preamble of that Act recognises that by the custom of merchants, the endorsement of a bill of lading *may* pass the property in the goods to the endorsee, and the Act then provides that every consignee named in a bill of lading, and every endorsee thereof to whom the property in the goods therein mentioned shall pass by reason of the endorsement, shall have transferred to and vested in him all rights of suit, and be subject to the same liabilities as if the contract contained in the bill of lading had been made with himself.

The Act also provides that nothing therein contained shall affect any right of stoppage *in transitu*, or any right to claim freight against the original shipper, owner, or any liability of the consignee or endorsee by reason or in consequence of his being such consignee or endorsee, or of his receipt of the goods by reason or in consequence of such consignment or endorsement.

And the Act, lastly, provides that every bill of lading in the hands of a consignee or endorsee for valuable consideration shall be conclusive evidence of the shipment of the goods therein mentioned as against the master or other person signing the bill of lading, notwithstanding that such goods, or some part thereof, may not have been shipped, unless the holder of the bill of lading shall have had notice at the time of receiving the same that the goods had not been in fact laden on board. The only exception or reservation is that of the master or other person signing the bill of lading being able to show that the goods, or part thereof, had not been laden on board owing to default on his part, and that their non-shipment was due to fraud on the part of the shipper or holder of the bill of lading.

It being considered, as we presume, that this Act did not extend to India, its provisions have been made applicable to India by Act IX of 1856, which is word for word the same as the English Bills of Lading Act.

It will be noticed that in the preamble to the Bills of Lading Act, it is affirmed that the endorsement of a bill of lading *may* pass the property in the goods; and as to this it remains to be stated that such endorsement does not of *necessity* operate in every single case without exception to "pass the property," and will not pass the property within the meaning of the Act in cases where it is the actual or implied intention of the parties that the property shall not pass.

As, for instance, where the shipper of goods, having endorsed the bill of lading in blank, deposits the same with his bankers by way of *security* for money advanced.

The law in such case has been clearly laid down in a recent decision of the Court in England (*Burdick* v. *Sewell*, 10 *Q. B. D.*, 365; 13 *Q. B. D.*, 159; and 10 *Ap. Ca.*, 74).

As regards right of stoppage *in transitu*, section 102 of the Indian Contract Act provides that the right of stoppage ceases if the buyer, having obtained *a bill of lading*, or *other document showing title to goods*, assigns it, while they are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them.

And section 103 of the same Act further provides that where *a bill of lading* or *other instrument of title* to any goods is assigned by the buyer of such goods by way of pledge to secure an advance made specifically upon it in good faith, the seller cannot, except on payment or tender to the pledgee of the advance so made, stop the goods *in transitu*.

(It may be remarked parenthetically that if the words "other document showing title to goods" and "other instrument of title" included railway receipts, these would, of course, secure the benefits or immunities conferred by the sections above referred to. We shall state further on our reasons for considering that "railway receipts" are neither "documents" nor "instruments" of title within the meaning of those sections.)

Lastly, section 108 of the Indian Contract Act provides that no seller can give to the buyer of goods a better title than he has himself, except in certain cases; and one of those cases is that when any person is by consent of the owner in possession of a bill of lading, he may transfer the ownership of the goods to which such bill of lading relates 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, &c.

It will be seen from what we have above stated that the position of bills of lading as to their negotiability, and in other respects, is clearly ascertained and defined by law both in England and in India; but turning now to

RAILWAY RECEIPTS,

it will be found that the case is altogether different, their position and effect being ill-defined and ambiguous with reference to negotiability, and with reference to the right which they confer as between the holder or endorsee and the carrier and consignor.

In the first place, if any custom of merchants has grown up, whether in England or in India, in relation to the negotiability or otherwise of railway receipts, such custom has never, we believe, been established in a court of law.

Next, there is not any Act of the Legislature, either here or in England, which defines or recognises any status or effect on the part of railway receipts in regard to negotiability or otherwise.

Speaking generally, and subject to what is hereafter stated, a railway receipt is—

(1) neither negotiable (in the legal sense of the word),
(2) nor capable, when endorsed, of passing the property in goods,
(3) nor is it when in the hands of a *bonâ fide* endorsee for valuable consideration of effect to defeat the consignor's right to stop in transit.

It is true that so far back as the year 1833 (in the case of *Hall* v. *Griffin*, 10 *Bing.*, 246), it was held by the court sitting in Banc that the delivery of a *wharfinger's* receipt upon an advance of money "was a symbolical transfer of the property, and might be considered the same as if the goods had passed from hand to hand;" and this case was in recent times relied upon by the plaintiff *in a suit brought in Calcutta* against the East Indian Railway Company. It was there argued on the plaintiff's behalf, upon the authority of the case of *Hall* v. *Griffin*, that a railway receipt is customary evidence of title, and that although it may not have the full power of a bill of lading, yet that it is an instrument which confers upon the holder thereof a right to deal with the goods.

Eagleton v. *the East Indian Railway Company*, 8 *B. L. R.*, 581.

The Court of Appeal (Couch, *C. J.*, and Macpherson, *J.*, reversing the decision of the lower court) seem to have approved the ruling of *Hall* v. *Griffin*, and to have considered it applicable to a railway receipt, and it was held that the Company was bound to deliver the goods to the holder of the receipt, notwithstanding a request to the contrary on the part of the consignor.

But in that case not only had the receipt been sent by the consignor or himself to the holder for the purpose of enabling him to receive the goods, but it also appears that the goods were delivered to, and accepted by, the Railway Company *for the express purpose* of being sent to the plaintiff, and *therefore* the Court held that the property and right to possession passed to the holder of the receipt, and that the consignor could not revoke the authority which he had given to the holder to receive the goods.

And in the case of *Hall* v. *Griffin* not only was the receipt of the wharfingers at Stockton (whence the goods were to be despatched to London) handed to the claimant of the goods, but the consignor also addressed and ordered to his agents (also wharfingers) in London to deliver the goods upon arrival to the receipt holder, and further those agents promised to deliver the goods to him on arrival.

It follows, in our opinion, that so far as this case and the Calcutta case decided that property in goods passes by transfer of a wharfinger's or railway receipt, they only so decided, *having regard to special circumstances which had happened in each case*, and not that they decided as a general principle that the passing of the property was a matter inherent in all cases to the delivery or transfer of a wharfinger's or railway receipt.

And neither case can be regarded as an authority to show that the endorsement of a railway receipt to a third party for valuable consideration will protect the holder from consignor's right of stoppage *in transitu*.

With the exception of the cases above referred to, we are not aware of any reported decisions bearing upon the effect of the transfer or endorsement of a railway receipt.

In a case lately disposed of by the Bombay High Court (*Gunesh Shundiram and others* v. *the Bombay, Baroda and Central India Railway*) the Company had, notwithstanding objection notified to them by the consignor, delivered the goods to the holder of the railway receipts; but the receipts had not been endorsed to the holder, and the Court found that he had obtained possession of them *by fraud*, and ordered the Company to refund to the consignor the value of goods delivered by them to the receipt holder. It appeared that the receipt in this instance comprised a condition (printed thereon) that the same should be produced by the consignee, or that the goods would not be delivered, and that "if he did not attend himself to take delivery, he must endorse a request for delivery to the person to whom he wished it made." As already stated, the receipt had not been endorsed, but it was proved that the Company had frequently during a period of 21 years delivered goods to holders of such receipts unendorsed. The Court held in effect that this practice could not exonerate the Railway Company, and that, even if it were a recognised custom, consignors at a distance from Bombay could not be held bound by it.

Whether the Court would have held the Company justified in delivering the goods supposing the receipt had been endorsed by the consignor (in accordance with the condition) is not clear. We apprehend not, as the holder of the receipts had obtained the same by fraud, and notice of the fraud had been given to the Company.

There remains to be considered the question whether the words "document of title" used in section 102 of the Indian Contract Act, the words "instrument of title" used in section 103, or the words "document showing title" used in section 108 include within their meaning respectively a railway receipt.

We do not think that this question has ever been decided by a court of law; at all events we are not aware of any reported decision on the subject.

We apprehend, however, that there can be but little doubt that a railway receipt is neither a "document of title," nor an "instrument of title," nor a "document showing title."

Such a receipt is, of course, evidence (though not necessarily conclusive evidence) that the Railway Company who have granted the receipt have actually received the goods for carriage. But what evidence is such receipt that the goods belong to the person who produces it? And if the receipt in no way evidences ownership, then how can it be said to be a "document showing title to the goods?"

We have examined the forms of receipt used by all the principal railways in India, and we find that a very large number of them contain a clause to the effect that the "consignee" must produce the receipt, or the goods will not be delivered; if he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. A receipt so framed is doubtless a document evidencing the right of the person therein named as consignee to *receive* delivery of the goods from the Railway Company. But there is a very wide distinction between a document which shows "a right to receive" goods from the carriers thereof and a document which shows title (*i.e.*, a right of ownership and of disposal) to the goods themselves.

It may be said that, judged from this point of view, a bill of lading should be no better than a railway receipt.

But the answer is that the established custom of merchants recognised by the courts of law and by the Legislature has invested a bill of lading with the character of a document showing title, whereas no such established and recognised custom exists as regards railway receipts.

Further, it is noticeable that section 108 of the Indian Contract Act, to which we have before referred, expressly includes not only bills of lading, but also "dock-warrants," a "warehouse-keeper's certificates," and a "wharfinger's certificate or warrant or order for delivery," but "railway or carrier's receipts" are not mentioned.

We have now shown that there is a very material distinction between the value for commercial purposes of a bill of lading and a railway receipt, the latter enjoying few, if any, of the special advantages and privileges which attach to the former.

The reasons for this are not far to seek.

The Western trade of former days was almost entirely carried on by water. Railways are comparatively of modern date, and distances in the United Kingdom so short that goods may arrive at their destination as soon as the railway receipt granted at the place of

their despatch; possibly for this reason not very much would be gained by making railway receipts negotiable, so far as the United Kingdom is concerned. That such receipts have not acquired the same advantages as bills of lading is probably due to the circumstance that it may not have been hitherto worth the merchants' while to secure those advantages for railway receipts.

But in India the case is different: goods travel long distances by rail, and are often several days on the road. It seems obvious that commercial transactions must be greatly facilitated if under such circumstances a railway receipt can be made to afford the same or as good security as a bill of lading.

As a matter of fact, considerable transactions in the way of negotiation of railway receipts take place in India, and especially in Bombay; and such transactions facilitate, and indeed are, we believe, often necessitated by the lawful operations of trade.

As matters stand at present, a merchant who buys a railway receipt, say, for 100 bales of cotton, is exposed to the risk of the goods being stopped in transit, or claimed in the case of an insolvency by the Official Assignee, or claimed on the ground that the consignor was not the true owner of the goods.

Why should the negotiator of railway receipts be compelled to incur these risks?

It appears to us to be a hardship and an anomaly that risks of the kind should attend the negotiation of railway receipts whilst the negotiation of bills of lading is practically free from them; and the very fact that such risks exist in connection with railway receipts seems calculated to operate in restraint of trade.

It may well be that a mercantile custom is even now growing up, if it be not already in existence, to treat railway receipts on the same footing as bills of lading.

If this be the case, then it is of all the more importance that such custom should be recognised and established by law.

The application by the Legislature to railway receipts of the law which governs bills of lading would not, we think, be a matter of any difficulty.

This object could, we submit, be effected by an amendment of the Indian Contract Act or of the Bills of Lading Act (IX of 1856), or by passing a "Railway or Inland Carriers Receipts Act."

Such amendment of the law might with advantage be made applicable also to "canal" receipts, and perhaps to other carriers' receipts.

We are of opinion that to place railway receipts upon an equal footing with bills of lading is desirable, not only in the interests of traders, but of all the community generally.

