BEAMAN, J., in *Dhondu* v. *Bhikaji*(1). I might be permitted to suggest to the Legislature that section 61 of Act IV of 1882 might be replaced by a section enacting that all consolidation even in the case where the mortgagee and mortgagor are the same persons and the property is the same, is abolished.

C.M.N.

APPELLATE CIVIL.

Before Mr. Justice Sadasiva Ayyar and Mr. Justice Tyabji.

KARIADAN KUMBER (PLAINTIFF), APPELLANT,

v.

THE BRITISH INDIA STEAM NAVIGATION COMPANY, LIMITED, BY AGENTS, MESSRS. ASPINWALL & CO. (FIRST DEFENDANT), RESPONDENT.*

1913. March 19, 20 and 26 and May 2.

Bill of Lading—Clause of exemption from liabiltiy after goods are free of ship's tackle, validity of—Common carriers by sea, governed by English Law and not by Indian Contract Act (IX of 1872)—Indian Contract Act (IX of 1872), sec. 23—Exemption clause not void under—Sea worthiness, definition of—Warranty of seaworthiness not extending to lighters or boats—Binding force of Privy Council decision on India, though not in an Indian case.

Carriers by sea for hire are common carriers, to whom the Carriers Act (III of 1865) does not apply.

Hajee Ismail Sait v. *The Company of the Messageries Maritimes of France* (1905) I.L.R., 28 Mad., 400, followed.

The duties and liabilities of a common carrier are governed in India by the principles of the English Common Law on that subject (except where they have been departed from, in the cases of some classes of common carriers, by the Carriers Act of 1865 or by the Railway Acts of 1878 and 1890), and that notwithstanding some general expressions in the chapter on Bailments, a common carrier's responsibility is not within the Indian Contract Act of 1872.

The Irrawaddy Flotilla Company v. *Bugwandas* (1891) I.L.R., 18 Calc., 620 (P.C.), followed.

A provision in a charter-party to the effect that "in all cases and under all circumstances the liability of the company (of shipowners) shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee," affords complete protection to the shipowners against all losses in respect of goods arising from any cause at any time after the goods are free of the ship's

(1) (1914) 17 Bom. L.R., 144.

* Second Appeal No. 935 of 1913.

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tackle, whether the cause of the loss be (*a*) as in this case, the sinking of the boats, which conveyed the goods from the ship to the shore, a sinking occasioned by the negligent overloading of the boats by the shipowner's landing agents or (*b*) by the misfeasance and fraud of their landing agents.

Sheik Mahamad Ravuther v. *The British India Steam Navigation Co., Ltd.* (1909) I.L.R., 32 Mad., 95 (F.B.) and *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Company, Limited* (1909) A.C., 369, followed.

Such a clause as the above is according to English Law, not opposed to public policy and is valid; and section 23 of the Indian Contract Act has no application.

A decision of the Privy Council though not in a case arising from India binding on the Courts in India.

Obiter.—The warranty of seaworthiness which is implied as to the ship does not extend to the lighters or boats employed to land the cargo. Even this warranty as to the ship is satisfied if the ship be originally seaworthy, i.e., when she first sails on the voyage insured; she need not continue to be so throughout the voyage.

Lane v. *Nixon* (1866) I.C.P., 412, followed.

Sparrow v. *Carruthers* (1745) 2 Strange 1236, doubted.

SECOND APPEAL against the decree of A. EDGINGTON, the Acting District Judge of South Malabar, in Appeal No. 203 of 1911, preferred against the decree of J. L. JACQUES, the Subordinate Judge of Cochin, in Original Suit No. 34 of 1909.

The facts are fully given in the judgment of Mr. Justice TYABJI.

The Honourable Mr. *T. V. Seshagiri Ayyar* for the Honourable Mr. *J. L. Rozario* for the appellant.

M. O. Parthasarathi Ayyangar for the respondent.

SADASIVA AYYAR, J.

SADASIVA AYYAR, J.—Though my learned brother has prepared a separate judgment dealing fully with the facts and the law, I thought that I should add a judgment of my own as the questions raised are important and as I am differing from the conclusions arrived at by the majority of the Full Bench in *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(1). The defendant in this case is the powerful company well known as the British India Steam Navigation Company. The legal questions we have to consider are—

(*a*) whether they are common carriers,

(*b*) whether the English Common Law relating to carriers by sea applies to them or the provisions of the Indian Contract Act relating to bailees,

(1) (1909) I.L.R., 32 Mad., 95 (F.B.).

