CHAPTER V RIGHTS OF UNPAID SELLER AGAINST THE GOODS

45. "Unpaid seller" defined:

46. Unpaid seller's rights:

47. Seller's lien:

48. Part delivery:

49. Termination of lien:

50. Right of stoppage in transit:

51. Duration of transit:

52. How stoppage in transit is effected:

53. Effect of sub-sale or pledge by buyer:

54. Sale not generally rescinded by lien or stoppage in transit:

45. "Unpaid seller" defined:

45.1 A seller shall be treated as an unpaid seller when the whole price has not been paid or tendered, or when a negotiable instrument taken as conditional payment has been dishonoured.

Section 45(1) of the Sale of Goods Act, 1930 defines who is an "unpaid seller", which matters because only an unpaid seller can exercise the special rights the Act gives against the goods themselves: the right of lien (s. 47), the right of stoppage in transit (s. 50) and the right of resale (s. 54), in addition to the ordinary right to sue for the price. Under clause (a), the seller remains unpaid so long as any part of the price is outstanding; payment of even a large portion does not end this status. But if the buyer has tendered, that is, validly offered, the full price and the seller has refused it, the seller cannot claim to be unpaid, since the non-payment is the seller's own doing. Under clause (b), where the seller accepts a cheque, bill of exchange or other negotiable instrument, it is ordinarily treated as conditional payment, meaning payment subject to the instrument being honoured. If the instrument is dishonoured, or the condition otherwise fails, the seller becomes, or reverts to being, an unpaid seller, even though he had earlier accepted it. For example, J sells 100 bags of fertiliser to K for ₹1 lakh. K pays ₹70,000 in cash and gives a cheque for ₹30,000. Under clause (a), J is an unpaid seller until the cheque clears, because the whole price has not been paid. If the cheque bounces, J is an unpaid seller under clause (b) as well, and, if the bags are still in his godown, he may exercise his lien and

refuse to deliver them until the balance is paid. If, however, K had offered the full ₹1 lakh in cash on the agreed date and J had refused it, J could not claim to be an unpaid seller.

45.2 Any person who stands in the position of a seller shall be treated as a seller for the purposes of Chapter V.

Section 45(2) of the Sale of Goods Act, 1930 widens the meaning of "seller" in Chapter V, which deals with the rights of an unpaid seller against the goods, namely lien (s. 47), stoppage in transit (s. 50) and resale (s. 54). These rights are not confined to the person who is the seller under the contract; they extend to anyone whose position is similar to that of a seller, because that person is equally exposed to loss if the buyer does not pay. The section gives two illustrations. The first is an agent of the seller to whom the bill of lading has been endorsed: such an agent controls the goods on the seller's behalf and may exercise the unpaid seller's rights over them. The second is a consignor or agent who has himself paid the price, or is directly responsible for it: typically a buying or commission agent who purchases goods for a principal, pays the supplier (or becomes personally liable to pay), and then sends the goods to the principal. As between that agent and the principal, the agent is treated as a seller, so if the principal fails to pay, the agent can retain the goods, stop them in transit or resell them, just as an unpaid seller could. The list is illustrative ("as, for instance"), so other persons in a comparable position are also covered. For example, J, a commission agent in Kolkata, buys 500 bales of jute on behalf of K, a merchant in Chennai, pays the supplier from his own funds, and ships the bales to K by sea. While the goods are in transit, J learns that K has become insolvent. Although J is not the original seller, he is in the position of a seller under s. 45(2), since he has paid the price, so he may exercise the right of stoppage in transit under s. 50, instruct the carrier to withhold delivery, and recover his money by reselling the bales.

46. Unpaid seller's rights

46.1 An unpaid seller shall have a lien on the goods, a right of stoppage in transit, and a right of resale, even after property in the goods has passed to the buyer.

