

CHAPTER IV

The Indian Law of Sale of Goods

BY

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I

HISTORY OF CODIFICATION

Prior to the enactment of the Contract Act¹ in 1872, the law relating to sale of goods in India was the English common law on the subject. The Contract Act incorporated in a codified form these common law principles. With the rapid growth in trade and commerce some of the concepts and notions of this enactment became archaic. The realization that law has to keep pace with the changing patterns and character of trade led in England to a new statute, the English Sale of Goods Act,^{1a} enacted in 1893 which discarded very many old common law principles and adopted some of the basic common law principles in order to meet the needs of a growing society. The English statute assimilated new norms of trade law evolved by judicial decisions. These changes did not find place in the Indian Contract Act. Hence, it was considered necessary to embody the law relating to sale of goods in a separate enactment. During 1926-27 cases relating to the law of sale of goods, as contained in the Contract Act, were exhaustively examined by the Legislative Department of the Government. After the examination, a draft Bill was prepared in 1928 which was considered by a Special Committee in 1929. The Bill, as revised by this Committee and subsequently by a Select Committee of the Legislature, was enacted as the Indian Sale of Goods Act 1930.² This Act has been in force since then and not much difficulty has been faced in its operation. The fact that the Act has been amended only once or twice so far³ is a testimony to its soundness. The Indian Law Commission which considered the revision of the Act also confirmed the view that the Act did not require any radical change.⁴

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1. IX of 1872.

1a. 56 & 57 Vict. c. 71.

2. III of 1930.

3. The Indian Sale of Goods (Amendment) Act, XXXIII of 1963 which has amended sections 1, 13, 25 and 64-A of the Act of 1930. Some minor amendments were also carried by the Indian Sale of Goods (Amendment) Act, 41 of 1940.

4. Law Commission of India, *Eighth Report* (Sale of Goods Act, 1930) at 1 (1958).

II

UNDERLYING PRINCIPLES

(a) *Autonomy of parties' will*

One of the basic questions relating to the law of sale of goods contained in the Indian Sale of Goods Act 1930 (hereinafter in this chapter referred to as the Indian Act) is whether the provisions of the Act lay down fixed rules of law which cannot be abrogated by a contrary intention or will of the parties. Or, does the Indian Act exclude the common law doctrine, *viz.*, that statutory remedies do not oust old remedies unless inconsistent?⁵ Or, does the Indian Act, like its English counterpart⁶, merely facilitate the ascertainment of the will of the parties?

It may be pointed out that in certain matters the provisions of the Indian Act specifically lay down fixed rules which cannot be rebutted by evidence of contrary intention of the parties, *e.g.*, provisions relating to the subject-matter of contract⁷, implied conditions as to quality or fitness,⁸ sale by sample⁹ and description,¹⁰ transfer of title,¹¹ rules as to delivery,¹² rights of unpaid seller against the goods,¹³ suits for breach of contract¹⁴ etc. There is a set of other provisions in which the provisions of the Indian Act are to be applicable subject to the intention of the parties appearing from the terms of the contract.¹⁵ There is yet another set of provisions which are meant only to assist in ascertaining the intention of the parties¹⁶ and the matter has to be decided only on the basis of the intention of the parties. These provisions relate to the passing of property from seller to the buyer.¹⁷

It may thus be observed that the Indian Act restricts freedom of contract in many matters, and in others the will of the parties is given due consideration¹⁸ as evident from the terms of contract.¹⁹ On this premise one can proceed to a different plane, namely, the Indian law relating to international sales.

5. *Stevens v. Chown* (1901) 1 Ch. 894 at 903.