(*c*) if the English Common Law applies to them, whether the defendants are wholly absolved from liability for the loss caused by the negligence of their agents employed to carry in boats the goods of the plaintiff (consignee) from the mooring place of the steamer to the plaintiff's jetty in the port of Cochin, owing to the defendants having protected themselves from liability for such loss by appropriate clauses in the bill of lading,

(*d*) whether those general clauses could not legally absolve the defendants because the bill of lading did not contain an express provision declaring that defendants shall not be liable even if the boats procured by their agents to take the cargo from the steamer to the plaintiff's jetty were unseaworthy.

As regards the first question, *Hajee Ismail Sait* v. *The Company of the Messageries Maritimes of France*(1), clearly decides that carriers by sea for hire are common carriers. The Carriers Act, 1865, does not, however, apply to them, as in that Act the term "common carrier" is confined to denoting "a person other than the Government engaged in transporting for hire property . . . . *by land or inland navigation*" and is not extended to carriers by sea. The next question is "are common carriers by sea governed by the English Common Law or by the Contract Act?" In the Full Bench case *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(2), the learned Chief Justice and WALLIS, J., evidently hold as unquestionable that, where the English Common Law and the Indian Contract Act differ, the former and not the latter applied to common carriers by sea. WALLIS, J., referred (at page 108) to the argument of the appellant's learned vakil in that case (Mr., now Mr. Justice SUNDARA AYYAR) that section 23 of the Indian Contract Act applied and that the clause in the Bill of Lading absolving the carriers by sea (the same British India Steam Navigation Company, who is the defendant in this case) from all liability arising from whatever cause, is opposed to public policy and hence is void under section 23 of the Indian Contract Act. The learned Judge, however, did not accept this argument of

(1) (1905) I.L.R., 28 Mad., 400. (2) (1909) I.L.R., 32 Mad., 95 at p. 108 (F.B.).

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the learned vakil and says at page 109, "As regards the second point I am of opinion that it is not open to us to hold that contracts exempting a carrier from liability for the negligence of his servants are void as opposed to public policy. As pointed out by WALTON, J., in *Price & Co.* v. *Union Lighterage Company*(1), 'the law of England, unlike the law of the United States of America, does not forbid the carrier to exempt himself by contract from liability for the negligence of himself and his servants; but, if the carrier desires so to exempt himself, it requires that he shall do so in express, plain, and unambiguous terms.' So far as the general question goes this is the law which has been received and applied by the Indian Courts [*Jellicoe* v. *The British India Steam Navigation Co.*(2) and *Hajee Ismail Sait* v. *The Company of the Messageries Maritimes of France*(3)]. Contracts have been made and business has been carried on for many years in India on this footing, and if the law is to be altered now it must be by the Legislature." WHITE, C.J., says on this point at page 107, "Mr. Sundara Ayyar contended that a contract which purported to relieve a shipowner from his liability as a carrier for negligence was contrary to public policy and should not be enforced. As pointed out by WALTON, J., in *Price & Co.* v. *Union Lighterage Company*(1), the law of the United States of America forbids a carrier to exempt himself by contract from liability for negligence, whilst the law of England does not. I am of opinion that on a question of this character Courts in India ought to follow the law of England." Mr. Seshagiri Ayyar, who argued the present appeal before us, contended that WHITE, C.J., and WALLIS, J., did not, in their judgments in *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(4), consider the question whether the Indian Contract Act applied or not, but I am unable to accept this argument. It is no doubt true that SANKARAN NAIR, J., in that case elaborately considered the provisions of the Contract Act, which he assumed to be applicable to common carriers by sea even when such provisions conflicted with the English Common Law (see page 121). Mr. Seshagiri Ayyar invited us to refer this question to a Full Bench, as,

(1) (1903) 1 K.B., 750 at p. 752.
(2) (1884) I.L.R., 10 Calc., 489. (3) (1905) I.L.R., 28 Mad., 400.
(4) (1909) I.L.R., 32 Mad., 95 at pp. 107 and 109 (F.B.).

