

**APPELLATE CIVIL.**

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*Before Sir Shadi Lal, Chief Justice, and Mr. Justice  
Coldstream.*

SHANKER DAS-JOTI PARSHAD (PLAINTIFFS)

Appellants

*versus*

BHANA RAM-SHEO DIAL (DEFENDANTS)

Respondents.

Civil Appeal No. 1489 of 1922.

*Indian Contract Act, IX of 1872, section 78—Sale—  
When property in goods sold passes to the buyer.*

On 6th May 1918 defendants entered into a contract for the sale of 314 tins of kerosine oil to the plaintiffs and received Rs. 1,000, in part payment of the price (the balance being paid subsequently). The goods had been despatched to defendants from Calcutta on the 25th April 1918, and had not yet arrived, but defendants had received the railway receipt which they endorsed in favour of the plaintiffs. The goods were destroyed by fire in transit 6 days after the 6th May. Plaintiffs sued for return of the purchase money and interest thereon.

*Held*, that as there was a contract for the sale of ascertained goods and part of the price had been paid, the property in the goods had passed to the buyer on the 6th May, and the defendants-vendors could not, therefore, be called upon to refund the price.

*Second appeal from the decree of A. H. Parker, Esquire, District Judge, Ambala, dated the 16th March 1922, affirming that of Lala Shibbu Mal, Senior Subordinate Judge, Ambala, dated the 25th April 1921, dismissing the plaintiffs' suit.*

TEK CHAND AND SHAMAIR CHAND, for Appellants.

MOTI SAGAR AND GOBIND RAM, for Respondents.

The judgment of the Court was delivered by—

SIR SHADI LAL C. J.—The facts of this case as admitted before the learned District Judge may be

shortly stated:—On the 6th May, 1918, the defendants entered into a contract for the sale of 814 tins of kerosine oil to the plaintiffs, and received Rs. 1,000 in part payment of the price. The vendors were not, at that time, in possession of the goods which had been despatched to them from Calcutta on the 25th April, 1918. They had however, received the railway receipt and endorsed that receipt in favour of the plaintiffs. It appears that the goods never reached their destination and were burnt on or about the 12th May while they were in transit.

The question arises as to whether the vendors or the vendees have to bear the loss arising from the destruction of the goods. The decision of the question depends upon whether the property in the goods had passed to the buyers. Now, there can be no doubt that the goods were in existence on the date of the contract, and that the sale related to ascertained goods. The whole of the consignment as represented by the railway receipt was sold to the plaintiffs who paid part of the price on the very day of the contract, and the balance subsequently. Section 78 of the Indian Contract Act prescribes that, where there is a contract for the sale of ascertained goods, the property in the goods sold passes to the buyer when the whole or part of the price is paid. The requirements of this section have been fulfilled in the present case, and the learned District Judge has rightly held that the property in the goods had passed to the plaintiffs on the 6th May—six days before they were burnt. The vendors cannot, therefore, be called upon to refund the price.

For the aforesaid reasons we dismiss the appeal with costs.

C. H. O.

*Appeal dismissed.*

1926

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