Section 46(1) of the Sale of Goods Act, 1930 protects a seller who has not received the price by giving him rights against the goods themselves, not merely a personal claim against the buyer. A seller is "unpaid" when the whole price has not been paid or tendered, or when a bill of exchange or other negotiable instrument received as conditional payment has been dishonoured (s. 45). These rights arise by implication of law, so they need not be written into the contract, and they exist even though ownership has already passed to the buyer. There are three: first, a lien, which is the right to keep possession of the goods until the price is paid, available only while the seller still holds them (ss. 47 to 49); second, a right of stoppage in transit, which arises only if the buyer becomes insolvent and allows a seller who has handed the goods to a carrier to stop them and regain possession before they reach the buyer (ss. 50 to 52); and third, a right of resale, which lets the seller resell the goods within the limits of the Act, such as where the goods are perishable or the seller has given notice of his intention to resell and the buyer does not pay within a reasonable time (s. 54). The opening words make these rights subject to the Act and other laws in force, so they operate within the conditions laid down in those provisions. For example, J sells 200 bags of rice to K for ₹2 lakh on credit, and ownership passes to K when the contract is made. Before collecting the rice, K fails to pay, so J may keep the rice in his godown under his lien. If J had already sent the rice by truck and learned on the way that K had become insolvent, J could order the carrier to stop and return it. And if K still does not pay after J gives notice of intention to resell, J may sell the rice to another buyer and recover any shortfall from K as damages.

46.2 Where property in the goods has not passed to the buyer, the unpaid seller may withhold delivery to the same extent as he could exercise lien and stoppage in transit had property passed.

Section 46(2) of the Sale of Goods Act, 1930 complements s. 46(1). Under s. 46(1), an unpaid seller, that is, a seller who has not been paid or tendered the whole price, or who has received a bill of exchange or other negotiable instrument that has been dishonoured (s. 45), has rights against the goods even after ownership has passed to the buyer: a lien to retain goods in his possession (ss. 47–49), a right to stop goods in transit when the buyer becomes insolvent (ss. 50–52), and a limited right of resale (s. 54). Strictly,

lien and stoppage are rights over another person's property, so they would not fit a case where the seller still owns the goods. Section 46(2) fills this gap by giving the seller, where ownership has not yet passed, a right of withholding delivery. Although the seller already owns the goods, this right protects him from a claim that he has broken the contract by refusing delivery. It is "similar to and co-extensive with" lien and stoppage: it arises in the same situations, such as the goods being sold without credit, the credit period expiring, or the buyer becoming insolvent, and it ends in the same way, for instance when the goods are delivered to the buyer, or when the price is paid or tendered. The seller also keeps his other remedies, such as suing for damages for non-acceptance (s. 56) or, where s. 55(2) applies, for the price. For example, J agrees to sell 200 bags of cement to K on the term that ownership passes only on delivery, with the price payable on delivery. Before delivery, K is declared insolvent and cannot pay. Since ownership has not passed, J cannot exercise a lien in the technical sense, but under s. 46(2) he may refuse to deliver the cement until he is paid, just as an unpaid seller with a lien could, and K's official receiver cannot compel delivery without paying the price. If J had already dispatched the cement by rail, he could likewise halt it in transit and withhold delivery, matching the right of stoppage in transit.

47. Seller's lien

47.1 An unpaid seller in possession of the goods may retain them until the price is paid or tendered.

Section 47(1) of the Sale of Goods Act, 1930 gives the unpaid seller a right of lien, that is, a right to keep the goods in his possession until the buyer pays or offers to pay the price, even though ownership may already have passed to the buyer. An "unpaid seller" is one who has not been paid or tendered the whole price, or who received a bill of exchange or other negotiable instrument as conditional payment that has been dishonoured (s. 45). The lien arises in three situations: (a) where the goods were sold without any agreement for credit, so the price is payable immediately; (b) where they were sold on credit but the credit period has expired without payment; and (c) where the buyer has become insolvent, even if the credit period has not yet expired, since the seller should not be forced to part with the goods to a buyer unable to pay. The lien depends on possession and

secures only the price, not other charges such as storage costs. It is a right to retain, not a right to resell: resale is governed separately by s. 54. The phrase "subject to the provisions of this Act" signals that the lien is limited by other sections; for instance, it is lost when the seller delivers the goods to a carrier for transmission to the buyer without reserving the right of disposal, when the buyer or his agent lawfully obtains possession, or when the seller waives it (s. 49). For example, J sells a specific machine to K for ₹3 lakh, with payment due on delivery and nothing said about credit. Ownership passes to K when the contract is made (s. 20), but when K comes to collect the machine without paying, J may refuse to hand it over until K pays or tenders the price. Similarly, if J had allowed K one month's credit and K was declared insolvent within that month, J could still keep the machine until payment, even though the credit period had not expired.