though WHITE, C.J., and SANKARAN NAIR, J., agreed in their ultimate conclusion in that case, they differed on this question of the applicability of the provisions of the Indian Contract Act, and the agreement between the views of the Chief Justice and WALLIS, J., about the non-applicability of the provisions of the Contract Act did not affect the result of that case, as the learned Chief Justice differed from WALLIS, J., also as to the result of applying the English Common Law. As I am myself always inclined not to travel beyond Indian cases and Indian Statutes unless I am convinced that they are clearly not applicable, I would have gladly referred the question of the applicability of the Contract Act, where it differs from the English Common Law to a Full Bench, if I did not feel that I am concluded by the pronouncement of the Privy Council on this question. In *The Irrawaddy Flotilla Company* v. *Bugwandas*(1), their Lordships have clearly approved of the decision of the Full Bench in *Moothora Kant Shaw* v. *The India General Steam Navigation Co.*(2) and disapproved of the contrary decision in *Kuverji Tulsidas* v. *The Great Indian Peninsula Railway Company*(3). The effect of their Lordships' decision in *The Irrawaddy Flotilla Company* v. *Bugwandas*(1) seems to me to be "that the duties and liabilities of a common carrier are governed in India by the principles of the English Common Law on that subject" (except where they have been departed from in the case of some classes of common carriers by the Carriers Act of 1865 or by the Railway Acts of 1878 and 1890) and "that notwithstanding some general expressions in the chapter on Bailments, a common carrier's responsibility is not within the Indian Contract Act of 1872."

Taking it, then, that the English Common Law applies to the rights and liabilities of the defendant company, the Bill of Lading (Exhibit BB) in this case contains the following two clauses:—

1. "Accidents, loss or damages from any *act, neglect or default whatsoever* of the pilot . . . . *or other servants of the company excepted* and the company is to be at liberty to tranship the goods on shore or afloat and reship or forward the same at the company's expense but *at shipper's or consignee's risk.*"

(1) (1893) I.L.R., 18 Calc., 620 (P.C.). (2) (1884) I.L.R., 10 Calc., 166.
(3) (1878) I.L.R., 3 Bom., 109.

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2. "In all cases and under all circumstances, the liability of the company shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk *for all purposes and in every respect of the shipper or consignee*."

As regards these very wide clauses, WHITE, C.J., and SANKARAN NAIR, J., held in *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(1), that they did not absolve the company from liability for loss occasioned by the negligence of their servants before delivery and after landing. WALLIS, J., held otherwise. [I might remark that Sir S. SUBRAMANIA AYYAR, J., and MILLER, J., similarly differed in the earlier stage of the same case *Sheik Mahamad* v. *The British India Steam Navigation Company*(2).] I am bound, of course, by the judgment of the majority unless it is opposed to a judgment of the Privy Council, not brought to the notice of the majority, or reported after the Full Bench decision. Such a judgment of the Privy Council, it seems to me, has been pronounced in *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Company, Limited*(3). The defendant in that case was this very same British India Steam Navigation Company. The Bill of Lading which had to be construed in that case contained this very same clause about the liability of the company ceasing absolutely when the goods were free of the ship's tackle, etc., and the defendants' landing agents (as in this case) received the goods into lighters to be carried to jetties. The only difference between the facts of this case and the facts of that case is that, whereas the goods were lost in the present case through the negligent overloading of the lighter by the defendant's landing agents, the goods were lost in the other case by the misfeasance and fraud of the landing agents. Their Lordships of the Privy Council applied the English Common Law relating to common carriers by sea in that case as we have to do in this case. I shall just quote the concluding sentences of their Lordships' judgment :—"Now it may be conceded that the goods in question were not delivered according to the exigency of the bills of lading by being placed in the hands of the landing agents, and *it may be admitted that bills of lading cannot be said to be spent or exhausted until the goods covered by them are placed*

(1) (1909) I.L.R., 32 Mad., 95 (F.B.). (2) (1907) I.L.R., 30 Mad., 79.
(3) (1909) A.C., 369 at pp. 374 and 375.