6. The English Sale of Goods Act 1893, ss. 17 and 18.

7. The Indian Sale of Goods Act 1930, ss. 6-8.

8. S. 16.

9. S. 17.

10. S. 15.

11. Ss. 27-30.

12. S. 36.

13. Ss. 45-54.

14. Ss. 55-60.

15. These sections are: 9, 11, 14, 25, 26, 32, 33, 38, 39(2) and (3), 40, 41 (2), 43, 61 (2) and 62.

16. Ss. 20-24.

17. S. 19. This subject is discussed in detail in the following pages 60-61.

18. See the observation of Justice Markby in *Buchanan v. Avdall* (1875) 15 B.L.R. 289.

19. C.O. Remfry, *Commercial Law in British India* 102-106 (Tagore Law Lectures, 1910 pub. in 1912).

(b) Conflict of laws

How does Indian law resolve issues relating to international sales? It is not uncommon these days to come across a contract for the sale of goods between two parties belonging to, or residing in, two different countries, or a situation in which the contracting parties may be resident in one country but the goods may be in a different country. In such cases the question arises as to the law to be applied.²⁰ No doubt, there is a measure of agreement on some principles of law among most of the civilized countries, e.g., that a valid contract can be entered into by parties capable to contract; that there should be some consideration for a valid contract; that a contract should not be unlawful in its nature, etc. But the law differs in detail in many countries. In cases of conflict the Indian law provides that the question should be the proper law applicable to the situation. But, when the proper law is not the Indian law, there is a great difficulty in finding out the proper law of the contract. If the proper law of the contract is some foreign law the task of the courts and the parties is further complicated in as much as the burden of proof of the fact that the foreign law is different from the Indian law is on the person who asserts this. If the burden of proof is not discharged, it would be presumed that both the Indian and the foreign law are identical.²¹

Despite the above complexities, the Indian law is fairly clear on some aspects of international sales. In cases of disposal of personal property, the law of the country where property is situated is applied according to the rule of *locus regit actum*.²² As to the validity of interpretation of the contract, the law to be applied is the law of the country where it is entered into. If contract is entered into in one country, and is to be performed in another country, it is the law of the latter country that has to be applied. If there appears any different intention of the parties, the above rules would not apply and the intention of the parties would be the decisive factor.

(c) Formation of contracts

The law relating to sale of goods contained in the Indian Act is not exhaustive, and the general principles of law of contract as embodied in the Contract Act 1872 will be applicable in case of contracts of sale of goods subject, of course, to their consistency with the former.²³ Thus, a contract of sale of goods, to be valid, must be made²⁴ by the free consent²⁵ of the

20. Story's *Conflict of Laws*, s. 232.

21. *Raghunathjee v. Varjewandas* (1906) 2 Bom. L.R. 525. Also see *The Parchim* (1918) A.C. 157; the Evidence Act 1872, s. 114.

22. The maxim *locus regit actum* (the place governs the act) means that the validity of an act depends on the law of the place where it is done: *Parwatawva v. Channawwa*, A.I.R. 1966 Mys. 100 at 105.

23. The Indian Sale of Goods Act 1930, s. 3.

24. The Contract Act 1872, s. 10.

25. *Id.*, ss. 13-22.

parties competent to contract²⁶ for a lawful²⁷ consideration²⁸ with a lawful object and should not be expressly declared void by law. Thus, there can be no agreement of sale of goods which restricts trade,²⁹ or restrains legal proceedings³⁰ or is uncertain³¹ or is in the nature of a wagering contract.³² An agreement to sell goods contingent on impossible events³³ or to do some impossible act³⁴ will not be a valid agreement.

In addition to the application of the above general principles of the law of contracts, there are other principles also that govern contracts for the sale of goods. Communication of a proposal³⁵ becomes complete when it comes to the knowledge of the person to whom it is made. On the other hand, communication of an acceptance becomes complete, as against the proposer, when it is put in a course of transmission to him so as to be out of the power of the acceptor, and as against the acceptor, when it comes to the knowledge of the proposer.³⁶ Thus if A makes a proposal to B by post, the proposal would be complete only when the letter is received by B and not before that. On the other hand, if B puts his acceptance letter in the post box, the communication of acceptance is complete, as against A, the moment the letter is deposited in the post box and the loss of the letter in transit would not invalidate the agreement. But the acceptance would be completed as against B only when A receives the letter. This is the point of difference between Indian law (which is based on the common law) and the civil law where 'reception' of acceptance is necessary to complete the contract.

The communication³⁷ of a revocation becomes complete, against the person making it, when it is put in course of transmission to the person to whom it is made so as to be out of the power of the person who makes it, and against the person to whom it is made, when it comes to his know-

26. *Id.*, ss. 11-12.

27. *Id.*, ss. 23-24.

28. *Id.*, s. 2(d).

29. *Id.*, s. 27.

30. *Id.*, s. 28.

31. *Id.*, s. 29.

32. *Id.*, s. 30.

33. *Id.*, s. 36.

34. *Id.*, s. 56.

35. 'Proposal' is defined under section 2(a) of Contract Act as follows:

When one person signifies to another his willingness to do or to abstain from doing anything, with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

The definition of various terms hereinafter given from the Contract Act 1872 have been adopted for the purposes of the India Sale of Goods Act 1930 vide section 2(15) of the latter Act.