47.2 The unpaid seller may exercise his lien even while holding the goods as agent or bailee for the buyer.

Section 47(2) of the Sale of Goods Act, 1930 supplements s. 47(1), which entitles an unpaid seller who is in possession of the goods to retain them until payment where the goods were sold without credit, where the credit period has expired, or where the buyer has become insolvent. Often, by the time payment is due, ownership has already passed to the buyer (for example, under s. 20), and the seller keeps the goods only as a custodian on the buyer's behalf, as the buyer's agent or bailee. Section 47(2) makes clear that this change in the capacity in which the seller holds the goods does not defeat the lien. What matters for the lien is the seller's actual possession of the goods, not the character in which he holds them. The seller therefore does not lose his security merely because ownership has passed and he is storing the goods for the buyer; he loses it only in the ways the Act provides, such as delivery of the goods to a carrier for transmission to the buyer without reserving the right of disposal, the buyer or his agent lawfully obtaining possession, or waiver (s. 49). For example, J sells 200 bags of cement lying in his godown to K for cash, and they agree that K will collect them within a week, with J keeping them in the meantime. Ownership passes to K when the contract is made (s. 20), and J now holds the cement as K's bailee. If K then comes to collect the bags without paying, J may

refuse to release them and retain them until paid, because he is an unpaid seller still in possession, even though he holds them as K's bailee.

48. Part delivery

An unpaid seller who has made part delivery of the goods may exercise his lien on the remainder.

Section 48 of the Sale of Goods Act, 1930 deals with the effect of part delivery on the unpaid seller's lien. Under s. 47, an unpaid seller in possession of the goods may retain them until the price is paid or tendered, where the goods are sold without credit, or the credit period has expired, or the buyer becomes insolvent. Since the lien depends on possession, it ends when the goods are delivered to the buyer (s. 49(1)). Section 48 makes clear that delivering part of the goods ends the lien only over the part delivered; the seller may still retain the goods remaining in his possession until the whole price owing is paid, even though some goods have already gone to the buyer. The only exception is where the part delivery was made in circumstances showing an agreement to give up the lien over the rest, for instance, where the seller delivered part intending the delivery to be treated as delivery of the whole, or expressly or impliedly agreed to release the remaining goods without payment. Whether there was such a waiver is a question of fact, judged from the terms of the contract, the parties' conduct and the circumstances. For example, J sells 100 bags of fertiliser to K for ₹1 lakh, payable on delivery, and delivers 40 bags on the first day, but K does not pay. J may refuse to hand over the remaining 60 bags until K pays the price. However, if J had delivered the 40 bags and at the same time told K that he could collect the other 60 whenever he wished, and that payment could be settled later, those circumstances would show an agreement to waive the lien, and J could not then withhold the remaining bags.

49. Termination of lien

49.1 The unpaid seller shall lose his lien on the goods when he delivers them to a carrier or other bailee for transmission to the buyer without reserving the right of disposal, when the buyer or his agent lawfully obtains possession of them, or when he waives the lien.

An unpaid seller's lien is the right to keep possession of the goods until the price is paid or tendered (s. 47). Since a lien is a right to retain possession, it lasts only while the seller holds the goods, and s. 49(1) sets out three ways it comes to an end. First, under clause (a), if the seller hands the goods to a carrier or other bailee (such as a transport company or warehouseman) to be sent to the buyer, and does not reserve the right of disposal (for example, by taking the railway receipt or bill of lading in his own name or to his own order), he parts with possession and the lien ends. He may, however, still have the separate right of stoppage in transit if the buyer becomes insolvent while the goods are on the way (s. 50). Second, under clause (b), the lien ends when the buyer or his agent lawfully obtains possession of the goods, as by delivery with the seller's consent; the word "lawfully" means that if the buyer takes the goods by fraud or without the seller's consent, the lien is not lost. Third, under clause (c), the lien ends by waiver, which may be express, as by the seller agreeing to give the buyer credit and release the goods, or implied from conduct inconsistent with the lien, such as the seller wrongfully selling the goods to someone else or assenting to the buyer's resale of them (s. 53). In each case, the seller still has his personal right to sue the buyer for the price (s. 55). For example, J sells 20 bales of cotton to K for ₹3 lakh on cash terms, and while unpaid, J may keep the bales in his godown. If J sends the bales by road transport to K, with the consignment note made out in K's name, J loses his lien under clause (a). If instead K's agent collects the bales from the godown with J's permission, the lien ends under clause (b). And if J tells K, "You may take the bales now and pay me in three months," he has waived the lien under clause (c). In all three cases, J can still sue K for the unpaid ₹3 lakh.