under the absolute dominion and control of the consignees. But their Lordships cannot think that there is *any ambiguity* in the clause providing for cesser of liability. *It seems to be perfectly clear.* There is no reason why it should not be held operative and effectual in the present case. They agree with the learned Chief Justice that it affords complete protection to the respondent company." It seems to me that this decision of the Privy Council pronounced on the 31st March 1909 (about 3½ months after the pronouncement of the Full Bench decision in *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(1), on the 15th December 1908) clearly overrules the decision in the latter case, unless we are to accede to the ingenious argument of Mr. Seshagiri Ayyar that we are not bound by the decision of the Privy Council unless it was given in a case which went up on appeal from an Indian tribunal. (The Appeal Case of 1909 was an appeal from the decision of the Supreme Court of the Straits Settlements.) I am wholly unable to hold that the binding nature of a decision of the Privy Council depends on the locality of the tribunal which pronounced the decision from which the appeal was preferred to the Privy Council, any more than the binding nature of a decision of this Madras High Court upon a Madras District Court depends on the question whether the High Court's decision was pronounced in an appeal preferred in a case which arose in that particular district. (The tribunal which decided *Chartered Bank of India, Australia, and China* v. *British India Steam Navigation Company, Limited*(2), consisted of Lord MACNAUGHTEN, Lord ATKINSON, Lord COLLINS and Sir ARTHUR WILSON who have taken part in deciding many Indian appeals.) The last question I have to consider is whether this case can be distinguished from the case decided by the Privy Council by reason of the fact that the boat in which the goods were placed by the defendant's landing agent was unseaworthy. Having regard to the language of their Lordships of the Privy Council that the clause in the bill of lading absolutely absolving the defendant as soon as the goods are free of the ship's tackle protects the defendant from liability *for whatever happens afterwards,* I do not think the question whether what happened afterwards was negligent overloading by, or fraudulent

(1) (1909) I.L.R., 32 Mad., 95 (F.B.). (2) (1909) A.C., 369.

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dishonesty of, the landing agents is of the least importance. If it is necessary to decide this question, I should be inclined to follow the English Law on this question also, whatever may be the American Law. [See, as to the American Law, Carver's Carriage by Sea, section 251 (*a*), last paragraph.] Arnould on Marine Insurance, volume II, page 846, says: "The warranty of sea-worthiness which is implied as to the ship *does not extend to lighters employed to land the cargo*". "It is enough to satisfy this warranty (of seaworthiness) that the ship be *originally seaworthy* for the voyage insured *when she sails on it*; the assured makes no warranty that the ship *shall continue seaworthy in the course of it*. 'Every ship,' says Lord MANSFIELD, 'must be seaworthy *when she first sails on the voyage insured but she need not continue so throughout the voyage*'" [Arnould in footnote (*b*) at page 848 refers to the cases decided by Lord MANSFIELD and Lord ELDON establishing the above proposition].

In *Lane* v. *Nixon*(1), it was clearly held by ERLE, C.J., BYLES, J., KEATING, J., and MONTAGU SMITH, J., that the warranty of the ship's seaworthiness does not extend to lighters employed to land goods. KEATING, J., says "the employment of lighters to land the goods seems to be a usual and ordinary incident of such a voyage, and *has no reference whatever to the implied warranty of seaworthiness. I think it would be a dangerous step to extend that warranty.*" MONTAGU SMITH, J., said "There is nothing to justify the extension of the implied warranty of seaworthiness to lighters so employed as in a fresh stage of the voyage. It would, I think, be extremely inconvenient if it could be done." If there is no implied warranty of seaworthiness for lighters and boats (or catamarans or coolies or elephants, as ERLE, C.J., put it) the clause about negligence in the bill of lading is "express, plain and unambiguous" and clearly exempts the defendants from liability even if we adopt the "artificial rule of construction" (as WALLIS, J., puts it at page 109 in *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(2), "enunciated by WALTON, J.", in *Price & Co.* v. *Union Lighterage Company*(3).

Mr. Seshagiri Ayyar quoted several English cases relating to the question whether, when the safety of the goods was insured till landing, the assurer is liable—

(1) (1866) 1 C.P., 412. (2) (1909) I.L.R., 32 Mad., 95 (F.B.).
(3) (1903) 1 K.B., 750.

(*a*) in the case when the boat which goes to the ship's side for landing belongs to some person other than the owner of the goods and the goods are lost before landing.

(*b*) in the case when the said boat belongs to the owner of the goods and hence delivery to him may be said to be complete *though the goods are not then actually landed.*

I think these cases whether belonging to class (*a*) or class (*b*) have little relevancy as they are concerned with the question whether delivery into the owner's boat is *equivalent to landing so as to terminate the assurer's liability* and not to the question of the shipowner's liability when the shipowner has protected himself from all liability after the goods have left the ship's tackle. (I may, however, state that I find it difficult to accept the decision in *Sparrow* v. *Carruthers*(1), as correct and the correctness of that decision has been, in a manner, doubted in *Hurry* v. *Royal Exchange Assurance Company*(2). For all these reasons I would dismiss the Second Appeal with costs.