36. *Id.*, s. 4.

37. It is provided that the communication and revocation of proposals and acceptances are deemed to be made by any act or omission of the party proposing, accepting or revoking by which he intends to communicate such proposal, acceptance or revocation or which has the effect of communicating it: Contract Act, s. 3.

ledge.³⁸ It may be pointed out that these provisions form the basis of revocation of proposal and acceptance. Thus a proposal could be revoked any time before the communication of its acceptance is complete as against the proposer but not thereafter, and an acceptance could be revoked at any time before the communication of the acceptance is complete as against the acceptor but not thereafter.³⁹

Taking the above illustration again, it may be said that A can revoke his proposal only until B comes to know about it, and B can revoke his acceptance only until A gets B's letter. It may be noted that revocation is never presumed.⁴⁰ It can be made only by notice, lapse of prescribed or reasonable time, failure to accept conditions precedent or death or insanity of either of the contracting parties.⁴¹ For a proposal to become promise,⁴² the acceptance must be absolute and unqualified and be expressed in the prescribed or the usual and reasonable manner.⁴³ An acceptance need not be formally made. It may be done by performance of conditions of a proposal or acceptance of any consideration for a reciprocal promise offered with a proposal.⁴⁴ A promise may be express or implied.⁴⁵

A contract of sale of goods is a contract⁴⁶ whereby the seller transfers or agrees to transfer the property in goods⁴⁷ to the buyer for a price.⁴⁸ Such a contract may involve the transfer of property immediately or at a future time or subject to some condition to be fulfilled thereafter. The first would be called sale and the second only an agreement to sell,⁴⁹ which might become a sale on the lapse of time or fulfilment of conditions for transfer.⁵⁰ The contract may provide for delivery of goods or payment of price immediately or by instalment or may even be postponed. A

38. *Id.*, s. 4.

39. *Id.*, s. 5.

40. Pollock and Mulla, *Indian Contract and Specific Relief Acts* 80 (1972).

41. The Contract Act 1872, s. 6.

42. When the person to whom the proposal is made signifies his assent thereto, the proposal is said to be accepted. A proposal, when accepted, becomes a promise : *id.*, s. 2(b).

43. *Id.*, s. 7.

44. *Id.*, s. 8.

45. *Id.*, s. 9.

46. An agreement enforceable by law is a contract : *id.*, s. 2(h). An agreement is a promise or a set of promises forming the consideration for each other : *id.*, s. 2(e). When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing, or promises to do or to abstain from doing, something, such act or abstinence or promise is called a consideration for the promise : *id.*, s. 2(d).

47. "Goods" means every kind of moveable property other than actionable claims and money; and includes stock and shares, growing crops, grass or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale : The Indian Sale of Goods Act, s. 2(7).

48. *Id.*, s. 4(1).

49. *Id.*, s. 4(3).

50. *Id.*, s. 4(4).

contract of sale of goods may be in writing or oral or both.⁵¹ The subject-matter of contract may be present as well as future goods.⁵² If the specific goods agreed upon perish before entering into contract without seller's knowledge, the contract becomes void.⁵³ The price of goods may be agreed upon between the parties or may be decided by the course of dealings between the parties.⁵⁴ A contract of sale of goods may be made subject to conditions and warranties.⁵⁵

(d) *Stipulation of time*

The question whether time for payment should be a material factor in a contract of sale of goods is, as a general rule, subject to the intention of the parties as evident from the terms of the contract. However, if it is not so evident, the stipulation of time of payment is not an essence of a contract of sale.⁵⁶ The net result of this rule is that in case of non-payment of price by the buyer on the appointed day, the seller is not entitled to treat the contract as repudiated.⁵⁷ But in such a case, the seller can withhold the delivery of goods till the price is paid.⁵⁸ Another remedy available to him is to re-sell the goods in certain cases if no payment is made within reasonable time.^{58a}

But the application of the above rule is confined to the stipulation of time only for payment. In commercial contracts, time is of essence in the matter of delivery⁵⁹ of goods. It may be noted that stipulation as to the time being of essence of a contract of sale may always be waived by the party in whose favour the stipulation was intended to operate. And where it is so waived the party waiving it is always entitled to get damages. But once the stipulation is waived, reasonable notice to make time again of the essence would be necessary. If the party in whose favour it is to operate rescinds the contract because of the breach of the stipulation, there cannot be a waiver.