It follows, therefore, that in reply to the question put to us, we are of opinion that "it is advisable that the Chamber should address the Government with a view to obtain such alteration or modification of the law as will render railway receipts transferable and negotiable instruments, carrying a title to property in the same way as bills of lading," and (we may add) as will secure to railway receipts the same privileges in all respects as bills of lading enjoy.

No. 3.] I have the honour to state, for the information of the Government, that this Chamber has been favoured by the Bombay Chamber with a copy of the letter which it addressed to you on the 10th ultimo, asking that legislative action may be taken to place railway receipts on the same footing as bills of lading. *Madras Chamber, dated the 8th December 1886.*

The opinions expressed by the Bombay Chamber are shared by the mercantile community of Madras, and I am desired to say that this Chamber entertains the hope that the Government will be pleased to take the legislative action that has been proposed.

No. 4.] I am to say that this Chamber is generally in favour of the proposals set out in the letter of the Bombay Chamber of 10th November last. They can see no reason why railway receipts should not be placed on the same footing as bills of lading. Small parcels and packages could be covered as now by parcel receipts. *Bengal Chamber, dated the 29th April 1887.*

2. The proposal was referred by the Government of India to its Law Officers, and the case stated for the Advocate-General by the Government Solicitor and the Advocate-General's opinion are printed below:

No. 5.] The questions raised in the accompanying papers, and on which the Government of India desire the opinion of the Honourable the Advocate-General are, as it appears to the Government Solicitor, (1) whether the application of the Bombay Chamber of Commerce to the Government of India in the Legislative Department makes out a sufficient case for the initiation of legislation with a view to placing receipts granted by Railway Administrations to consignees for goods entrusted to such administrations for conveyance by railway on the same footing as bills of lading; (2) whether any practical objections suggest themselves to the initiation of such legislation; and (3) the form which such legislation should take. *Case stated by Mr. H. A. Adkin, Officiating Solicitor to the Government of India.*

These questions are, of course, based on the assumption that, as the law of India at present stands, railway receipts are not negotiable instruments; and as to this, it appears to the Government Solicitor that the letter from Messrs. Craigie, Lynch & Owen appended to the letter from the Secretary of the Bombay Chamber of Commerce makes out a conclusive case. Unless, however, the Honourable the Advocate-General concurs in this view, the questions, as above stated, will not arise.

The considerations urged by the Bombay Chamber and their Solicitors in support of their application appear to be very strong, and no reasons occur to the Government Solicitor (who concurs in the views expressed in Messrs. Craigie, Lynch & Owen's letter) against the proposed legislation.

The Honourable the Advocate-General will please advise on the questions stated above.

Opinion by Mr. G.C. Paul, Advocate-General.

No. 6.] The letter from Messrs. Craigie, Lynch & Owen to the Secretary of the Bombay Chamber of Commerce, I think accurately enunciates the principles of law relating to bills of lading and railway receipts respectively. I am further of opinion that the Bombay Chamber of Commerce has made out a strong case for legislative action. If railway receipts are put on a *par* with bills of lading, doubtless the legal responsibility of the Government either as owners or principal proprietors of Railways will be increased in cases where unpaid vendors can legally exercise their right of stoppage *in transitu*. The question for the Government to decide is whether in view of the great advantages to trade which would be afforded by railway receipts being put on a *par* with bills of lading, an additional legal responsibility should not be incurred by the Government. This is a question of expediency and policy which is beyond my province as the Legal Adviser to the Government. But if my advice is sought on this subject, I would be disposed to view favourably the change in the law recommended by the Bombay Chamber of Commerce.

3. The proposal was then referred to the Agents of Guaranteed and the Managers of State Railways for their opinions, the Agents being instructed to send their opinions to their London Boards. It was also suggested to the Secretary of State that the question should be discussed with the Boards of Directors of Indian Railway Companies. The opinions received are reproduced in substance below:

Bengal-Nagpur Railway.

From the Manager, dated the 8th June 1887.

No. 7.] In my opinion the custom on the subject requires alteration, and that a railway should be justified in handing over goods at any time to any one producing their receipts for the same, and that, having done so, they are free of all responsibility in the matter.

2. It is not universally admitted by legal authorities that a special legislation is necessary. Macpherson on Law of Indian Railways and Common Carriers, page 37, would lead to the opinion that all that is required is a receipt in the form of a special contract approved by the Governor-General in Council, as has been done with risk notes, and that such a contract could not be altered by the Civil Courts.

Bilaspur-Etawah State Railway.

From the Manager, dated the 5th June 1887.

No. 8.] Officially no instance of the difficulties attended on the non-negotiability of railway receipts has ever occurred to me. I, however, am fully aware of the truth of what the Secretary of the Bombay Chamber of Commerce puts forward, and do not anticipate any difficulties likely to accrue to Railway Administration by giving effect to the suggestions.

Burma State Railway.

From the Manager, dated the 17th June 1887.

No. 9.] The matter was discussed at an official meeting held at this Office on Monday, the 13th instant, when the Examiner of Railway Accounts pointed out that the following endorsement appears on Goods Receipt Form No. S. N. 36:

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

It was therefore resolved that in reply to the reference, it be pointed out that the above-quoted rule, which is issued under the authority of the Government, evidently constitutes the document concerned a negotiable instrument, and that, as far as State Railways are concerned, no legislative action appears necessary.

Eastern Bengal State Railway.

From the Manager, dated the 24th June 1887.

No. 10.] The legal aspect of the question appears to have been fully dealt with by Messrs. Craigie, Lynch & Owen, Solicitors to the Bombay Chamber of Commerce,

and these gentlemen, after setting forth arguments in favour of the proposal, state:

"This object could, we submit, be effected by an amendment of the Indian Contract Act or of the Bills of Lading Act (IX of 1856), or by passing a Railway or Inland Carriers Receipt Act."

I have referred to this, as I consider from a railway point of view that, in the event of the Legislature favouring the proposal, the manner in which the object is effected is of some importance. In my opinion the latter alternative is the best.

I do not follow the Advocate-General where he seems to imply that if railway receipts are put on a par with bills of lading, an additional legal responsibility will fall on Government as owners or principal proprietors of railways. It seems to me that the responsibility of the railway as a carrier should not extend beyond the delivery of the goods to the consignee or endorsee, as the case may be. In this connection, I may remark that the right of stoppage *in transitu* is very rarely exercised, and there appears no valid reason why railway receipts should differ from bills of lading in this respect.

Tirhoot State Railway.

From the Manager, dated the 15th June 1887.

No. 11.] I see no material objection to this as far as the railways are concerned, assuming that the projected legislation to effect this protects railways from loss or undue responsibility. The endorsement to a consignee, for instance, which would give him right of property in the goods, should at the same time involve responsibility to the railway for freight and undercharges, though we may still have to hold consignors responsible for fraudulent or mistaken description of goods. Due account should also be taken of the difference between the station staff on Indian Railways and those who have to deal with ordinary bills of lading used in shipping.

It is to be noted that the correspondence received with your letter under reply shews that the supporters so far of the proposal are those who would be buyers or consignees of goods to be dealt with under these negotiable receipts. It would be well to take the views of sellers on the matter. It would possibly be found that they were not so favourable to the proposal, and that the anticipated increase of trade among the smaller firms at ports, which it is urged or implied as likely to follow on the realisation of this proposal, would not be fulfilled unless the operation is protected by greater security to the consignor at the station of consignment. In any case consignors would desire, I think, that railway receipts are not made generally negotiable, but only when endorsed, or, better still, when granted and executed on a separate form intended for such negotiable receipts.

North-Western State Railway.

From the Examiner of Accounts, dated the 9th June 1887.

No. 12.] The proposals are apparently that the railway receipts should be made in law an instrument of the same nature as a bill of lading, the most valuable features of which are stated to be—

(1) that it is negotiable and transferable by endorsement and delivery or by transmission:

(2) that endorsement and delivery or transmission of the bill of lading transfers the property in the goods to the endorsee (in the absence of a contrary intention on the part of the endorser and endorsee):

(3) that it may be endorsed either specially or in blank:

(4) that the holder of a bill of lading may by negotiating, endorsing, or transferring the same to a *bonâ fide* transferree defeat the vendor's right to stop *in transitu*.

The bill of lading is also seemingly, with certain reservations as to fraud, &c., conclusive evidence of the receipt of the goods as against the carrier.

The State Railway form of receipt, after providing that it must be produced by the consignee, further provides that—

"If the consignment or this railway receipt is sold one or more times, the endorsement must be a distinct written order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appear on the face hereof, each order must bear a stamp."

This would seem to indicate an intention to recognise the receipt as a negotiable document and instrument showing title to the goods, and the proposed legislation would apparently define and legalise its position in these respects.

I am not quite clear as to the position the Railway would occupy in the case of—

(1) An endorsement in blank.

(2) The *bonâ fides* of a transfer being questioned, and the consignor seeking in consequence to exercise a right of stoppage *in transitu*.

But I am inclined to think that, so far as the railway is concerned, the receipt should be specially endorsed, and that its production duly endorsed should be accepted as sufficient evidence of title and delivery made thereupon, except in case of an interdict from a Court.

Any increase in the responsibility of the railway is, I think, to be deprecated, and probably the requirements of the mercantile community might be sufficiently met without adding to the liability of the railway.

With reference to the remarks of the Bengal Chamber of Commerce, it would probably be desirable to have a distinction between the parcels and goods receipts.

The proposals have been made in the interest of the export trade, but there is also a large internal trade to be considered, and I am unaware whether the proposed charges are such as would commend themselves to the large body of Native merchants who chiefly carry on the internal trade of the country. Steps might perhaps be taken to ascertain this. If necessary, there might be two sets of forms—one for the export, and the other for the internal trade, to be used at the option of the consignors; but, except upon very strong grounds, it would seem undesirable to have forms of different legal nature for the same railway purpose.

From the Traffic Superintendent, Punjab Section, dated the 17th June 1887.

No. 13.] It would, I think, be expedient to obtain a full explanation of the extent to which the legal responsibility of a Railway Administration is increased.

The Advocate-General implies that this increased responsibility will be incurred *only* in cases where unpaid vendors can legally exercise this right of stoppage in transition.

The clauses of the Contract Act which affect the case are—

99. "A seller who has parted with the possession of goods and has not received the whole price may, if the buyer becomes insolvent, stop the goods while in transit to the buyer."

101. "The seller's right of stoppage does not, except in the case hereinafter mentioned, cease on the buyer re-selling the goods while in transit and receiving the price, but continues until the goods have to be delivered to the second buyer, or to some person on his behalf."

102. "The right of stoppage ceases if the buyer, having obtained a bill of lading, assigns it, while the goods are in transit, to a second buyer, who is acting in good faith, and who gives valuable consideration for them."

To take the cases given in the Contract Act: *A* sells and consigns certain goods to *B*, and sends him the bill of lading. *A* being still unpaid, *B* becomes insolvent and assigns the bill of lading for cash to *C*; *C* either knows or does not know that *B* is insolvent. In the former case the transaction is not in good faith, and *A* can stop the goods in transit. In the latter case the transaction is in good faith, and *A* cannot stop the goods in transit.

But the Railway Administration is not in a position to know whether the transaction between *B* and *C* is in good faith, and, in the absence of such knowledge, must of necessity be placed in a dilemma if *A* orders the goods to be stopped in transit.

If the Railway does not Act on *A*'s instructions and allows the goods to be delivered to *C*, and it subsequently turns out that the transaction between *B* and *C* was not in good faith, it becomes liable to *A* for the value of the goods. If, on the other hand, the Railway stops delivery of the goods, and it turns out that the transaction between *B* and *C* was conducted in good faith by *C*, then *C* can sue the Railway for loss of market.

If my interpretation is correct, there is no question that Railway Administrations will incur a very serious responsibility; and the question is, whether the facilities given to merchants would be likely to increase trade to an extent which would compensate railways for the increased risk incurred.

On the whole, I am doubtfully disposed to believe that the prospect of extending trade is worth the risk, and to recommend that we declare in favour of the proposed legislation.