TYABJI, J.—The question to be determined in this appeal is whether or not the respondent shipowners are liable to the plaintiff for the loss of the goods mentioned in the bill of lading, Exhibit BB. The goods were lost by the sinking of the boats in which they were put after being taken out of the ship; the cause of the sinking was that the boats were overloaded. The shipowners claim to be protected by the following clause in the bill of lading: "in all cases and under all circumstances the liability of the company shall absolutely cease when the goods are free of the ship's tackle and thereupon the goods shall be at the risk for all purposes and in every respect of the shipper or consignee." This clause in itself seems to be sufficiently clear and unambiguous to save the shipowners from any liability after the goods are free of the ship's tackle; and it is admitted that the loss occurred after they were so free. The point does not seem to arise here whether, when the cause of loss is such as we have to deal with, the liability imposed by law upon the shipowners can be limited only by an express and specific stipulation referring in direct terms to the cause of the loss or whether general words limiting the liability will suffice provided their terms are wide enough clearly and unequivocally to include the

(1) (1745) 2 Strange, 1236. (2) (1801) 2 B.&R. 430; s.c., 126 E.R., 1367.

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cause of loss in question; because in the clause before us the liability of the shipowners is limited by reference to a point of time, after which the shipowners are no more responsible for the loss of the goods. It is not contended that any doubt arises, with reference to the facts of the present case, as to the point of time when the clause must come into operation having been reached when the loss occurred, nor is it questioned that after the clause comes into operation its terms in their natural meaning remove all responsibility from the shoulders of the shipowners. The rules of law and construction which prevail when the clause is so framed as to limit the liability of the shipowners against particular causes of damage by providing exceptions to the general responsibility of the shipowners, which general responsibility is to survive subject to the excepted cases, can have but a remote bearing where the clause is so framed as to purport to leave no responsibility whatever on the shipowners after a particular point of time has been reached, after which it is stipulated in effect that the voyage must be taken to have been completed so far as the responsibility of the shipowners is concerned. In the first mentioned clauses the cases in which the shipowners are saved from liability consist of exceptions to the general rule; in the latter the relative function of the rule and the exception are interchanged.

It seems, however, necessary to refer to two decisions which were cited to us. The shipowners rely on *Chartered Bank of India, Australia, and China* v. *British India Steam Navigation Company, Limited*(1), where their Lordships of the Privy Council had to determine the liability of the same shipowners, who are the present respondents, under a clause in identical terms. The cause of the loss there was that the goods had been taken away without the production of the bill of lading or delivery order through the fraud of the representatives of a third party acting in collusion with the representatives of the landing agents of the shipowners.

The arguments before us were, first, that the present case is distinguishable from the decision of the Privy Council above referred to inasmuch as the cause of the loss in the present case, it was contended falls under the denomination of the unseaworthiness

(1) (1909) A.C., 369.

of the boats, and that though the clause in question must (in accordance with the said decision of the Privy Council) be taken to be sufficient to protect the shipowners against the fraud of their agents, it is not sufficient to protect them against the unseaworthiness of the boats in which the goods are placed when they are taken out of the ship in order to be carried to the jetties.

Assuming that the overloading of the boats could, in such circumstances as we have before us, be considered to render the boats unseaworthy—and that assumption requires us to apply the word "unseaworthy" in a rather unusual sense—there is nothing to prevent the shipowners from limiting their liability against the unseaworthiness of the ships, any more than there is anything to prevent their limiting their liability against the fraud of their agents. The principle in the one case seems to have features common with the principle in the other case. In the case of unseaworthiness, it is assumed that the parties enter into the contract on the basis that the carriers are in a position to carry the goods and that their ships are capable of doing so—to use the words of Lord BLACKBURN in *Steel* v. *State Line Steamship Company*(1), "there is a duty on the part of the person who furnishes or supplies that ship, or that ship's room, unless something be stipulated which should prevent it, that the ship shall be fit for its purpose. That is generally expressed by saying that it shall be seaworthy; and I think also in marine contracts, contracts for sea carriage, that is what is properly called a 'warranty,' not merely that they should do their best to make the ship fit, but that the ship should really be fit." If, therefore, the shipowners wish to enter into a contract in which they do not warrant that their ships are seaworthy, they must make it clear to the persons with whom they contract that they do not so warrant; similarly the carriers would, ordinarily, be supposed to be responsible for the honesty of their agents who are under their own control, and if they wish to restrict their liability so that they are not responsible for loss caused by the dishonesty or the fraud of their agents, equally must they make that restriction plain. It seems, however, unnecessary in this case to consider whether the duty cast upon the shipowners to employ honest agents and the duty (if any) cast upon the shipowners to prevent loss arising

(1) (1877) 3 A.C., 72 at p. 86.