49.2 An unpaid seller shall retain his lien on the goods even after obtaining a decree for their price.

Section 49(2) of the Sale of Goods Act, 1930 clarifies that getting a court decree for the price does not end the unpaid seller's lien. An unpaid seller in possession of the goods has a lien, meaning a right to keep possession of them until the price is paid or tendered (s. 47). Section 49(1) lists the ways the lien is lost: when the seller delivers the goods to a carrier or other bailee for transmission to the buyer without reserving the right of disposal, when the buyer or his agent lawfully obtains possession of the goods, or when the

seller waives the lien. Section 49(2) adds that suing the buyer and winning a decree for the price is not one of them. The reason is that a decree only declares that the buyer owes the money; it is not payment. Until the seller is actually paid, the purpose of the lien, which is to secure payment, remains, so the seller keeps both remedies together: he may execute the decree against the buyer and continue to hold the goods as security. For example, J sells 200 bags of cement to K for ₹1 lakh on terms of cash payment, but K fails to pay and the cement is still in J's warehouse. J sues K and obtains a decree for ₹1 lakh. K then demands the cement, arguing that J's claim has turned into a decree. J may lawfully refuse to release the cement until K pays the decretal amount, because his lien survives the decree. The lien ends only when K pays or tenders the price, or on one of the events in s. 49(1), such as J voluntarily handing the cement over to K.

50. Right of stoppage in transit

An unpaid seller shall have the right to stop goods in transit when the buyer becomes insolvent.

Section 50 of the Sale of Goods Act, 1930 gives the unpaid seller a remedy after he has lost possession of the goods. An unpaid seller is one who has not been paid or tendered the whole price, or who received a negotiable instrument as conditional payment that was dishonoured (s. 45). Once the seller parts with possession, for instance by handing the goods to a carrier for delivery, he loses his lien, which depends on possession (s. 49). Section 50 protects him in this situation: if the buyer becomes insolvent while the goods are still in transit, the seller may resume possession of them and hold them until the price is paid or tendered. A buyer is insolvent when he has ceased to pay his debts in the ordinary course of business or cannot pay his debts as they become due, whether or not he has been declared insolvent by a court (s. 2(8)). The right exists only while the goods are in the course of transit, that is, from the time they are delivered to a carrier or other intermediary until the buyer, or his agent, takes delivery of them (s. 51). The seller exercises it either by taking actual possession of the goods or by giving notice of his claim to the carrier or bailee in possession (s. 52). The right does not rescind the contract, and it may be defeated if the buyer has lawfully transferred the document of title to a person who takes it in good faith and for consideration (s. 53). For example, J, a textile dealer in Surat,

sells cloth worth ₹3 lakh on credit to K in Patna and dispatches it by rail. While the goods are on the way, J learns that K has stopped paying his creditors. J may notify the railway not to deliver the goods to K, and the railway must then redeliver them to J or as J directs. J can keep the cloth until K pays or tenders the price. But if K had already collected the goods from the railway station before J's notice, the transit would have ended and J's right of stoppage would be lost.

51. Duration of transit

51.1 Goods shall be treated as in transit from their delivery to a carrier or other bailee for transmission to the buyer until the buyer or his agent takes delivery of them from that carrier or bailee.

Section 51(1) of the Sale of Goods Act, 1930 defines the period during which goods are "in course of transit". This matters mainly for the unpaid seller's right of stoppage in transit under s. 50: where the buyer becomes insolvent, an unpaid seller who has parted with the goods may resume possession of them, but only while they are still in transit. Transit begins when the seller hands the goods to a carrier, such as a railway, shipping line or transport company, or to another bailee, such as a warehouse keeper, for the purpose of sending them to the buyer. It continues while the goods are with that intermediary, who holds them neither as the seller's agent nor as the buyer's agent for keeping, but merely to carry or forward them. Transit ends, and with it the right of stoppage, when the buyer or an agent authorised by him to receive them takes delivery from the carrier or bailee. The same section goes on to deal with related cases, such as the buyer obtaining delivery before the goods reach their destination (s. 51(2)) or the carrier acknowledging, after arrival, that it holds the goods on the buyer's behalf (s. 51(3)). For example, S, a textile manufacturer in Surat, sells cloth worth ₹3 lakh on credit to B in Patna and hands the bales to a transport company for delivery to B. While the bales are on the road, S learns that B has become insolvent. Since the goods are still in transit, S, as an unpaid seller, can instruct the transport company to stop them and hold them for him, instead of delivering them to B. But if B's godown manager has already collected the bales from the transport company's Patna depot, the transit has ended, S's right of stoppage is lost, and S is left to prove his claim as an ordinary creditor in B's insolvency.