From the Manager, Punjab Section, dated the 28th June 1887.

No. 14.] Before we are called upon to express a definite opinion, some explanation is required of the extent to which our responsibility would be increased by the proposed legislation.

The wording on the form of receipt in use on State Railways would appear to imply that we already consider the receipt as a document showing title to the goods by the person to whom it has been last duly transferred by endorsement. I cannot, however, say under what responsibilities the Railway actually labours in the case of an endorsement in blank or in the event of the *bonâ fides* of a transfer being disputed by the consignor, and his instructions received to stop delivery. The responsibility would seem to depend upon whether the transfer was made in good faith between the parties concerned; but how the Railway is to ascertain this before it may be too late is in no way indicated.

If the proposed legislation will remove this difficulty, or at all events place us in no worse a position than we are now, I would willingly advocate the acceptance of the assimilation of bills of lading and railway receipts which the mercantile community appear to desire; but the opinion of the Honourable the Advocate-General distinctly indicates increased responsibility in certain cases, and we ought to know what the extent of this responsibility is likely to be.

From the Traffic Superintendent, Sind Section, dated the 14th June 1887.

No. 15.] There can be no doubt that to place railway receipts on the same footing as bills of lading will be an immense convenience to merchants and bankers.

At the same time it is equally certain that the responsibility of the railway carrier will be largely increased, especially so if the consignee is allowed to retain his right to stop goods while in transit, and while the present practice of delivering goods on indemnity

bonds remains in force. These considerations, however, cannot be allowed to outweigh the great convenience that would be afforded to traders, and I think it would be well if railway receipts were rendered negotiable documents.

From the Manager, Sind Section, dated the 1st July 1887.

No. 16.] I concur in the general opinion that a railway receipt should be a negotiable document. But as this will virtually prohibit delivery without production of the receipt, it may possibly be advisable to restrict its application either to—

(1) certain trading localities;
(2) to consignments of certain value or quantity;
(3) to certain classes of goods, and allow all other traffic to be conducted on ordinary principles. A form of indemnity bond will also be necessary to meet cases of lost negotiable receipts.

There are also certain small consignments for short distances, the freight on which will scarcely cover the cost of printing and filling in the numerous forms which now complicate and retard the business of a railway, and I would venture to suggest, while the alteration of the law is under consideration, the advisability of still further altering the law and making it legal for railways to book small consignments at owner's risk without either a consignment note, receipt, or invoice, the fact of their entry in a receipt book and of a signature on a delivery book being considered conclusive evidence of receipt or delivery.

East Indian Railway.

From the Agent to the Board of Directors, dated the 10th September 1887.

No. 17.] My own opinion is that before any change in the law is considered, the alleged inconvenience to the public should be fully ascertained and established. If from the circumstance of railway goods receipts not possessing the legal status of bills of lading the inconvenience to trade should be found to be considerable, I am of opinion that Railway Administrations should be prepared to accept the increased risk and responsibility which a change in the law would entail. Correspondence is enclosed.

From the Board of Directors to the Agent, dated the 25th November 1887.

No. 18.] I am desired to hand to you the enclosed copy of a report from Messrs. Freshfields & Williams, the Company's Solicitors, in which the question of the proposed legislation is fully discussed from a legal point of view.

For the rest, you are aware how anxious the Board have always been to grant the utmost facilities to traders using the East Indian Railway Company's system or that of other Companies in connection therewith.

It appears, however, to the Board that the alterations now suggested by the Bombay and other Chambers of Commerce, if carried out, must entail increased, and probably onerous, responsibilities upon the East Indian Railway Company, and they therefore feel their inability to arrive at any judgment upon the question until they are able clearly to understand what course of legislation the Government of India would propose.

Should the Government, therefore, decide to proceed to any legislative enactment to alter the present status or force of the existing railway receipt for goods, you are directed to take the earliest opportunity of apprising the Board thereof, and to forward for their consideration (in conjunction with their legal advisers) the full terms of any measure to be introduced into the Legislative Council. You will further, at the same time, most urgently represent to the Government of India the Board's request that they may have ample time to consider any such legislation on a matter which appears to them of vital importance to the East Indian Railway Company before its final adoption.

From Messrs. Freshfields & Williams (the report mentioned in the foregoing letter).

No. 19.] We collect from the correspondence and papers that, as a matter of practice, the East Indian Railway Company already treat the railway receipts to a certain extent as bills of lading, and deliver the goods at their destination to any endorsee of the receipt appearing thereon entitled to such goods. This practice, it is clear, is carried on at the Company's own risk.

The question then arises, what effect would the proposed legal assimilation of railway receipts with bills of lading have on the liability and responsibility of the Company in the carriage of goods.

We may here observe that it is not quite clear in what way the promoters of legislation propose to make the new law obligatory on the Railway Companies.

At present the system of railway receipts adopted by the Company is an entirely voluntary arrangement.

We understand that, under the Indian Contract Act, the sole duty of the Railway Companies as carriers is to deliver goods to the original consignees, and that the Company is not bound to issue railway receipts at all, nor to recognise or act upon endorsements, and consequently the Company can depart from or modify their present practice in any particular case when it may be convenient or prudent to do so.

If the law were altered so as to place railway receipts on the same footing as bills of lading, and a statutory form of bill of lading were prescribed and made obligatory on the Companies, they would become liable for the proper delivery of the goods to the party entitled under the bill whether as endorsee or otherwise.

As a consequence of this, the Railway Company would have to take into consideration questions as to irregular and forged endorsements, and in the event of goods being delivered even to an innocent holder for value when a previous endorsee's signature had been forged, the Company would be liable to the right holder whose signature was forged for the goods so delivered.

In addition to this, further inconvenience would arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*.

At present, when a consignor and consignee stand in the relation of unpaid seller and buyer, and before the delivery of the goods the consignor finds out that the consignee is insolvent, the former has a right to stop the delivery of the goods to the consignee; but, in the case of a bill of lading, the consignor cannot stop the goods *in transitu* if the consignee has parted with the bill of lading, and it has passed into the hands of a *bonâ fide* holder for valuable consideration.

It follows that if railway receipts were turned into bills of lading, questions of the good faith, &c., of the holder would have to be considered when an unpaid consignor attempted to stop goods *in transitu*.

Whether or not, in the interests of trade, it would be advisable for the Government of India to impose upon Railway Companies the additional risk and responsibility which we have pointed out, it is not for us to express an opinion; but in our opinion the proposal is at least open to the criticisms and objections passed upon it and urged against it in the letters of Mr. Macpherson and Messrs. Morgan, and we think that, as pointed out by Mr. Macpherson, if any alteration of the law takes place in the direction now contemplated, it is essential that it should only apply to consignments above a certain fixed weight or value; otherwise a wide field would be opened for petty frauds on the Railway Companies, and we think that some provision for protecting Railway Companies against forged endorsements should, as suggested by Messrs. Morgan, be introduced into the Bill. We prefer to defer giving any more definite opinion until we see the exact terms of the proposed legislation.

Great Indian Peninsula Railway.

From the Board of Directors to the Agent, dated the 11th November 1887.

No. 20.] The object which the Chambers have in view is understood to be to give further facilities to traders in the conduct of their business, and, in as far as it may be possible to secure that object, the Board recognise that the proposal is of a character deserving their support. It is not necessary for the Board to go at present into details as to the manner in which the arrangement suggested might affect the Railway Companies as carriers, but it must be remembered that there are in that respect circumstances which could not be overlooked in any proposed legislation.

That with this reservation, and with the understanding that it is not contemplated by means of the proposed legislation to affect unduly responsibilities at present attaching to the Railway Companies as carriers, the Board will be ready to give their best consideration and assistance to any Bill which may be introduced into the Legislative Council on the subject and which they assume will be proceeded with in the Council in a way to afford the Railway Companies the fullest time for considering it, and representing their views in the matter.

Bombay, Baroda and Central India Railway.

From the Agent to the Board of Directors, dated the 6th January 1888.

No. 21.] The change which the Bombay Chamber of Commerce advocates is one which confers certain advantages upon the mercantile communities of the ports of exportation, and it does not appear from the opinion expressed by the Solicitors to the Bombay Chamber of Commerce that the interests of the inland traders, or that the increased risks and responsibilities which would be entailed upon Railway Administrations by the introduction of the proposed change, have been dealt with in connection with the subject.

It is pointed out in the correspondence that difficulties would be likely to arise with respect to the stoppage of goods in transit in the case of the loss of railway receipts and with regard to the lien that Railway Administrations now have upon the goods of a consignee who has become insolvent, as well as in connexion with forged endorsements on railway receipts. Delivery without the production of railway receipts would involve the Railway in increased risks, and to insist on the production of railway receipt would often delay delivery, and so block up storage accommodation. This would specially affect the short distance traffic, such as our cotton traffic from Guzerat and Kathiawar, which often arrives at Bombay before the railway receipt can reach the consignee through the post.

The negotiability of bills of lading is doubtless in complete conformity with all existing legislation regarding shipping matters, while the extension of the same principle to railway receipts might necessitate many alterations in law as now affecting Railways; but in the main I agree with the opinion expressed by the Agent, East Indian Railway (copy attached, with copies of opinions of East Indian Railway officers), that if sufficient necessity is shown for the introduction of the proposed change, or the interests of trade and commerce are to be promoted thereby, I would not oppose the introduction of legislation to make railway receipts negotiable, provided that it is accompanied by safeguards to protect Railway Administrations against undue risks and responsibilities.

From the Board of Directors to the Agent, dated the 17th February 1888.

No. 22.] This subject is one of much importance, and in the opinion of the Board should not be legislated upon without full previous enquiry as to the nature and real extent of the disadvantages to traders and others alleged by the Bombay Chamber of Commerce, with the concurrence of the Bengal Chamber of Commerce, to result from the present status of railway receipts as untransferable and unnegotiable instruments not carrying a title to property in the same way as shipping bills of lading. The Board concur in the view expressed by yourself and the Agent of the East Indian Railway Company to the effect that, if a change in this status is advisable in the interests of trade and commerce, the Railway Companies should not oppose a necessary alteration therein, provided that in any legislation undertaken with a view to this end, the Railways are fairly protected against undue risks and responsibilities, and are not unreasonably hampered in the prompt conduct of their business as common carriers.

Bhavnagar-Gondal Railway.

From the Manager, dated the 15th December 1887.

No. 23.] The Traffic Superintendent of this Railway reports that no complaints have been received from merchants or traders of any inconvenience arising from the railway receipt not being a legalised document in the same sense as the bill of lading is, but at the same time he has no doubt that the railway receipt being placed on the same footing in point of law as the bill of lading would be a convenience generally to the trading community, and in this opinion I concur.

4. About this time the Secretary of State had under consideration certain claims for compensation preferred by an officer of the army on account of injuries received, and the question of the liabilities and obligations of railways owned by the State was discussed. The opinions of the Legal Advisers of the India Office on this question and on the question of the negotiability of railway receipts were sent to the Government of India for consideration in connection with the Railway Bill which was then under preparation. The opinion on the latter point was as follows:

Note by the Legal Adviser of the India Office on bills of lading, dated the 29th June 1887.

No. 24.] I do not think there is much legal aspect in this case, though the general considerations which apply to it are important. For I do not quite see why the legal responsibility of the Government would be increased by the proposed change as suggested by the Advocate-General; and, if it would be, provision could be made in the proposed legislation for negativing such responsibility.

The general considerations applying to the case are as follow:

The negotiability, &c., of bills of lading was brought about by custom or the law merchant, they being ancient mercantile documents applicable to goods at sea shipped in one bottom, which, if sold, could not be delivered by reason of being on the sea. If the bill of lading was not negotiable, the species of property to which it applied would be locked up, and, in the old sailing days, for long periods.

It may be doubtful whether the existing law as to bills of lading would have grown up and taken root so as to be recognised with judicial sanction in these days of quick voyages. And at all events the principle on which the negotiability of bills of lading is based, *viz.*, that for a long period the goods, and the captain in charge of them, cannot be communicated with, does not apply to railway carriage with telegraphic communication.