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from the causes with which we have now to deal, are each, or either of them a warranty properly so called or whether the duty in either of the cases consists merely in that the shipowners should do their best to prevent loss. We have primarily to deal with the words of the clause and the facts of this case; and not much help is obtained in construing a clause by the circuitous method of reasoning which has to be followed before any aid can be had from the fact that the Privy Council considered a similar clause to save the shipowners from liability in the particular case before them. For if we wish to follow this method of reasoning we should have to determine the further questions whether the liability under the circumstances which were before the Privy Council is of the same extent and nature as the liability under the facts now before us, and in order to do so, it will be necessary to determine whether the cause of loss with which we are dealing falls under the head of unseaworthiness.

It has, however, seemed necessary to refer to the Privy Council decision, as it has been pointed out to us that in *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(1), a bench consisting of the CHIEF JUSTICE, WALLIS and SANKARAN NAIR, JJ., held that a clause in the same terms as the one that is before us did not protect the shipowners against loss by sweat damage through the neglect of the shipowners after the goods were free of the ship's tackle. That case is not a decision of a Full Bench of this Court and WALLIS, J., dissented from the view taken by the other two Judges. On the other hand we are of opinion that we are bound by the decision of the Privy Council so far as that decision is applicable, notwithstanding that it was not pronounced in appeal from an Indian Court.

The next head of argument before us was that the clause in question is of no effect inasmuch as the Indian Contract Act, section 151, lays down the liability of bailees in express terms and that it does not permit the parties to contract themselves out of such liability: section 151 does not contain the words "in the absence of any special contract" as the next section does, and as are contained in a great number of other sections of the Contract Act—not less than 25, as the learned pleader for the appellant

(1) (1909) I.L.R., 32 Mad., 95 (F.B.).

pointed out to us. In *Sheik Mahamad Ravuther* v. *The British India Steam Navigation Co., Ltd.*(1), to which reference has already been made, SANKARAN NAIR, J., expressed the view that the term "bailee" in section 151 of the Indian Contract Act must be taken also to refer to carriers. But that view was not alluded to and, apparently, not accepted by the other Judges composing the bench. Assuming that the clause we have to deal with does not end the relationship of the shipowners as carriers of the goods after the goods are free of the ship's tackle and that the bill of lading is not spent or exhausted until the goods covered by it are placed under the absolute control and dominion of the consignee [see *Chartered Bank of India, Australia and China* v. *British India Steam Navigation Company, Limited*(2)] it is not open to this Court to say that the liability of such carriers as we have to deal with in this case is governed by section 151 of the Indian Contract Act, after the decision of the Privy Council in the case of *The Irrawaddy Flotilla Company* v. *Bugwandas*(3). In that case the Privy Council had to decide whether the view of the Bombay High Court as expressed in *Kuverji Tulsidas* v. *The Great Indian Peninsula Railway Company*(4) was correct or the view of the Calcutta High Court in *Moothora Kant Shaw* v. *The India General Steam Navigation Company*(5) and they said that they were "compelled to decide in favour of the view of the Calcutta High Court and against that of the High Court of Bombay." In deciding against the view of the High Court of Bombay, they decided against the argument on which the appellant relied. They decided that the liability of carriers such as we have to deal with is not governed by the sections of the Indian Contract Act, relating to bailees.

Under these circumstances there is no reason why the plain meaning of the clause should not be given effect to, and why the shipowners should be held to be responsible for the loss of the goods, after the time when it was stipulated that the goods should for all purposes and in every respect be at the risk of the shipper or consignee.

We therefore dismiss the appeal with costs.

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(1) (1909) I.L.R., 32 Mad., 95 (F.B.). (2) (1909) A.C., 369.
(3) (1891) I.L.R., 18 Calc., 620 (P.C.). (4) (1878) I.L.R., 3 Bom., 109.
(5) (1884) I.L.R., 10 Calc., 166.