51.2 Transit shall end when the buyer or his agent obtains delivery of the goods before they reach the appointed destination.

Section 51(2) of the Sale of Goods Act, 1930 forms part of the rules on the unpaid seller's right of stoppage in transit. Under s. 50, when the buyer becomes insolvent, an unpaid seller who has parted with the goods may stop them while they are still in transit and resume possession until paid. That right lasts only as long as the transit continues, and s. 51(1) treats goods as in transit from the time they are delivered to a carrier or other bailee for transmission to the buyer until the buyer or his agent takes delivery of them from that carrier. Section 51(2) makes clear that the buyer need not wait for the goods to reach the agreed destination: if the buyer, or an agent authorised by him for that purpose, takes delivery from the carrier at any earlier point on the journey, the transit ends at that moment. Once transit ends, the goods are in the buyer's possession, and the seller's right of stoppage is lost, leaving the seller only with a claim for the price. For example, J, a Kolkata trader, sends a consignment of textiles by rail to K in Delhi on credit. While the goods are at Kanpur, K's authorised agent approaches the railway, obtains the goods from the carrier and takes them to K's warehouse. The transit ended at Kanpur, when the agent obtained delivery, so if J later learns of K's insolvency, he can no longer stop the goods and must claim the price as a creditor. Had the goods still been with the railway when J gave notice, he could have stopped them in transit.

51.3 Transit shall end when, after the goods arrive at the appointed destination, the carrier or other bailee acknowledges to the buyer or his agent that he holds the goods on the buyer's behalf, even if the buyer has indicated a further destination.

Section 51(3) of the Sale of Goods Act, 1930 fixes one of the points at which goods cease to be "in transit". This matters because an unpaid seller may stop goods in transit and resume possession of them when the buyer becomes insolvent (s. 50), but this right of stoppage lasts only while the transit continues. Under s. 51(1), goods are in transit from the time they are delivered to a carrier for transmission to the buyer until the buyer or his agent takes delivery from the carrier. Section 51(3) adds that transit also ends, even without physical delivery, once two things happen: the goods reach the destination named in the contract, and the carrier or other bailee

acknowledges (or "attorns") to the buyer or his agent that he now holds the goods for the buyer. From that moment, the carrier's possession is treated as the buyer's own possession, so the carrier stops being a mere middleman between seller and buyer and becomes the buyer's bailee. It makes no difference that the buyer has asked for the goods to be sent on to another place, because that onward journey is a fresh transit arranged by the buyer, not part of the seller's original transit. Once transit ends under this rule, the unpaid seller can no longer exercise the right of stoppage and is left with the rights of an ordinary creditor. For example, J, a Kanpur seller, sends 100 bales of cloth by rail to K at Patna on credit. When the bales reach Patna, the railway informs K that it is holding them for him at the goods shed, and K asks the railway to forward them to his godown in Gaya. K is then declared insolvent, and J tries to stop the goods. J cannot do so, because the transit ended when the railway, after arrival at Patna, acknowledged holding the goods for K; the onward dispatch to Gaya is K's own arrangement and does not revive J's right of stoppage.

51.4 Where the buyer rejects the goods and the carrier or other bailee keeps possession of them, the goods shall be deemed to remain in transit, even if the seller refuses to take them back.

Section 51(4) of the Sale of Goods Act, 1930 is one of the rules fixing how long goods are "in transit" for the purpose of the unpaid seller's right of stoppage in transit. Under s. 50, when the buyer becomes insolvent, an unpaid seller who has parted with the goods may stop them while they are still in the course of transit, recover possession and hold them until paid. Transit begins when the goods are handed to a carrier or other bailee for transmission to the buyer, and ordinarily ends when the buyer, or the buyer's agent, takes delivery (s. 51(1)). Section 51(4) deals with the case where the goods reach their destination but the buyer refuses to accept them. Since the buyer has not taken delivery, and the goods are still in the hands of the carrier or bailee, the law treats the transit as continuing. This is so even if the seller, on being told of the rejection, declines to receive the goods back: the seller's refusal does not end the transit or convert the carrier into the buyer's agent. The practical effect is that the unpaid seller's right to stop the goods in transit survives, protecting the seller against the buyer's insolvency and the buyer's creditors. For example, S, a textile mill in Surat, sends 100