However, in the words of Mr. Justice Buller in *Lickbarrow* v. *Mason*: "In all mercantile transactions, one great point to be kept uniformly in view is to make the circulation and negotiation of property as quick, as easy, and as certain as possible," and if land carriage and water carriage were on all-fours, the proposed legislation might be beneficial.

But so far from being on all-fours, there are important distinctions applying to them.

In water carriage, to which bills of lading apply, all the goods up to thousands of tons go in one bottom from port to port.

In railway carriage only part of the goods probably can go by each goods train, which would necessitate a separate receipt for each load, giving enormous trouble to the carriers; for a bill of lading is an acknowledgment by the captain of having received the goods on board his ship, and it will be a fraud by the captain to sign a bill of lading if he had not received the goods on board. And it appears to me that it would be improper to interfere with a vendor's rights, at all events until the goods were in actual transit—that is, not whilst they were lying at the railway station to be loaded for transit. For a bill of lading would not apply to goods on a wharf awaiting shipment.

And instead of one bottom carrying the goods, they would possibly have to pass over several systems of rails, the officer at the starting point who gave the receipt having no authority from the Company at the station of delivery.

On the whole, I think the question requires very careful consideration, and I doubt whether it can be properly dealt with until a system of through booking is established.

I may add that Lord Blackburn, in dealing with this question in his book on the Contract of Sale, says:

"There have been some attempts made to give the same effect to the endorsement of dock warrants, wharfingers' receipts, delivery orders, and similar documents as is given to the endorsement of a bill of lading.

"These documents are generally written contracts by which the holder of the endorsed document is rendered the person to whom the holder of the goods is to deliver them, and in so far they greatly resemble bills of lading; but they differ from them in this respect, that when goods are at sea, the purchaser who takes the bill of lading has done all that is possible in order to take possession of the goods, as there is a physical obstacle to his seeking out the master of the ship and requiring him to attorn to his rights; but when the goods are on land, there is no reason why the person who receives a delivery order to dock warrant should not at once lodge it with the bailee, and so take actual or constructive possession of the goods. There is, therefore, a very sufficient reason why the custom of merchants should make the transfer of the bill of lading equivalent to an actual delivery of possession, and yet not given such an effect to the transfer of documents of title to goods on shore."

5. It was then decided on consideration of these opinions to discuss the question in the Legislative Council on the Railway Bill, and the Chambers of Commerce were so informed on the 1st November 1888. The Statement of Objects and reasons, which was circulated with the Bill, contained the following remarks on the subject:

Railway Bill: Statement of Objects and Reasons.

No. 25.] *Sections 57, 58, and 59.*—The first of these sections legalises the existing practice with respect to the disposal of unclaimed property. The second and third of them have been suggested partly by existing practice, partly by the case of *Eagleton* v. *the East Indian Railway Company* (8 B. L. R., 581), and partly by the proposal to give railway receipts the same effect as bills of lading.

The proposal to give such an effect to railway receipts has not been adopted in the Bill because Railway Administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere.

6. In discussing the Bill, the Chambers of Commerce of Bengal and Bombay wrote as follows on this question:

Bengal Chamber, dated the 7th August 1888.

No. 26.] In this connection, however, I am to invite your attention to my letter of 29th April 1887, in which this Chamber gave its adhesion to the suggestion of the Chamber of Commerce, Bombay, that railway receipts should be placed on the same footing as bills of lading. This question appears to the Committee to be one which might be discussed by such a body as a Railway Conference with great advantage, and they would suggest that the papers submitted to Government by the Bombay Chamber may form one of the subjects to which the attention of the Conference will be invited by Government.

Bombay Chamber, dated the 13th October 1888.

No. 27.] In dealing with the proposal of the Chamber for giving to railway receipts the status of negotiable instruments carrying a title to property conveyed by railways similar to that conferred by bills of lading on goods transported by sea, the "Statement of Objects and Reasons" attached to the Bill says that "the proposal to give such an effect to railway receipts has not been adopted in the Bill because Railway Administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere." As to whether, and for what reasons, the majority of the Railway Administrations are averse to the proposed change of the law relating to railway receipts, the Committee are not in a position to speak, the latest information at their disposal being conveyed in the Government of India's letter to the Chamber, dated 17th May 1887, when it was stated the question had been submitted to the Secretary of State for discussion with the Boards of Directors of the Indian Railways. The representative of the Great Indian Peninsula Railway, however, expresses himself as strongly in favour of the Chamber's suggestion; and as the Chambers of Commerce of Bengal and Madras have also supported it, the Committee would deprecate the omission of the provision regarding the altered power of railway receipts from the Bill until opportunity has been afforded the Chamber of ascertaining the extent and character of the opposition. That the change is not justified by existing legislation elsewhere is not, in the opinion of the Committee, sufficient ground for rejecting the amendment of the law in India, as the conditions of railway traffic in this country are admittedly widely different from those prevailing in England and Continental Europe. The length of time occupied in the transit of a large portion of the railway traffic in this country renders some means of intermediate finance, as between interior markets and the sea-board, absolutely essential to avoid restriction of trade, and it is impossible to imagine a better basis for it than the mode suggested by the Chamber of giving to railway receipts the same power and effect as bills of lading. The legitimate rights of the consignor and consignee would thereby be effectually safeguarded, while the liabilities of the Railway Administrations would be immensely simplified and diminished. The mere fact of its being an innovation on the existing practice in other countries should not, the Committee respectfully submit, be allowed to stand in the way of the adoption of what the commercial community regard as a much needed reform.

7. The Honourable Sir Dinshaw Manockjee Petit also wrote:

Sir D. M. Petit, dated the 27th November 1889.

No. 28.] The Chamber of Commerce of Bombay wish to provide about the negotiability of railway receipts as bills of lading. The Great Indian Peninsula Railway and North-Western Railway are in favour of such suggestion. I do not think that any Railway Company can have any possible objection to the same.

It may be mentioned that an unpaid consignor had filed a suit in the Bombay Court of Small Causes against an assignee of a railway receipt who had advanced moneys on the same, and that the Chief Judge of that Court had held that railway receipts are negotiable under section 102 of the Indian Contract Act; but it is understood that an appeal is intended to be preferred to the High Court against this judgment.

The Bombay Cotton Trade Association at their meeting held on the 4th September 1889 passed a resolution on this subject, and it will, I think, be better if I quote it here:—

"That, in the opinion of the Cotton Trade Association, the practice of advancing money on railway receipts in the present state of the law is most unadvisable; but as it appears impossible to alter at present the custom of buying produce from the North-West, the Association desires to signify its approval of the action the Chamber of Commerce has taken in requesting Government to legislate for the purpose of rendering railway receipts negotiable instruments, carrying a title to property similar to bills of lading, and that the Secretary be requested to prepare a representation to Government in support of the Chamber's proposals."

The law which at present exists operates as a source of restraint on the thriving trade of this great country. On the railway receipt in its present form, a trader cannot get an advance on his goods as he can do on a bill of lading, and consequently the money invested in the goods remains locked up until he is able to sell the goods.

From my experience as a merchant, I am of opinion that if the railway receipt be made negotiable, as represented by the Bombay Chamber of Commerce, not only there will be great facility to the trade, but the same will be much developed and increased; for if the receipt will be negotiable, the merchant will be able to obtain advances on his goods, and thus, by free circulation of his money, he will be able to invest the money received by him as advances in the purchase of other goods. This will greatly increase the traffic, and the Railway Companies also will thereby derive great benefit.

8. Meanwhile the question had been submitted to a Railway Conference which sat at Simla in the summer of 1888, with the result stated in Resolution No. 110 of the Conference, which was as follows:

Railway Conference: Meeting of 24th September 1888.

No. 29.] Proposed by Mr. Carter, seconded by Mr. Hanna,—

That, with reference to the proposal of the Bombay Chamber of Commerce to place railway receipts on the same footing as bills of lading, the Conference is of opinion that as such a course would increase the responsibility of Railway Administrations without any corresponding advantage, the proposed legislation is unadvisable.

The Committee divided:—

Ayes—47 votes.		*Noes—10 votes.*	
W. S. Betts (South Indian Railway)	4 votes.	H. Conder (Great Indian Peninsula Railway	6 votes.
G. F. O. Boughey (Bengal Railways)	5 „	W. B. Wright (Indian Midland Railway.)	4 „
N. St. L. Carter (East Indian Railway)	6 „		
L. Conway-Gordon (State Railways)	6 „		
R. Gardiner (Bhavnagar-Gondal-Junagarh-Porbandar Railway) ...	3 „		
F. B. Hanna (Madras Railway) ...	4 „		
A. Izat (Bengal and North-Western and Rohilkhand-Kumaun Railways)	5 „		
J. Lightfoot (North-Western Railway)	7 „		
I. O'Callaghan (Bombay, Baroda and Central India Railway).	7 „		

[Messrs. Constable (Bengal-Nagpur Railway) and Craik (Southern Mahratta Railway) did not vote.]

Proposal *agreed to*.

9. When moving on the 25th October 1888 for leave to introduce the Railway Bill, the Honourable Mr. Scoble stated why the proposal had not been embodied in the Bill, and was followed by the Honourable Sir Charles Elliott:

Railway Bill: Mr. Scoble's remarks in Council, 25th October 1888.

No. 30.] It may be convenient, in connection with this question of responsibility, to refer to a proposal to give railway receipts the same effect as bills of lading. This proposal has not been adopted. The two classes of documents stand upon an entirely different footing. The principle upon which the negotiability of bills of lading is based, namely, that for a long period the goods, and the captain in charge of them, cannot be communicated with, does not apply to railway carriage with telegraphic communication. Indeed, it may be doubted whether in these days of quick voyages the law as to bills of lading would ever have come into force. If the law were altered so as to place railway receipts on the same footing as bills of lading, and a statutory form of delivery order were prescribed under which Railway Administrations were subjected to the same responsibilities as shipowners, they would become liable for the proper delivery of the goods to the party entitled under the order, whether as endorsee or otherwise. As a consequence of this, the Railway Company would have to take into consideration questions as to irregular and forged endorsements, and, in the event of goods being delivered even to an innocent holder for value when a previous endorsee's signature had been forged, the Company would be liable to the right holder whose signature was forged for the goods so delivered. In addition to this, further inconvenience would arise in connection with the exercise by an

unpaid consignor of his right of stoppage *in transitu*. At present, when a consignor and consignee stand in the relation of unpaid seller and buyer, and before the delivery of the goods the consignor finds out that the consignee is insolvent, the former has a right to stop the delivery of the goods to the consignee; but, in the case of a bill of lading, the consignor cannot stop the goods *in transitu* if the consignee has parted with the bill of lading, and it has passed into the hands of a *bonâ fide* holder for valuable consideration. It follows that if railway receipts were turned into bills of lading, questions of the good faith and so forth of the holder would have to be considered when an unpaid consignor attempted to stop goods *in transitu*.

These are among the inconveniences which would result from the adoption of the proposal, and the Government of India has not deemed it advisable to impose this additional risk and responsibility on the railways in the absence of similar legislation on the subject in England.

Sir C. Elliott's remarks.

No. 31.] My honourable friend the Law Member in his speech has referred to the impossibility of bringing railway receipts under the law which affects bills of lading given by seagoing vessels. It may be worth while to mention in connection with this that section 81 of the Bill proposes to give one very desirable convenience to exporters from this country, in that it facilitates the through booking of goods from India to England, and *vice versâ*, and will thus help to remove the difficulties which have been met with in carrying out the arrangements which Colonel Conway-Gordon has made between the North-Western Railway and the Hall Line of steamers for the through booking of goods between England and the Punjab. I hope that the encouragement thus given to this system will tend to its development and spread on other Railway Administrations.