III

EFFECTS OF CONTRACT FOR SALE OF GOODS

(a) *Passing of property*

It is imperative that in a contract of sale of goods, the goods must be ascertained before the property in them is transferred to the buyer from the seller.⁶⁰ The rule is that property in the sale of specific or ascertained

51. *Id.*, s. 5.

52. *Id.*, s. 6.

53. *Id.*, s. 7.

54. *Id.*, s. 9.

55. *Id.*, ss. 11-13.

56. *Id.*, s. 11.

57. *Martindale v. Smith* (1841) 1 Q.B. 389.

58. The Indian Sale of Goods Act, s. 47.

58a. *Id.*, s. 54(2).

59. *Kidson & Co. v. Monceau Iron Works Co.* (1902) 86 L.T. 556.

60. The Indian Sale of Goods Act, s. 18.

goods passes to the buyer at the time agreed upon between the parties.⁶¹ Thus, in the matter of passing of property from seller to the buyer, the autonomy of the free will of the contracting parties has been fully safeguarded by the statute. The statute further lays down certain rules which assist in ascertaining the intentions of the parties. The first rule is that in unconditional contracts for the sale of specific goods⁶² in a deliverable state,⁶³ the property in goods passes to the buyer when the contract is made. The delivery of goods or payment of price immediately is not necessary.⁶⁴ According to another rule, in an unconditional contract for the sale of specific goods, if the seller is bound to do something to the goods for the purpose of putting them into a deliverable state, the property passes only when such a thing is done and the buyer gets notice of it.⁶⁵ So also, according to a third rule, when seller has to do something regarding the specific goods in a deliverable state, e.g., to weigh, measure, test or do something else, for ascertaining the price, the property passes only when that act is done and notice of it is given to the buyer.⁶⁶ There is yet another rule according to which property passes by appropriation by one of the parties with the consent of the other in case of unascertained or future goods.⁶⁷ Delivery to the carrier, bailee or buyer in terms of contract, without reserving the right of disposal, amounts to appropriation of goods to the contract.⁶⁸ The last rule for ascertaining the intention of the parties relates to goods sent on approval or on sale or return. In such a case property passes when acceptance or approval is signified to the seller or any other act is done adopting the transaction or goods are retained upto fixed or reasonable time without giving a notice of rejection.⁶⁹

(b) *Passing of risk*

The general rule is that the question of passing of the risk is subject to the intention of the parties to be ascertained from the terms of the agreement. However, in the absence of any clear intention, the goods remain at the risk of the seller till property in them passes to the buyer. But after the property in goods passes to the buyer the goods are at his risk even though goods have not actually been delivered to him. But this rule is subject to a stipulation that in case there is

61. *Id.*, s. 19(1).

62. "Specific goods" means goods identified and agreed upon at the time a contract of sale is made : *id.*, s. 2(14).

63. Goods are said to be in a "deliverable state" when they are in such state that the buyer would under the contract be bound to take delivery of them : *id.*, s. 2(3).

64. *Id.*, s. 20.

65. *Id.*, s. 21. See *Lachmi Niwas Rice Mills v. Firm Ram Das Ramnivas*, A.I.R. 1963 All. 110.

66. The Indian Sale of Goods Act, s. 22.

67. *Id.*, s. 23(1).

68. *Id.*, s. 23(2).

69. *Id.*, s. 24.

any loss because of the fault of either party which has delayed the delivery, the party in fault has to bear the loss and the goods are at its risk. Also, this rule is subject to the rights and liabilities of either party as a bailee⁷⁰ of the goods of the other party.⁷¹ There might be a situation where, without the fault of either party, ascertained goods agreed upon have perished or damaged to an extent as no longer to answer to their description at the time of the contract or subsequently, but before the risk passes to the buyer, without the knowledge of the seller. In such a case the agreement becomes either void⁷² or is avoided.⁷³ There is yet another situation which makes it necessary to ascertain the fact of passing of property. Such a situation may arise where under the agreement the seller agrees to deliver goods at his own risk at a place other than the place where they are sold and there is deterioration in the goods necessarily incidental to the course of transit. In this situation also the agreement of parties is the determining factor. But in the absence of any such agreement, risk lies on the buyer.⁷⁴ Lastly, subject to contrary agreement, where goods are sent by the seller to the buyer by a route involving sea transit in circumstances in which it is usual to insure the goods the seller is under a duty to give such notice to the buyer as may enable him to insure them during their sea transit, and in case of his failure to do so, the goods are deemed to remain at his risk during such sea transit.⁷⁵

(c) *Transfer of title*

The maxim *nemo dat quod non habet*⁷⁶ (no one can give another a better title than he himself has) has been given expression in the Indian Sale of Goods Act.⁷⁷ If goods are sold by a person other than the owner without the authority or the consent of the owner, the buyer does not get a better title than the seller. However, this general rule is subject to a number of exceptions. Thus, it is provided that the above rule may not apply if owner of goods is precluded by his conduct from denying the seller's authority to sell.⁷⁸ Secondly, a mercantile agent⁷⁹ in possession of

70. A "bailment" is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the "bailor". The person to whom they are delivered is called the "bailee": Contract Act 1872, s. 148.