bales of cloth by rail to B in Patna on credit. When the goods arrive, B rejects them as not matching the order, and the railway keeps them in its warehouse. S, disputing the rejection, refuses to take the bales back. B is then declared insolvent. Because B never took delivery and the railway still holds the goods, they are deemed to be in transit, so S, as an unpaid seller, can still exercise the right of stoppage by giving notice to the railway and recover the bales, instead of their going to B's creditors.

51.5 Whether the master of a ship chartered by the buyer holds the goods as a carrier or as the buyer's agent shall be decided on the facts of each case.

Section 51(5) of the Sale of Goods Act, 1930 forms part of the rules on the duration of transit, which determine how long an unpaid seller may exercise the right of stoppage in transit when the buyer becomes insolvent (ss. 50 and 51). Goods are in transit from the time they are handed to a carrier for transmission to the buyer until the buyer, or the buyer's agent, takes delivery of them (s. 51(1)). A difficulty arises where the goods are loaded onto a ship chartered by the buyer. If the master of the ship holds the goods merely as a carrier, the transit continues and the unpaid seller may still stop the goods. If the master holds them as the buyer's agent, delivery to the ship is delivery to the buyer, the transit ends on loading, and the right of stoppage is lost. The Act does not settle this by a fixed rule; it depends on the circumstances, chiefly the terms of the charter-party and the destination and purpose of the voyage. Broadly, under a charter by demise (bareboat charter), where the buyer takes over the ship and employs the master and crew, the master is the buyer's servant, so delivery to the ship is delivery to the buyer. Under an ordinary voyage or time charter, where the shipowner keeps control of the ship and crew, the master usually acts as a carrier, and the transit continues until the goods reach the buyer. For example, S sells 1,000 tonnes of coal on credit to B, who charters a vessel to carry it from Kolkata to Chennai, and the coal is loaded. B then becomes insolvent before paying. If B had chartered the ship by demise, crewed it with his own employees and appointed its master, the master received the coal as B's agent, the transit ended on loading, and S cannot stop the goods. If instead B merely hired the ship for the voyage while the owner retained the master and crew, the master received the coal as a carrier, the goods remain in transit, and S may

stop them by giving notice to the master or the shipowner before they are delivered to B (s. 52).

51.6 Where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent, the transit shall be treated as ended.

Section 51(6) of the Sale of Goods Act, 1930 forms part of the rules on the duration of transit, which matter for the unpaid seller's right of stoppage in transit. Under s. 50, when the buyer becomes insolvent, an unpaid seller who has parted with the goods may stop them while they are still in transit and take them back; once the transit ends, that right is lost. Ordinarily transit ends when the buyer or his agent takes delivery of the goods from the carrier (s. 51(1)). Section 51(6) adds that transit is also deemed at an end where the carrier or other bailee wrongfully refuses to deliver the goods to the buyer or his agent, even though the buyer has not actually received them. The reasoning is that the buyer was entitled to delivery and was kept out of it only by the carrier's wrong; the goods have reached the point where the buyer could claim them, so the law treats the journey as complete, and the seller cannot rely on the carrier's wrongful act to extend his right of stoppage. The refusal must be wrongful: if the carrier lawfully withholds the goods, for instance under a lien for unpaid freight, the transit continues and the seller may still stop the goods. For example, S, a trader in Kolkata, sends a consignment of textiles by road to B in Patna on credit. The goods reach the transporter's Patna depot, B presents the consignment note and offers to take delivery, but the transporter's clerk, without any lawful reason, refuses to hand them over. The next day S learns that B has become insolvent and asks the transporter to stop the goods. S cannot do so, because the wrongful refusal ended the transit and S's right of stoppage came to an end with it. If, however, the transporter had refused delivery because B had not paid the freight due, the refusal would be lawful, the goods would still be in transit, and S could stop them.

