

SALE

OF

GOODS ACT

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A. Unpaid seller.—"Unpaid seller" is defined in Section 45 (1) as follows :—

"The seller of goods is deemed to be an "unpaid seller" within the meaning of this Act—

- (a) When the whole of the price has not been paid or tendered;
- (b) When the bill of exchange or other negotiable instrument has been received as conditional payment, and the condition on which it was received has not been fulfilled by reason of the dishonour of the instrument or otherwise."

The above definition is based on Section 338 of the English Sale of Goods Act, 1893.

Right of stoppage in transit.—The right of stoppage of unpaid seller, means, the right of stopping the goods in transit after he has parted with the possession of them. Section 50 of the Sale of Goods Act defines the right of stoppage as following :

"Subject to the provisions of the Act, when the buyer of the goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say he may resume possession of the goods as long as they are in the course of transit, and may retain them until payment or tender of the price."

The right of stoppage in transit can be exercised so long as the goods are in transit.

A pertinent question, therefore, arises as to when the transit begins and when does it end, as observed by Cave, J. :

"The moment that the goods are delivered by the vendor to the carrier to be carried to the purchaser the *transitus* begins. When the goods have arrived at their destination and have been delivered to the purchaser or his agent or when the carrier holds them as warehouse man for the purchaser and no longer as carrier only, the *transitus* is at an end." [*Bethell v. Clark* (1888) 19 QBD 555].

This rule finds incorporated in Section 51 [(1), which says :—

"Goods are deemed to be in the course of transit from the time when they are delivered to a carrier or other bailee for the purpose of transmission to the buyer, until the buyer or his agent in that behalf takes delivery of them from such carrier or other bailee."

How stoppage in transit is effected.—The unpaid seller exercises his right of stoppage in transit either by actually taking possession of the goods, or by giving notice of his claim to the carrier or other bailee in whose possession the goods are. Such notice may be given either to the person in actual possession of the goods or to his principal. In the latter case the notice to be effectual shall be given at such time and in such circumstances that the principal, by the exercise of reasonable diligence, may communicate it to his servant or agent in time to prevent a delivery to the buyer.

When notice of a stoppage in transit is given by the seller to the carrier or other bailee in possession of the goods he shall redeliver the goods to, or according to the direction of the seller. The expenses of such redelivery shall be borne by the seller.

End of transit.—The transit comes to an end in the following cases :—

1. Buyer obtaining delivery before goods reaching destination.—When the buyer or his agent in that behalf obtains delivery of the goods before their arrival at the appointed destination, the transit is at an end. [Section 51(2), Sale of Goods Act.]

2. Acknowledgement to the buyer by carrier or other bailee.—If after arrival of the goods at the appointed destination the carrier or other bailee acknowledges to the buyer or his agent, that he holds the goods on his behalf and continues in possession of them as bailee for the buyer or his agent, the transit is at end, and it is immaterial that a further destination for the goods may have been indicated by the buyer. [Section 51(3), Sale of Goods Act.]

3. Wrongful refusal by carrier or bailee to deliver the goods to the buyer.—When the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent in that behalf the transit will not come to an end.

4. Delivery to a ship chartered by the buyer.—If the goods are delivered to a ship chartered by the buyer and the goods are held by it as an agent of the buyer the transit comes to an end. Where goods are delivered to a ship chartered by the buyer, it is a question depending upon the circumstances of the particular case, where they are in the possession of the master as a carrier or as an agent of the buyer.

The transit, however, does not come to an end in the following cases : —

(1) **Rejection by the buyer.**—If the goods are rejected by the buyer and the carrier or other bailee continues in possession of them the transit is not deemed to be at an end even if the seller has refused to receive them back [Section 51(4), Sale of Goods Act.] In *Bolton v. L. & Y. Co.*, (1866) L. R. 1 C. P. 431, the buyer accepted part of the goods and rejected the rest. The seller refused to take back the goods and ordered them back to buyer who again refused to take them. Meanwhile, the buyer became bankrupt and the seller exercised his right of stoppage in transit. It was held that the transit had not come to an end.

(2) **Part delivery.**—Where part delivery of the goods has been made to the buyer or his agent in that behalf, the remainder of the goods may be stopped in transit, unless such part delivery has been given in such circumstances as to show an agreement to give up possession of the whole of the goods [Section 51 (1)].

Effect of sub-sale or pledge by buyer.—Section 53 (1) provides :—

"Subject to the provisions of this Act, the unpaid seller's right of lien or stoppage in transit is not affected by any sale or other disposition of the goods which the buyer may have made, unless the seller has assented thereto."

Thus, in the absence of the consent of the seller, sub-sale or pledge by the buyer will not affect the unpaid seller's right of lien or right of stoppage in transit. An illustrative case on this point is *Mardaunt Brothers v. British Oil and Coke Mills, Ltd.*, (1910) 2 K. B. 502. Some oil was purchased by the buyers. The buyers resold part of the oil to the plaintiff and gave them a delivery order to

receive the oil from the sellers. The sellers made certain deliveries to the plaintiffs but since they were not paid by the buyers, they stopped making further deliveries. It was held that'.....the unpaid seller's right of lien or retention or stoppage in *transit* is not affected by any sale or other disposition of the goods which the buyer may have made unless the seller has assented thereto."

There is, however, an exception to this rule. This exception is contained in the following proviso to Section 53(1), Sale of Goods Act. Where a document of title to goods has been issued or lawfully transferred to any person as buyer or owner of the goods, and that person transfers the document to a person who takes the document in good faith and for consideration, then, if such last mentioned transfer was by way of pledge or other disposition for value, the unpaid seller's right of lien or stoppage in transit can only be exercised subject to the rights of the transferee. [Section 53 (1)].

Section 53 (2) further provides that where the transfer is by way of pledge, the unpaid seller may require the pledgee to have the amount secured by the pledge satisfied in the first instance, as far as possible, out of any other goods or securities of the buyer in the hands of the pledgee and available against the buyer.

Right of Re-sale.—Section 46 (1) (c) provides the right of re-sale to the unpaid seller notwithstanding the fact that the property in the goods may have transferred to the buyer. This right is subject to the provisions of the Act. The important thing to be noted in this connection is that a contract of sale is not rescinded by the mere exercise by unpaid seller of his right of lien or stoppage in transit. That is to say, the buyer can recover the goods on payment of the price or tendering the price. However, in following cases, the seller gets the right of re-sale also.

- (i) Where the goods are of perishable nature [Section 54 (2)];
or
- (ii) Where the unpaid seller who has exercised this right of lien or stoppage in transit gives notice to the buyer of his intention to re-sale and the buyer does not within reasonable time pay or tender the price, [Section 54 (2)];