10. When moving in Council on the 21st March 1890 that the report of the Select Committee on the Bill be taken into consideration, the Honourable Mr. Scoble again stated his opinion, being supported on this occasion by Sir Alexander Wilson, the representative of the Calcutta mercantile community:

Railway Bill: Further remarks by Mr. Scoble, 21st March 1890.

No. 32.] In connection with this Chapter, I may notice another proposal which has been made, that railway receipts should be given the same effect as bills of lading. This proposal has not been adopted by the Select Committee.

In introducing the Bill, I stated the objections which to my mind stood in the way of the acceptance of such a proposal. One of these was the inconvenience likely to arise in connection with the exercise by an unpaid consignor of his right of stoppage *in transitu*. A recent case which has been decided by the High Court at Bombay affords a good illustration of this difficulty. A firm at Bijapur sold to a firm in Bombay three parcels of wheat, and received from the purchaser *hundis* payable at sight for the purchase-money. The railway receipts were thereupon handed to the purchaser, who promptly endorsed them for value to a third party. The *hundis* were dishonoured on presentation, and the purchasing firm became insolvent. The endorsees of the railway receipts claimed the goods, and actually obtained delivery of a portion of them: the delivery of the residue was stopped on a telegram from the original vendor. The High Court held that the railway receipts were not instruments of title within the meaning of section 103 of the Indian Contract Act, and that the unpaid vendor was therefore not deprived of his right to stop the goods in transit by reason of the endorsement of the receipts to secure a specific advance. The endorsee in this case seems to have been an innocent holder; but it is easy to see what a door would be opened to fraud under a different state of facts; and I am not surprised that a very large majority of the members of the Railway Conference which assembled at Simla in 1888 came to the conclusion that it was not desirable to give the same legal effect to railway receipts as to bills of lading.

Sir Alexander Wilson's remarks.

No. 33.] A proposal has been brought forward that the Bill should incorporate a provision to give railway receipts the same effect as bills of lading. This proposition has not been adopted, and wisely so, I think, looking to the wide difference between a consignment of goods in wagons passing over, it may be, various lines of railway under different administrations, and a shipment of goods on board a vessel in one port bound to another.

I cannot see that any provision of the kind would have materially benefited the export trade, and certainly not on this side of India, and would have been a departure which did not commend itself to the Railway Administrations, and which does not seem justified by existing legislation elsewhere.

11. While the Bill was still before the Council, the Bombay Chamber of Commerce again wrote to the Government on the subject of railway receipts, the letter being as follows:

From the Bombay Chamber, dated the 11th February 1890.

No. 34.] In a letter, dated 10th November 1886, this Chamber had the honour to represent to Government the unsatisfactory condition of the existing law relating to railway receipts in India, and expressed the hope that His Excellency the Governor-General in Council might see fit to initiate such legislative action as might be deemed necessary, not only to regulate more definitely the respective rights and liabilities of the public and the various Railway Administrations under these documents, but also to render them transferable and negotiable instruments, carrying a title to property in the same way as bills of lading.

2. The representation, as the Chamber understands, was duly considered by Government, and, further, referred to the discussion of Her Majesty's Secretary of State for India in conference with the Boards of Directors of Indian Railways in London. As to the result of these deliberations, however, the only information which has come to the Chamber was the remark in the Statement of Objects and Reasons attached to the draft Railway Bill for India (1888), that "the proposal to give such an effect (the same effect as "bills of lading") to railway receipts has not been adopted in the Bill, because Railway Administrations are understood to be averse to it, and it is not justified by existing legislation elsewhere." In reporting to Government on the provisions of the draft Railway Bill under date of 13th October 1888, the Chamber ventured to express the opinion that these reasons were neither adequate nor sufficient grounds on which to come to a final conclusion regarding such an important question, and the Committee of the Chamber again desire to approach Government in the hope that their proposal may receive further consideration in conjunction with the deliberations now in progress on the new Railway Bill.

3. It is unnecessary to repeat here at length the reasons formerly adduced by the Chamber for soliciting the suggested legislation. I am now directed to say that in the interval which has elapsed, these reasons have materially gained in strength, and the urgency for legislation has been more clearly demonstrated by the difficulties which traders have experienced, and the unsatisfactory character of the litigation which has taken place with regard to railway receipts. In a recent judgment delivered by the Honourable the Chief Justice of the Bombay High Court and the Honourable Mr. Justice Scott—a copy of which, for convenience of reference, I am directed to annex—any doubt which formerly existed as to whether railway receipts were documents showing title to goods within the meaning of those expressions as used in sections 103 and 108 respectively of the Indian Contract Act is finally settled.

4. The judgment also disposes of the possibility of any custom having grown up or being in existence by which railway receipts could be treated on the same footing as bills of lading, and in so doing concludes with the following words:

"If this be thought by the commercial community to be an unsatisfactory state of the law, it will be necessary, in our opinion, that the desired change should be made by the Legislature."

5. This Chamber, on behalf of the commercial community, begs most respectfully but emphatically to repeat that it does consider the present state of the law unsatisfactory, and is strongly of opinion that a change should be effected by legislation. Such legislation, the Chamber would submit, could be shortly and effectually dealt with in the new Railway Bill now under consideration; but should the legal advisers of Government object to this course, my Committee venture to express the hope that His Excellency the Governor-General in Council will be pleased to sanction the required amendment of the Indian Contract Act, or the introduction of a Railway or Inland Carriers Receipts Act.

Law Report referred to in the Chamber's letter.

No. 35.] BOMBAY HIGH COURT.—ORIGINAL SIDE.

[Before SIR CHARLES SARGENT, Chief Justice, and MR. JUSTICE SCOTT.]

THE GREAT INDIAN PENINSULA RAILWAY COMPANY *versus* HANMANDAS RAMKISSEN AND ANOTHER.

This was a reference to the High Court by Mr. Hart, Chief Judge of the Small Causes Court, upon a point of general interest to mercantile men in relation to the liability of a Railway Company as carriers.

The Chief Justice, in delivering judgment, said:—The facts out of which this reference by the Chief Judge of the Small Causes Court arises are fully set out in the case stated by the Court. With respect to the third question, whether there was such a delivery to Chinn Deokarn's agent at Bijapur as to deprive the first defendant of his right of stoppage, we agree with the Chief Judge that it must he answered in the negative. There was no actual delivery to the agent of that firm at Bijapur, and the wheat therefore remained *in transitu* in the hands of the Railway Company until delivery to the consignee. —*James v. Griffin*, 2 M. and W. 632, where Parke, J., says—

"The vendor has a right if unpaid, and if the vendee be insolvent, to retake the goods before they are actually delivered to the vendee, or some whom he means to be his agent to take possession, and keep the goods for him."

It is clear, therefore, that whether the first defendant be regarded as a factor and *quasi*-vendor, he was entitled to stop the 73 bags before they were delivered by the Company in Bombay.—*Feite* v. *Wray*, 3; *East and Ireland* v. *Livingstone*, 5, H. L., L. R. With respect to the fourth question, we think there was such a delivery of the 73 bags at the Wari Bunder to second defendant's servant as to determine the first defendant's right of stoppage *in transitu*. Section 105 of the Contract Act provides that the notice by the vendor to the carrier to stop the goods must be given to the principal in possession at such time and under such circumstances that the principal by the exercise of reasonable diligence may communicate it to his servant in time to prevent a delivery to the buyer. It is left in doubt by the case whether the Goods Traffic

Inspector received the first defendant's telegram before all the 73 bags had been placed on the carts; but in any case we must assume that it did not arrive in time to prevent the bags being placed with the consent of the railway official on the second defendant's carts hired for the purpose; for it is plain that it was not till the loading the carts had been completed that the Company's servants interfered to prevent the second defendant's servant from removing the carts from the railway compound. Before that the freight for these 73 bags had been paid by the second defendant's servant to the Company, and the railway receipt had also been given up to the Company duly signed by the second defendant's servant. It remains to consider the first and second question as to the effect of the endorsement and delivery by the firm of Chinn Deokarn of the railway receipts to the second defendant as regards the remainder of the 181 bags. In *Trikam Panachand* v. *Bombay, Baroda and Central India Railway Company*, Mr. Justice Farran held that the railway receipts in that case, which are in the same form as those which are issued by the Great Indian Peninsula Railway Company, were not documents of title, being in form simple receipts with a notification that "the Company reserve the right of delivering the goods without the production of the receipt," and therefore not distinguishable from wharfingers' certificates and mates receipts, which were held not to be documents of title in *Bolchaw* v. *Vaughan & Co.*, L. R. 10 ch. App. 491, and *Laing* v. *Laden*, 17 Eq. 92. However, in *Chinulal Jadhag* v. *the Great Indian Peninsula Railway Company* the same learned Judge had under consideration a railway document signed by the Rajputana-Malwa Railway officials in the same form as that of the present goods receipt note, and which is, we are informed, the one in use on all the State Railways, and is somewhat differently worded from the goods receipt in the former cases. It runs thus:

"Received from the consignor the undermentioned goods for conveyance to *C.*, Banda Station, by goods train. Consignee, Chinn Deokarn. Description, 181 bags of wheat. This receipt must be produced by the consignee, or the goods will not be delivered. If he does not himself attend, he must endorse a request for delivery to the person to whom he wishes it made. If the consignment of this railway receipt is relied on one or more times, the endorsement must be a distinct order to deliver to a certain person or firm, and this order must be on a one-anna stamp. If more than one order appears on the face hereof, each order must bear a stamp. For conditions of contract, see back.—*Signature* ( )."

The learned Judge expressed the inclination of his opinion that such a goods receipt was an instrument of title within the contemplation of section 103 of the Contract Act; but added that he did not intend to decide the question whether he should have held them to be such without some evidence that they were so treated by merchants and the trade, as he had come to a conclusion on another part of the case which made it unnecessary for him to do so. There can be no doubt, we think, that such a document or endorsement would not have been treated in the English Courts as a document or instrument of title to exclude the vendor's right of stoppage *in transitu* when the Contract Act came into force in September 1872. The decision of the Exchequer Court in 1846 in *Farina* v. *Home*, 16 M. and W. 119, was then in force (see *Benjamin on Sales*, paragraph 803), by which a delivery warrant signed by a wharfinger, whereby the goods were made deliverable to the plaintiff "or his assignee by endorsement, was held to be" no more than a token of authority to receive "possession." "Blackburn on Sales, page 297," or as Mr. Baron Parke states it—

"Only an engagement by the wharfinger to deliver to the consignee or any one he may appoint, and that until the wharfinger has attorned to the assignee, and agreed with him to hold for him, there was no constructive delivery to the assignee."

That decision was never overruled, and authoritatively determined the legal effect of such documents—at any rate until the passing of the Factors Act of 1877, 40 and 41 Vict., Cap. 39, the language of the goods receipt in question scarcely affords so strong an indication of an authority to the assignee by endorsement to receive the goods as that of the document before the Court of Exchequer, and the document therefore is in no higher degree "a symbol of the goods" so as to exclude the right of stoppage than the wharfinger's certificate in the above case. It may be that both of them would have that character by virtue of section 5 of the English Factors Act of 1877, which, as pointed out in "Benjamin on Sales," page 708, assimilates all documents of title as defined by section 4 of the previous Factors Act 5 and 6 Vict., Cap. 39, to bills of lading for the purposes of defeating the right of stoppage. But that Act has not been extended to India In *Trikam Panachand* v. *Bombay and Baroda Railway Company*, Mr. Justice Farran seems to have thought that, in the absence of any definition of a document of title on the Contract Act itself, section 4 of Act 20 of 1844, by which the English Factors Act 5 and 6 Vict., Cap. 39, was extended to India, might be properly accepted as a guide to the meaning of the expressions "documents showing title to goods" or "instruments of title to goods" in sections 108 and 103 of the Contract Act; but it appears to us that, however much that definition might assist in construing the expression "document showing title" in section 108 of the Contract Act, which was virtually substituted for the Factors Act, and is in *pari materia*, it cannot be properly used in construing the expression "instrument of title" in section 103, which relates to an entirely different subject matter from the Factors Act, and that it is therefore more reasonable to presume that in a matter of such general commercial importance, the framers of the Contract Act intended to leave the term "instrument of title" in section 103 to be construed with reference to the decisions then in force in the English Courts. The case of the *Merchant Banking Company of London* v. *Phœnix Bessemer Steel Company*, 5 Ch. Div., which was decided before that Act came into force, was referred to

as bearing on the question. There doubtless the Master of the Rolls, Sir G. Jessel, decided against the right of stoppage, but it was on special grounds (see page 217)—first, on account of the general custom of the iron trade; and, second, because he thought he ought to impute to the vendors special notice and special knowledge that the warrant was intended to be used for the purpose of raising money on it, and having that knowledge they issued the document in that particular form. In conclusion, he adds:

"Vendors purposely issued a second document of title with a view to its being used for a special purpose."