71. The Indian Sale of Goods Act, s. 26. The rights and liabilities of bailees are dealt with in sections 148-81 of the Contract Act.

72. The Indian Sale of Goods Act, s. 7.

73. *Id.*, s. 8.

74. *Id.*, s. 40.

75. *Id.*, s. 39(3).

76. The maxim means that no one can give that which he has not.

77. S. 27.

78. *Id.*

79. "Mercantile agent" means a mercantile agent having in the customary course of business as such agent authority either to sell goods or to consign goods for the purposes of sale, or to buy goods, or to raise money on the security of goods: Indian Sale of Goods Act, s. 2(9).

goods or documents of title⁸⁰ with the consent of the owner while acting in his ordinary course of business may validly sell the goods but the buyer must not have notice of the fact that the seller has no authority to sell and acted in good faith.⁸¹ So also sale by one of the joint owners in possession of goods with the consent of other co-owners⁸² and also by a person in possession of goods under voidable contract⁸³ before the contract is actually avoided,⁸⁴ is valid provided the buyer acts in good faith and without notice of the seller's defective title. Further, where a person retains possession of the goods or of the documents of title to the goods after sale, the delivery or transfer of the goods or documents of title to the goods under any sale, pledge or other disposition thereof by that person or by a mercantile agent acting for him would be as effective as if the person making the delivery or transfer was expressly authorised by the owner of the goods to make the same provided that the person receiving the goods receives in good faith and without notice of the previous sale.⁸⁵ So also, where a person, having bought or agreed to buy goods, obtains possession of the goods or of the documents of title to the goods with the permission of the seller, the delivery or transfer of the goods or of the documents of title to the goods under any sale, pledge or other disposition thereof by that person or by a mercantile agent acting for him to any person receiving the same in good faith and without notice of any lien or other right of the original seller in respect of the goods shall have effect as if such lien or right did not exist.⁸⁶ Yet another situation in which a seller can confer a better title on the buyer is when sale is done in the market overt, that is to say, "an open, public and legally constituted market."⁸⁷

80. "Document of title to goods" includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented: Indian Sale of Goods Act, s. 2(4),

81. *Id.*, s. 27.

82. *Id.*, s. 28.

83. Under sections 19 and 19-A of the Contract Act, the contracts caused by coercion (s. 16), fraud (s. 17), misrepresentation (s. 18) or influenced by undue influence (s. 17) can be avoided.

84. The Indian Sale of Goods Act, s. 29.

85. *Id.*, s. 30(1).

86. *Id.*, s. 30(2).

87. Section 22 of the English Sale of Goods Act 1893 reads as follows:

Where goods are sold in market overt, according to the usage of the market, the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of any defect or want of title on the part of the seller.

For details see P.S. Atiyah, *The Sale of Goods* 151 (1967); Chalmers' *Sale of Goods Act* 1893 edited by Paul Sieghart at 88-91 (1963); K.C.T. Sutton, *The Law of Sale of Goods in Australia and New Zealand* 281 (1967).

It may be pointed out that without any exception all the above rules are subject to the buyer acting in good faith and without notice of the defective title of the seller.

(d) *Delivery of possession*

The natural consequence of the contract of sale of goods is the delivery of possession by the seller to the buyer and the payment of price by the latter to the former. Subject to the contrary agreement, both the incidents—delivery and payment—are concurrent conditions. Here we are concerned only with the first aspect, that of delivery of possession.