51.7 Where part of the goods has been delivered to the buyer, the unpaid seller may stop the remainder in transit.

Section 51(7) of the Sale of Goods Act, 1930 deals with the unpaid seller's right of stoppage in transit. Under s. 50, when the buyer becomes insolvent, an unpaid seller who has parted with the goods may stop them while they

are still in the course of transit, resume possession, and hold them until paid. Section 51 explains when goods are in transit and when transit ends. Sub-section (7) addresses the case where the carrier has delivered only part of the goods to the buyer or his agent. The general rule is that transit ends only for the portion actually delivered; the undelivered remainder is still in transit, so the seller may stop it. The exception is where the part delivery was made in circumstances showing an agreement to give up possession of the whole, for instance where the part delivery was intended as symbolic delivery of the entire consignment. In that case, the transit of all the goods is treated as ended, and the seller cannot stop the remainder. Whether such an agreement exists depends on the facts of each case. For example, J, a manufacturer in Kanpur, sells 200 cartons of shoes on credit to K in Patna and sends them by rail. The carrier delivers 80 cartons to K, and K then becomes insolvent without paying. J, being an unpaid seller, may instruct the carrier not to deliver the remaining 120 cartons, and retain them until the price is paid. But if the 80 cartons had been handed over under an arrangement showing that K was to take possession of the whole consignment through that delivery, the transit would have ended for all 200 cartons, and J could not stop the remaining 120.

52. How stoppage in transit is effected

52.1 The unpaid seller shall exercise his right of stoppage in transit either by taking actual possession of the goods or by giving notice of his claim to the carrier or other bailee holding them.

Section 52(1) of the Sale of Goods Act, 1930 lays down how the right of stoppage in transit is put into effect. That right, conferred by s. 50, allows an unpaid seller who has parted with the goods to a carrier to resume possession of them while they are still in transit, if the buyer becomes insolvent; the duration of transit is governed by s. 51. Section 52(1) gives the seller two ways to exercise the right. The first is by taking actual possession of the goods, for instance by collecting them from the carrier. The second, more common in practice, is by giving notice of his claim to the carrier or other bailee in possession of the goods. The notice may be given to the person actually holding the goods, such as the station master or the driver, or to that person's principal, such as the head office of the transport company. Where notice is given to the principal, it takes effect

only if it is given at such time and in such circumstances that the principal, acting with reasonable diligence, can pass it on to the servant or agent holding the goods in time to prevent delivery to the buyer. A notice that reaches the principal too late for this purpose is ineffective, and the right is lost if the goods are delivered to the buyer. Once an effective notice is given, the carrier must redeliver the goods to the seller or as the seller directs, at the seller's expense (s. 52(2)). For example, J, a textile manufacturer in Surat, sends a consignment of cloth by road to K in Patna on credit, through a transport company. While the goods are on the way, J learns that K has become insolvent. J may stop the goods by sending notice of his claim directly to the truck driver or to the company's Patna branch holding the goods, or by giving notice to the company's head office. If he notifies the head office only an hour before the truck is due to unload at K's warehouse, and the company cannot reasonably contact its driver in time, the notice is ineffective and the goods delivered to K are lost to J's claim. If he notifies the head office a day earlier, the notice is effective, and the company must return the cloth to J as he directs.

52.2 On receiving the seller's notice of stoppage in transit, the carrier or other bailee in possession of the goods shall re-deliver them to the seller or as the seller directs, at the seller's expense.

Section 52(2) of the Sale of Goods Act, 1930 sets out the duty of the carrier or other bailee once an unpaid seller exercises the right of stoppage in transit. That right arises under s. 50 when the buyer becomes insolvent while the goods are still in transit, that is, after the seller has parted with them to a carrier or bailee for transmission to the buyer but before the buyer has taken delivery (s. 51). Under s. 52(1), the seller may exercise the right either by taking actual possession of the goods or by giving notice of his claim to the carrier or bailee in possession. Section 52(2) then makes the notice effective: the carrier must stop the goods and hand them back to the seller or deal with them as the seller directs, instead of delivering them to the buyer. The seller, who benefits from the stoppage, must bear the cost of the re-delivery, such as freight for the return journey or storage charges. If the carrier ignores a valid notice and delivers the goods to the buyer, the carrier is liable to the seller. The purpose is to protect an unpaid seller from losing the goods to an insolvent buyer who cannot pay for them. For

example, J in Kanpur sells 200 bales of cotton to K in Mumbai on credit and hands them to a railway for dispatch. While the bales are in transit, J learns that K has become insolvent and, before K takes delivery, sends written notice of stoppage to the railway. The railway must hold the bales and return them to J, or deliver them to any other person J names, and J must pay the cost of that return or redirection. If the railway disregards the notice and delivers the bales to K, J may sue the railway for the loss.