In the present case no custom has been proved, and there are no special circumstances from which the intention could be inferred that the goods receipt should be used for pledging the bags. We must therefore answer the first and second questions in the negative. If this be thought by the commercial community to be an unsatisfactory state of the law, it will be necessary, in our opinion, that the desired change should be made by the legislature. Costs of this reference to be costs in the case.

12. The Chamber's representation was again supported by the Madras Chamber in the subjoined letter:

From the Madras Chamber, dated the 25th February 1890.

No. 36.] I have the honour to state that this Chamber has been afforded the opportunity of seeing the memorial of merchants and others carrying on business in Bombay to the Viceroy and Governor-General, praying that a short Act may be passed declaring railway receipts in India to be instruments or documents of title under the Indian Contract Act, or that other provision may be made, as may be thought expedient, for effecting this object.

This Chamber addressed you on the subject on the 8th December 1886, and it was informed by the Secretary, Public Works Department, Government of India, on the 1st November 1888 that the question would shortly be discussed in the Viceregal Legislative Council, and that the action taken would be published in the proceedings of the Council.

The Chamber is not aware that any action has yet been taken; and as it shares the opinion of the Bombay memorialists that the recognition of railway receipts as instruments of title, or that such documents should be placed on the same footing as bills of lading, is desirable, it entertains the hope that the Government will be pleased to give the subject the consideration which it has for several years seemed to the mercantile community to deserve.

13. Lastly, with a letter dated the 26th February 1890, from Messrs. Chalk, Walker & Smetham, Solicitors, of Bombay, was received the subjoined memorial from "nearly all" the leading native merchants and commission agents of Bombay in grain, seed, cotton, and opium:

Memorial from native merchants in Bombay.

No. 37.] Your petitioners are grain, seed, and cotton merchants and commission agents trading in Bombay, and in the ordinary course of their business are in the habit of borrowing and advancing large sums of money upon the security of railway receipts, which are assigned over by or to them by simple endorsement, it being the universal practice among the mercantile community of Bombay to treat these receipts as documents of title transferable by endorsement.

2. The question whether this practice is such a sufficient legal assignment as will preclude an unpaid vendor from stopping the goods *in transitu* has been frequently before the Courts, but the decisions thereon have, until the decision mentioned in paragraph 3 hereof, been of so conflicting a nature (although in the main holding that railway receipts are not documents of title) that your petitioners have been advised to discontinue the practice until legislative provision is made to meet the case.

3. There has been for some time past great uncertainty as to the legal effect and value of these documents in the hands of a merchant advancing money upon them, and this question has recently been carefully considered by the 1st Judge of the Court of Small Causes at Bombay in the case of the *Great Indian Peninsula Railway Company* v. *Hanmandas Ramkissen and Veerjee Hansraj*, who was of opinion that in the case brought before him, the railway receipts were documents of title and valid securities in the hands of a *bonâ fide* holder for value. A copy of his judgment wherein the authorities are reviewed, the custom of the trade cited, and the subject most ably dealt with, is hereunto annexed for Your Excellency's information, and marked A.

4. Upon the application of the unpaid vendor and first defendant in the above-mentioned suit, a case was stated for the opinion of the High Court by His Honour the 1st Judge of the Court of Small Causes at Bombay, the first question therein propounded being "whether the receipt of the Southern Mahratta Railway Company in the form thereunto annexed was, in the circumstances set forth in the said case, an instrument of title within the meaning of section 103 of the Indian Contract Act." The receipt in question was a receipt in the form given in the Public Works Code for use on all guaranteed State Railways, and a copy thereof is hereunto annexed, and marked B. A copy of the said case is also hereunto annexed, and marked C. The said case came on for argument before

the Honourable Sir Charles Sargent, Chief Justice, and the Honourable Mr. Justice Bayley, when they decided that the said railway receipt was not a document of title within the meaning of the section. A copy of the judgment on the said reference is hereunto annexed, and marked D.

5. The question of the negotiability of railway receipts has been for several years under consideration by the Bombay Chamber of Commerce, and their views on the matter, as well as those of the Chambers of Commerce of Bengal and Madras, are entirely in favour of receipts being recognised as instruments of title, and put on the same footing as bills of lading, as appears from paragraph 3 of a letter addressed by the Bombay Chamber to the Secretary to the Government of India on the subject of the draft Bill to consolidate, amend, and add to the law relating to Railways in India under date the 13th of October 1888. A copy of the said paragraph is hereunto annexed, and marked E. The reasons set forth in the said paragraph are entirely in accordance with your petitioners' views, and offer, they humbly submit, strong grounds for the legislative changes herein prayed for. For convenience of reference, your petitioners have also hereunto annexed (marked F) copies of the correspondence upon this subject which was communicated to the public press in Bombay by the Chamber of Commerce, and published in the local newspapers on the 6th day of September 1889.

6. Your petitioners submit that the custom referred to in paragraph 1 of this petition is one of universal acceptance among all merchants in Bombay, and that, therefore, it is of the most vital importance to the whole of the mercantile community that Your Excellency in Council should pass a short Act with as little delay as possible putting the railway receipts of all Railway Companies on the same footing as bills of lading, and declaring them instruments or documents of title under sections 102 and 103 of the Indian Contract Act, 1872, or make provision for the use of a uniform railway receipt in India that shall come within the said sections of the said Act.

Your petitioners, therefore, pray that a short Act may be passed as soon as possible declaring the railway receipts of all Railways in India instruments or documents of title under sections 102 and 103 of the Indian Contract Act, or that provision may be made for the use of a uniform railway receipt in India that shall come within the said sections of the Contract Act, or that such other provision may be made as Your Excellency in Council may think expedient or desirable for effectuating the objects of this petition.

Rw Dept
3-1144/90

Rem N° 3652/90

[G. C. F.] G. C. Press, Simla.—No. 83 C. F.—12-5-90.—325.

CHAMBER OF COMMERCE OFFICE.

Cocanada, 16th June 1890.

From

The Chairman,
Chamber of Commerce,
Cocanada.

To

Major Sidney Smith. R.E.
Under Secretary to Govt P.W.D.
Railway Branch
Madras.

SS
22/6/90

Sir,

I have the honor to acknowledge the receipt of G.O no. 744, Railway, dated the 30th May 1890, with enclosures, regarding a proposal by the Bombay Chamber of Commerce, that Railway receipts should be placed upon the same footing as Bills of Lading, as transferable and negotiable instruments; and with reference thereto I am desired to inform you that, after a careful perusal of the papers dealing with the subject, this Chamber entirely concurs with the views expressed by the Bombay Chamber of Commerce, and earnestly trusts that the Government may see fit to legislate accordingly.

I have the honor to be
Sir,
Your most Obedient Servt.
C. W. Simson
Chairman.

X 00hy 3/6

Rd 23-6-90

22 P.

Cochin Chamber of Commerce
Cochin 19 June 1890.

Fd
F21/6/90
paper

From
The Secretary
Chamber of Commerce
Cochin

To
The Under Secretary to Government.
P. W. D. Railway Branch
Madras.

Sir,

sent to Bombay
the 3/6

I have the honor to acknowledge receipt of your order No 744 R of 30th ult May inclosing copy of Government of India Resolution No 2341 together with a compilation of opinions &c on the subject of a proposal made by the Bombay Chamber of Commerce that "Railway receipts should be declared to be transferable and negotiable instruments, carrying a title to property like bills of lading" - and in reply thereto I am directed to inform you that, as this port is

unconnected with any Railway,
and the Chamber being in no
way associated with be interested
in Railway Receipts, it regrets,
in the absence of any practical
experience, being unable to submit
an expression of opinion on the
question at issue

I have the honor to be
Sir
Your most obedient Servant
Ernest St Black
Ag. Honry Secretary.

PW Cl No 59075

PW Cl No 58457

Rd 21-6-90

Rec

0/23/6.

0/24/6

241.

The Madras Chamber of Commerce,

Madras, 23 July 1890.

From The Honble I A Bozon,
CHAIRMAN, CHAMBER OF COMMERCE,
MADRAS.

To The Secretary to Government
P. W. D. Railway Branch
Ootacamund.

Sir,

The Chamber has had under its consideration the papers issued by the Government of India, that accompanied the G.O. of the Madras Government, dated the 30th May 1890, No 744, R, on the proposal that Railway Receipts should be declared to be transferable and negotiable instruments, carrying a title to property in the same manner as bills of lading. The Chamber has already intimated its approval of the proposal. I am requested, however, to state that it would seem that the State Railway forms provide for the transfer of receipts by one or more endorsements and that as a matter of practice, finding that

trade demanded it, many of the Railway Administrations treat their receipts, to a certain extent, as Bills of Lading and deliver to endorsees. The Chamber, therefore, thinks it would be an advantage to legalise this practice. The Chamber realises the force of some of the objections advanced by the Railway Companies, but is of opinion that the advantages to Trade would out-weigh them. The fact, moreover, that Railway Receipts are practically treated in many quarters as Bills of Lading seems to show that the objections are rather phained and staggerites. The Risk Note clause in the Bill to which the Chamber objected in its letters of the 18 December 1888 to the Government of Madras and the 7th March 1890, to the Government of India, will, however, have to be modified, for no Bank will regard as a negotiable document a receipt which purports to free the issuer from liability for the fault delivery of packages entrusted to him.

I have the honor to be,
Sir,
Your most obedt Servant,

J. A. Dorpat

Chairman.

Enclosures
"
1) Chamber's letter to the Govt of Madras dated 18 Dec 1888
2) . do . to the Govt of India —"— 7 March 1890.
—"—

P.W. (Rs) No. 7186

Encl 2

Recd 24-VII-90
31-7-90

Print

26 S.P

The Chamber of Commerce,

Madras, *18th December, 1888.*

From

D. RASBOTHAM, ESQ.,
CHAIRMAN, CHAMBER OF COMMERCE,
MADRAS.

To

THE CHIEF SECRETARY,
GOVERNMENT OF MADRAS,
FORT ST. GEORGE.

Sir,

The Chamber is glad to be afforded an opportunity of expressing the opinion that the Bill of the Government of India to consolidate, amend, and add to the law relating to Railways in India, which has been referred to it by the Order of the Governor in Council of the 10th ultimo, No. 2329, Judicial, has derived so much advantage from the discussion which has taken place since the proposed legislation was mooted some years ago, that it leaves little to be desired. There are, the Chamber is informed, some details of comparatively small importance which may seem to the Railway executive susceptible of improvement, but they do not come within the scope of the Chamber's experience; and, without going so far as to say that the Bill may not in practice be found to need some modification, the Chamber entertains the opinion that, with one exception, it is well adapted to meet the requirements of the country, and, at the same time, to safeguard the interests of the Government and of the Companies concerned.