Delivery constitutes voluntary transfer of possession from one person to another.⁸⁸ How it can be effected can always be agreed upon by the contracting parties.⁸⁹ The delivery of even a part of goods in progress in the delivery of the whole is as good as the delivery of the whole. If there is no agreement under which the seller is bound to deliver goods, the buyer is under a duty to apply for delivery. As a general rule, the question of delivery is always subject to the contract of the parties. But if there is no such contract, the delivery has to take place at the place where goods are present at the time of contract and if the contract is for future goods, delivery takes place at the place where goods are produced or manufactured. If the seller is under an obligation to send goods to the buyer without specification of time, he has to send them within a reasonable time. If at the time of contract the goods are in the possession of a third person, delivery by seller to the buyer would be deemed only when the person in possession acknowledges to the buyer that he holds goods on his behalf. Delivery, in order to be binding, must be of the whole quantity agreed upon which can, subject to agreement, be made even by instalments. If there is an agreement obliging the seller to send goods to the buyer, delivery of the goods to carrier, even though not named by the buyer, for transmission to the buyer or to a wharfinger for safe custody is *prima facie* deemed to be a delivery to the buyer.

IV

BREACH OF CONTRACT

(a) *Specific performance*

As a general rule, specific performance of a contract of sale of goods is not granted. However, the courts enjoy a discretion to grant specific performance of a contract⁹⁰ for the delivery of specific or ascertained goods.⁹¹ But since the remedy of specific performance can be granted only for the

88. The Indian Sale of Goods Act, s. 2(2).

89. *Id.*, ss. 33-39.

90. *Id.*, s. 58.

91. "Specific goods" means goods identified and agreed upon at the time a contract of sale is made: *id.*, s. 2(14).

delivery of goods, it benefits only the buyer. On the other hand, the remedies available to the seller are only a right to sue for damages (discussed below) and the rights of lien⁹² and stoppage in transit.⁹³

It is provided under the Specific Relief Act, which overrides the provisions of the Indian Sale of Goods Act in respect of specific performance, that the remedy of specific performance may be granted when compensation in money would not give the buyer adequate relief for the loss of the goods, or when it would be extremely difficult to ascertain the actual damage caused by their loss.⁹⁴ In other words, in the case of sale of goods, specific performance would be granted only in case of goods of a peculiar character having a *pretium affectionis*, e.g., statue, picture, etc. It may be worthwhile to point out that the rule is based on the simple reason that in ordinary commercial contracts the matters enumerated in the Specific Relief Act mentioned above hardly exist, and further, it is statutorily presumed that the breach of a contract to transfer moveable property can be adequately relieved by pecuniary compensation.⁹⁵

(b) Damages

Whereas the right of specific performance operates in favour of the buyer, the right of damages for breach of contract is available both to the buyer as well as the seller. The seller can claim damages in case of non-acceptance of delivery. Where the buyer wrongfully neglects or refuses to accept and pay for goods, the seller may sue him for damages for non-acceptance.⁹⁶ Likewise, the buyer can sue the seller for damages for non-delivery of goods if the latter does so wrongfully.⁹⁷ Damages may also be awarded to the plaintiff in case of breach of any warranty⁹⁸ or breach of any condition⁹⁹ treated as warranty.¹⁰⁰ Another situation in which damages could be awarded is the repudiation of contract by either party before the due date of delivery in which case the other party can either wait till the date of delivery or may treat the contract as repudiated and sue for damages for the breach.¹⁰¹

The Indian law not only allows damages in the above mentioned cases but also provides for special damages for breach of contract under

92. *Id.*, ss. 47-49.

93. *Id.*, ss. 20-52.

94. The Specific Relief Act 1963, s. 10.

95. *Id.*, s. 11.

96. The Indian Sale of Goods Act, s. 55.

97. *Id.*, s. 56.

98. A warranty is a stipulation in a contract collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not a right to reject the goods and treat the contract as repudiated : *id.*, s. 12(3).

99. A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise a to right to treat the contract as repudiated : *id.*, s. 12(2).

100. S. 13 read with ss. 12(3) and 59(1)(b).

101. *Id.*, s. 60.

any other law.¹⁰² Thus, the Indian law accepts the ruling of *Hadley v. Baxendale*,¹⁰³ in which it was held that damages could be awarded "such as may reasonably be supposed to have been in contemplation of both parties, at the time they made the contract, as the probable result of the breach of it". In such type of cases, damages are awarded to an extent anticipated by the parties. An example of special damage is found in section 73 of the Contract Act.¹⁰⁴

This section may be concluded by the observation that the award of damages under the Indian law of sale of goods is the general rule and grant of a decree for specific performance is an exception having a very little and rare application.

102. *Id.*, s. 61.

103. (1854) 9 Ex. 341.

104. Section 73 of the Contract Act runs as follows :

When a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things or *which the parties knew, when they made contract, to be likely to result from the breach of it.*