The exception referred to is as regards the responsibility of Railway Administrations as Carriers, under Chapter VII Sect. 72. It is proposed by the Bill that the responsibility of Railway Administrations for the loss, destruction, or deterioration of goods delivered to it to be carried by railway shall, subject to the other provisions of the Bill, be that of a bailee under the Indian Contract Act, but "(2) an agreement purporting to limit that responsibility shall, in so far as it purports to affect such limitation, be void, unless it (*a*) is in writing, signed by, or on behalf of the person sending, or delivering the goods, and (*b*) is otherwise in a form approved by the Governor-General in Council." It is also proposed that (3) nothing in the common law of England, or in the Carriers' Act 1865, with respect to the carriage of goods, shall apply to their carriage by railway.

A case has recently come under notice in Madras which has led the Chamber to the conclusion that the protection of a Railway Administration from responsibility for loss that happens to goods while in its custody may be carried too far. 563 bags of Ground Nuts were consigned from Arcot, per the Madras Railway, to a native merchant in Madras, but the Railway delivered only 511 bags, and when the consignee claimed from the Company the value of the 12 bags short-delivered, the Company declined to entertain his claim, on the ground that, as the goods had been

Ans 20-VII

27 S.P

forwarded at reduced rates, under Risk Note, Form B., sanctioned by the Governor-General in Council, the Company was not responsible for any loss he may have sustained. According to that Note, the party signing it does, "in consideration of such lower charge, agree and undertake to hold the said Railway harmless, and free from all responsibility for any loss, destruction, or deterioration of, or damage to the said consignment, from any causes whatever, during, and after transit over the said Railway, or other Railway lines working in connection therewith." The language is very precise, and probably warrants the refusal of the Company to pay the claim, but the Chamber submits that it is inexpedient to allow Railway Administrations to enjoy this great freedom from responsibility for the carelessness, or fraud of its servants. A consignor under a Risk Note takes the risk of damage, or loss of his goods, but if the Company accept 400 bags, and only deliver 200 bags of a consignment, without being able to explain where the missing bags have gone, it cannot be reasonably said to have fulfilled its part of the contract, which was to convey the consignment as a whole from one place to another.

Reference has been made by the Traffic Manager of the Madras Railway, in a letter on the subject with which he has favored the Chamber, to the case of Moheswar Das *v.* Carter, which was disposed of by the High Court of Calcutta, 12th March 1883. In this case the plaintiff alleged that, when 12 tins originally containing 6½ maunds of ghee, consigned from Agra to Ahmedpore were received, it was found that one had been cut open by a knife, and that 21½ seers of ghee were consequently deficient. He, therefore, claimed damages from the Railway Company; but his suit was dismissed on the ground that the Company was protected against liability by the terms of the Risk Note, which the plaintiff had signed. In the Madras case the Company similarly claims to be protected by the Risk Note; but if this plea may be used with regard to 12 out of 563 bags, it might be equally well set up for the failure to deliver, and the inability to account for, any of the bags. The Chamber cannot agree that the words "for any loss" should relieve the Railway from liability to deliver the number of bags, or packages, entrusted to it, and for which it granted a receipt. A Bill of Lading expressly states that "weight and contents are unknown," but it does not indemnify the ship from responsibility for failure to deliver the number of packages that were shipped. The stipulation contained in the Risk Note seems to the Chamber to be opposed to public policy. It is observed in the Statement of Objects and Reasons of the Bill, that "there have been very few complaints against the practical operation" of the rule under notice, "which is based upon a Judgment of the Bombay High Court", and that, "though the soundness of that Judgment has been questioned, the Government of India is of opinion that experience does not justify any material modification of existing legislation." The Chamber submits that as the legislation referred to involves the possibility of injustice to consignees, and is calculated to encourage Departmental carelessness and dishonesty, the continuance to Railway Administrations of the extensive and undiscriminating immunity from responsibility that they now enjoy under Risk Notes should not be re-affirmed in the new Act.

I have the honour to be, Sir,

Your most obedient Servant,

(Signed) D. RASBOTHAM,

Chairman.

Encl 2
PW 7/96 Fo

/True Copy/
Arthur R Lawton
Acting Secretary
C of C.

28 S.P

The Chamber of Commerce,

MADRAS, *7th March, 1890.*

FROM

THE HON'BLE J. A. BOYSON,
CHAIRMAN, CHAMBER OF COMMERCE,
MADRAS.

To

THE SECRETARY,
THE GOVERNMENT OF INDIA,
LEGISLATIVE DEPARTMENT,
CALCUTTA.

SIR,

This Chamber has studied with much attention the Railway Bill of the Government of India, as amended by the Select Committee of the Viceregal Legislative Council, which is to be discussed in Council on the 16th instant in view to its coming into law from the 1st proximo; and it has desired me to invite the attention of the Legislative Department to the circumstance that the exemption of Railway Administrations from responsibility in respect to goods carried under "Risk Notes" has not been modified by the Select Committee.

The Chamber addressed the Government of Madras on this subject on the 18th December 1888, and a copy of its letter was forwarded on the same date, to the Secretary Government of India Public Works Department, by the Chamber for information.

It is observed that the Bill limits the liability of Railway Administrations to the provisions of the Contract Act which imposes on the bailee the obligation (Sec. 151) of taking "as much care of the goods bailed as a man of ordinary prudence would under similar circumstances, take of his own goods;" relieves the bailee (Sec. 152), in the absence of any special contract of responsibility for the loss, destruction, or deterioration of the thing bailed, if that amount of care has been taken; and ordains (Sec. 161) that "if by the fault of the bailee the goods are not returned, delivered, or tendered at the proper time," the bailee "is responsible to the bailor for any loss, destruction, or deterioration of the goods."

This being the measure of liability it seems to the Chamber unnecessary and impolitic to introduce Clause 2 of Sec. 72 of the Bill, or in other words the Risk Note system, which reduces the liability of a Railway Administration to a risk of a purely nominal character as against the public, and offers the temptation for the imposition of unnecessarily high rates as the full rate, thereby forcing the public to adopt the reduced rate which practically frees the Administration from all liability.

Note

Under existing circumstances Railway as n
of rates for the carriage of goods, both
ment; namely, the full rates, which impo
non-delivery of goods; and the reduced r
dition that no such responsibility is incu
Railways is carried at the reduced rates,
ordinary charge that the Railways can v
a great extent fallen into desuetude, pr
could not afford to pay them, or becaus
to exact them. The public would not
not, as a general rule, realise that the imm
the Risk Notes does not often result in
the care of Railways. This redounds to
but it does not dispose of the objection t
public carriers from the customary respo
carriers. The great majority of persons
cause for complaint, but cases of individ
immunity conceded by the Government t
immunity would tend to diminish rather
of goods, and to fix responsibility on th
It should, therefore, be for the good in t
that the responsibility should be enforce
that the public which employs the rail
partial loss of goods entrusted to such A
tioned by the Government. The Chamb
Viceroy in Council will be pleased to
modified in accordance with the views en

I have

Administrations in India have two schedules
of which are sanctioned by the Govern-
se upon a Railway responsibility for the
Rates which are granted on the express con-
rred. The great bulk of the traffic of the
which may be regarded, therefore, as the
nture to make. The higher rates have to
sumably because the trade of the country
e it would not be politic for the Railways
avail itself of the reduced rates if it did
unity of Railways from responsibility under
the loss, or neglect of goods entrusted to
the credit of the Railway Administrations,
hat it is opposed to public policy to relieve
nsibilities and penalties of the business of
who send goods by railway may have no
ual hardship may, and do result from the
o the Railways. The withdrawal of that
than increase instances of loss and neglect
ose Railway servants who are blameworthy.
he long run of the Railway Administrations
d, and it seems to the Chamber but just
ways should be protected against total or
dministrations, and forwarded at rates sanc-
er trusts, therefore, that His Excellency the
ause Sec. 72 of the Railways Bill to be
tertained by the Chamber.

the honour to be, Sir,

Your most obedient Servant,

(Signed) J. A. BOYSON,
Chairman.

/ True Copy /
Arthur Lawson
Acting Secretary
C.P.C.

(Form No. 1.)

GOVERNMENT OF INDIA. P. W. DEPARTMENT.

RAILWAY BRANCH.

EXAMINER, GUARANTEED RAILWAY ACCOUNTS OFFICE,

No. 1066. *Madras,* 18th July 1890.

From

THE EXAMINER, GUARANTEED RAILWAY ACCOUNTS,
MADRAS,

To The Consulting Engineer
for Railways,
Madras.

SIR,

With reference to your No 1293 dated 24th June 1890, I have the honor to state that my opinion on the subject is identical with that of Honorable Mr. Scoble, the Law member of the Governor General at Viceroy's Council, whose views on the subject are found as No 30 on page 14 of the Fort Saint George Gazette Supplement of 17th June 1890.

I have the honor to be,
Sir,
Your most obedient Servant,

Examiner, Railway Accounts,
Madras.

From

THE EXAMINER,

GUARANTEED RAILWAY ACCOUNTS,

Madras,

To *The Consulting Engineer for Railways, Madras.*

No. *1066.*

Dated *18th July* 1890.

No. of Enclosures ———

SUBJECT.

Expressing his opinion as to the proposal of the Bombay Chamber of Commerce regarding Railway Receipts being declared transferable & negotiable instruments.

(No. 1.)

No. 6976 / 792

5,000—14-11-85.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE,

MADRAS, *21st July* 1890.

From

The Agent and Manager, M.R.Co.

To

The Consulting Engineer for Railways.

SIR, *Madras.*

Your No. 550 dated 24th June 1890

In reply to your request for an expression of opinion as to the proposal of the Bombay Chamber of Commerce that railway receipts should be made transferable and negotiable instruments, carrying a title to property like bills of lading, I have the honour to submit a letter from this Company's Traffic Manager with the views in which I concur.

The

328

2. The proposed alteration in the law would appear to have the effect of transferring a portion of the legitimate risks of the buyers and sellers of goods to the carriers of them and the alleged great facilities to trade to accrue from the change do not appear to be yet fully made out as they possibly might be by the citation of some examples in support of the general views put forward.

I have the honour to be,
Sir,
Your most obed^{t} Servant.

W. Leitch

Ag: Agent & Manager.

33 S.P. 8 I.P.

No. C 822 a/m / 15016

Madras Railway Company
Traffic Manager's office
Madras 7th July 1890.

To
The Ag Agent and Manager
Rayapuram.

Dear Sir,

I have read the papers sent to me with your No. 6976/5809 of the 28th ultimo.

The proposal to extend the benefits enjoyed by the holders of Bills of Lading to the holders of Railway Receipts was very fully discussed at the Railway Conference held at Simla in 1888, and generally the opinion held by the members who attended the Conference was that we

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REGISTER
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FILE

MADRAS RAILWAY.

From The Agent and Manager.

To The Consulting Engineer for Railways.

Dated 21 July 1890
Rcvd. 23.7.890
No. 7172

Regarding the question of Railway Receipts

34 S.P

should follow the English Railways, and not attempt to legislate for conditions which had not been found necessary elsewhere.

Messrs Freshfields and Williams, the legal advisers to the East Indian Railway, have correctly stated that the system adopted by Railways of issuing receipt notes is purely voluntary, and as you are doubtless aware it is not customary in England to grant receipts for parcels tendered at Railway stations for despatch.

In this country the practice of issuing receipt notes became necessary owing to so many natives holding the same

names

35 S.P

names, and we have even now no guarantee that the holder of a receipt note granted in favour of P. Ramasawmy is the legitimate consignee. The custom is however to accept the receipt notes as proof of delivery and as relieving us from further liability.

In many cases in the practical working of this Railway we depart from the practice of obtaining receipt notes before the delivery of parcels, and more especially is this the case when large consignments of fruit and other perishable articles arrive at stations in advance of the post. To detain such packages until

36 S-P-

until the receipt notes are presented would mean loss of market to the owner, or a total loss of the value of his packages.

The mail trains with the Brake Vans heavily loaded with fruit, indigo and other perishable articles arrive at Madras in the early morning, and packages are at once sent out for delivery to the residences of the addressees. Post letters containing receipt notes are not usually deliver-ed before 10 or 11 a.m. and when such letters are delivered in the suburbs of Madras the holders of receipt notes could not possibly apply for their packages until late in the afternoon.

Under our present rules
and as a convenience to consignees
we are content to accept written
receipts for packages through our
delivery books, but if receipt notes are
to be endorsed with legal responsibili-
-ty to a third party, we must neces-
-sarily hold packages in all cases
until receipt notes have been duly
presented to us.

Again, the danger will arise
of fraudulent endorsement to receipt
notes passing through the Post office,
Railway receipt notes seldom being
enclosed in envelopes, and in the event
of our agreeing to accept indemnity
notes from persons who are known
to us there will be delay in obtain
-ing the necessary signatures, as

in

in no case will a Railway Company consent to deliver a valuable package to the ordinary servant usually sent to clear goods. 38 d.f.

The Traffic Superintendent of the Punjab Northern Railway (see reply marked 13 printed on page 8 of the official papers) has stated the very serious responsibility that the proposed charge will place upon Railway administrations and I agree with him in thinking that the increased trade which it is supposed such a facility would give will not compensate Railways for the extra risk imposed upon them.

Practically all Railways in India are directly or indirectly the property of the Government, and the proposal while it seems to me to

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to

to offer advantages to native Traders
with small capital, places an enor-
-mous risk upon the State, friction
with bona fide merchants, delay in
the delivery of goods, and increased
cost to all Railways in providing
extra storage room. 39 A.S.

It is not stated in what
way the Legal advisers to the Govern
-ment of India would restrict the
responsibility that would fall upon
Railways if the proposal that ema-
-nated from the Bombay Chamber
of Commerce were adopted and I
have therefore considered the pro-
-posal as it would affect the
Madras Railway without any res-
-trictions, the Law remaining
as it is at present.

We

We have as you know been mulcted in heavy claims through accepting indemnity Bonds in the absence of receipt notes.

Yours faithfully
pd Louis S. Moss
Traffic Manager

/True Copy/

Foss Cuisholm.
Asst Agent & Manager.

No. 1086.

South Indian Railway,

AGENT'S OFFICE,

TRICHINOPOLY, 4th August 1890.

From

The Agent,
SOUTH INDIAN RAILWAY.

To

The CONSULTING ENGINEER FOR RAILWAYS,
MADRAS.

Sir,

Your Letter No. 644 of the 24th June last. So far as regards the Southern districts of this Presidency I believe that the bulk of the traders using the railway do not desire that railway receipts should be declared by law to be transferable and negotiable instruments, carrying a title to property like bills of lading. The introduction of such a regulation may be wished for by European houses of business but the number of their consignments form a very small per centage of the total number of consignments dealt with. If therefore any measure of the kind sought for by the Bombay Chamber of Commerce be legalised I submit that it should be operative only with regard to those traders who when they consign goods apply to the Railway Company, on a form approved by the Governor General in Council, for the issue of a Bill of Lading instead of an ordinary railway receipt

Note.

Note. The form of application should contain an undertaking to abide by the conditions which may be imposed by the Legislature for the protection of Railway Companies.

I submit that, in cases where Bills of Lading are issued, the Railway Companies should be legally safe guarded as under.

(1). That one Bill of Lading only be issued. (See remarks of L.J. Blackburn in Glynn Mills Currie & Co. Verses E and W. India Docks &c. L.J. Reports Q.B. LII, p. 146) for each Consignment, and that all such consignments be to Original sender or his order.

(2). That a Bill of Lading be on a form approved by the Governor General in Council, and that it be issued subject to the terms and conditions which now apply to the carriage of goods by railway.

(3). That if a Bill of Lading be endorsed over to and presented to the Railway Company by other than the trader in whose favor it is issued, the holder of the Bill of Lading be legally bound to the terms and conditions entered into by the sender of the Consignment. In consideration of a reduced rate being charged by the Railway Company for the conveyance of certain consignments sender undertakes to accept risks of carriages as laid down in a form of contract approved by the Governor General in Council.

(4) That the Railway Company be not held responsible for the genuineness of the Signatures to endorsement on Bill of Lading.

42 P

I am

Sir

Your most obedient Servant.

William Bell.

Agent.

REGISTER
No. 1077
FILE
No.

Form No. 1.

PUBLIC WORKS DEPARTMENT.

OFFICE OF CONSULTING ENGINEER FOR RAILWAYS,

Madras, 7th August 1890.

Letter No. 6976/792 S 21st July 90 from AM with enclosure.

Letter from A - No 1086 S 4 Aug 90.

No.

SUBMITTED to Government.

with reference to G.O. No 744 R d. 30 May 90.

2. If the railway Authorities M.R. S.I.R. The opinions on the proposed legislation regarding the railway receipts is forwarded as directed -

3. I consider that the proposal of the Bombay Chamber of Commerce to render railway receipts transferable and negotiable ~~documents~~ instruments carrying title to property in the same way as bills of lading, is fraught with considerable risks and responsibility to railway administration. The proposed legislation, in that it offers increased facilities for speculative trade, would be undoubtedly convenient to the mercantile community, but

Subject.—

From

THE AGENT,

South Indian Railway,

Trichinopoly.

To

THE CONSULTING ENGINEER FOR RAILWAYS,

Madras.

Dated 4th August 1890.

Received 6.8.90.

No. 1086

ENCLOSURE.

it is not apparent that any advantage accrues to the railway Companies. The latter however carefully safeguarded could hardly be secured immunity from loss through fraud, especially if the right of stoppage, by an unpaid Consignor, during transit became legal. The proposal in its present form, would if carried into effect subject railway administrations to the onus of investigating the delivery rights of Consignees or endorsees, and of determining questions of good faith &c, without conferring any commensurate advantages. Under any circumstances the alteration in the status of railway receipts would not admit of general application. For short journeys it is not apparent what benefit would result, and in the case of perishable goods as quoted by T. M. M. R. the proposed charges are inadmissible

RBGS
7/8/90

FORM No. 1.

PUBLIC WORKS DEPARTMENT.

OFFICE OF CONSULTING ENGINEER FOR RAILWAYS,

Madras, 20th August 1890.

Letter from the Examiner, Guaranteed Railway accounts Madras, No. 1066, dated 18th July 1890.

Letter from the Agent and Manager, Madras Railway, No. 4976/792 dated 21st July 1890.

Letter from the Agent, South Indian Railway, No. 1086, dated 4th August 1890.

Note by the Deputy Consulting Engineer for Railways, dated 4th August 1890.

44 P.

No. 567 C

SUBMITTED _____ to _____ Government.

I do not think there is any officer in the Consulting Engineer's office sufficiently acquainted with trade requirements to enable him to offer an opinion of any value on the subject of making Railway receipts negociable instruments.

2. It does not appear to me that any comparison can be made between bills of lading and railway receipts.

The

The former are generally made
out by persons who have
some Knowledge of business
and are usually signed by
a fairly well paid individual.
The latter are usually made
out by an ill paid goods
clerk who has no Knowledge
whatever of business
requirements.

Yours &c.

offs: Consulting Engineer for Rys:

m No. 3.

MM No 8126

From

THE CONSULTING ENGINEER

FOR RAILWAYS,

Madras,

Rv 22-8-90

Encl 5

+ Under K.D.O.R

No. 567 C

Dated 20th August 1890.

Received

No. OF ENCLOSURES. 5

Subject.

Report on the proposal that railway receipts should be declared to be transferable and negotiable instruments, carrying a title to property like bills of lading.

Sir

I presume that those papers must await the reply from the Madras Trades Association as to whether the proposals can be embodied in a Bill.

Yr obt servt
Reminder
Dr
20/8

H.L.
20/8

Papers may be sent.
Dr
20/8

Letter received
Dr
14/8/90

Taken down
the letter of
11/8/90 para 2
of this D.O. - the papers
should be published in
the Fort St George Gazette.

Draft to the Secretary

H.L.
9/8

Please return these soon after
taking above action.

B No. 744R 9 50 5-50.

No. 669 D. dy 22. VIII: 90

Phs 14 VIII

47

No. 4538 C

Government of Madras.

PUBLIC WORKS DEPARTMENT,

RAILWAY BRANCH.

To

The Chairman

Madras Trades Association

5th November 1890.

SIR,

I am directed to request the favor of a very early reply to this Office letter No. 669 D dated 22nd August 1890 enquiring when the report called for in G.O. No. 744 R dated 30th May 1890 may be expected

LS. 4/11/90

D. R

Acd 6/11

669 Rly 22-8-90
744 Rly 30-5-90

No. 4538 C Rly 5-11-90

57

48 P.

Print

The Madras Trades Association
Madras 10th November 1890.

To,

The Offg. Joint Secretary to Government
P.W. Deptt. Railway Branch.
Madras.

Sir,

Tel. 11/11/90 postponed Sri Shankara Tel. 14/11

C Series

I have the honor to reply to your several requests for the opinion of this Association, on the proposal that Railway receipts should be declared to be transferable and negotiable instruments carrying a title to property in the same way as Bills of Lading - The question was discussed by the members at a meeting held on the 31st. Ultimo, and I am directed to say that this Association see no objection to the making of Railway Receipts negotiable or transferable by endorsement.

I have the honor to be
Sir,
Your most obedt servant
W. H. Oakes
Chairman M.T.A.

dy 22-8-90

R

No. 4538C dy 5-11-90
" 669 D dy 22-8-90
Cus. 5907 of 90
Cus. 5045 of 90
Cus. 7186 of 90
Cus. 8106 of 90
No. 744R dy 30.5.90.

P.W. Cle. 10775

Rd 13-11-90.

57

A. No. 1848 ~~490 of 20 Nov 90~~

50 P

PUBLIC WORKS DEPARTMENT,

RAILWAY BRANCH.

PROCEEDINGS OF THE MADRAS GOVERNMENT.

UNDER date the 20th Nov 90.

again
READ the following

Progs: of the Madras Govt: P. W. Deptt: — } No. 744R dy 30th May 1890

Read also the following

Letter from the Chairman Chamber of Commerce Coconada } No. No. ____ dy 16th June 1890

Letter from the Secretary Chamber of Commerce Cochin } " ____ " ____ dy 19th do —

Letter from the Chairman Chamber of Commerce, Madras } " ____ " ____ dy 23rd July 90

Endorsement from the Consulting Engineer for Rys } " ____ " — 567C dy 20th Augt 90

Letter to the Chairman Madras Trades Association } " ____ " — 669-D dy 22nd do —

Do. ____ Do. ____ " ____ " — 4538C dy 5th Nov. 1890

Letter from — do ____ " ____ " ____ dy 10th do —

Ordered to be forwarded to the Govt. of India with reference to its Resolution

669 dated

79

No. 2341 dated 12th May

1890.

H.C. No 1849 R 7/20 Hour 1890

Forwarded.

V
Wm R

Published

11/12/90

A. No 1848-49 R 7/20 hours 90.

J.O. 14/12/90

To
Nia Comm: Engr for Rly

From

THE EXAMINER,

GUARANTEED RAILWAY ACCOUNTS,

Madras,

To *The Consulting Engineer for Railways, Madras.*

No. *1066.*

Dated *18th July* 1890.

No. of Enclosures ———

SUBJECT.

Expressing his opinion as to the proposal of the Bombay Chamber of Commerce regarding Railway Receipts being declared transferable & negotiable instruments.

(No. 1.)

No. 6976 / 792

5,000—14-11-85.

MADRAS RAILWAY.

AGENT AND MANAGER'S OFFICE,

MADRAS, *21st July* 1890.

From

The Agent and Manager, M.R.Co.

To

The Consulting Engineer for Railways.

SIR, *Madras.*

Your No. 550 dated 24th June 1890

In reply to your request for an expression of opinion as to the proposal of the Bombay Chamber of Commerce that railway receipts should be made transferable and negotiable instruments, carrying a title to property like bills of lading, I have the honour to submit a letter from this Company's Traffic Manager with the views in which I concur.

The