53. Effect of sub-sale or pledge by buyer

53.1 The unpaid seller's right of lien or stoppage in transit shall not be affected by any sale or other disposition of the goods by the buyer, unless the seller has assented to it.

Section 53(1) of the Sale of Goods Act, 1930 protects the unpaid seller (s. 45) against dealings by the buyer. An unpaid seller in possession of the goods may retain them until paid (lien, s. 47), and one who has parted with them to a carrier may resume possession while they are in transit if the buyer becomes insolvent (stoppage in transit, s. 50). The main rule is that these rights survive even if the buyer resells or pledges the goods to someone else, because the buyer cannot pass a better right than he has, and the seller's security should not be destroyed by acts to which he was not a party. The rights are lost, however, if the seller assents to the buyer's disposition, since he is then taken to have given up his security. The proviso creates an exception to protect innocent third parties dealing in documents of title (such as a bill of lading, railway receipt or warehouse-keeper's certificate, s. 2(4)). Where a document of title has been issued or lawfully transferred to the buyer, and the buyer transfers it to a person who takes it in good faith and for consideration: if the transfer is a sale, the seller's lien or stoppage is wholly defeated; if it is a pledge or other disposition for value, the seller may still exercise his right, but only subject to the transferee's rights, for instance after the pledgee's advance is satisfied. For example, S sells 100 bales of cotton to B for ₹10 lakh on credit, keeping them in his warehouse, and B becomes insolvent before paying. If B has meanwhile resold the bales to C by a simple agreement, without S's assent, S may still exercise his lien and refuse to deliver to C. But if S had issued a delivery order or warehouse receipt to B, and B had endorsed it to C, who bought in good faith and paid for the cotton, S's lien would be defeated and C would

be entitled to the bales. If B had instead pledged the document with a bank for a ₹6 lakh loan taken in good faith, S could exercise his lien only subject to the bank's claim, so the bank would be satisfied first out of the goods and S would retain his right over the surplus.

53.2 Where the buyer has pledged the goods, the pledgee shall, at the unpaid seller's demand, recover the pledge debt first, as far as possible, from the buyer's other goods or securities in the pledgee's hands.

Section 53(2) of the Sale of Goods Act, 1930 must be read with s. 53(1). Under s. 53(1), an unpaid seller's right of lien or stoppage in transit is ordinarily not defeated by the buyer reselling or pledging the goods, unless the seller has assented. But where a document of title to the goods has been transferred to the buyer, and the buyer transfers it to a person who takes it in good faith and for consideration, the seller's rights are affected: if the buyer's transfer is a sale, the seller's lien or stoppage is defeated; if it is a pledge, the seller's rights survive only subject to the pledgee's rights. Section 53(2) protects the unpaid seller in that second situation. Although the pledgee's claim ranks ahead of the seller's, the seller can require the pledgee to look first to any other goods or securities of the buyer that the pledgee holds and can enforce against the buyer, and to resort to the seller's goods only for any shortfall. This applies the equitable principle of marshalling: a creditor with two funds to draw on should not exhaust the one on which another creditor depends. The words "as far as possible" mean the pledgee cannot be made to suffer loss; he must be fully paid, but from the buyer's other assets before the seller's goods. For example, S sells 100 bales of cotton to B for ₹10 lakh on credit and hands over the railway receipt. Before paying, B pledges the railway receipt to Bank P, which takes it in good faith, for a loan of ₹6 lakh. P also holds B's shares worth ₹4 lakh as security available against B. B defaults on both debts, and the cotton is still in transit. S may require P to realise B's shares first, so that only ₹2 lakh of the loan remains to be recovered from the cotton; S may then exercise his right of stoppage in transit over the cotton, subject to that ₹2 lakh claim of P, and apply the balance towards the unpaid price.

54. Sale not generally rescinded by lien or stoppage in transit

54.1 The exercise by an unpaid seller of his right of lien or stoppage in transit shall not rescind the contract of sale.

Section 54(1) of the Sale of Goods Act, 1930 clarifies the effect of the unpaid seller's two possessory remedies: the right of lien, that is, retaining goods still in his possession until he is paid (ss. 47 to 49), and the right of stoppage in transit, that is, recovering possession of goods already handed to a carrier when the buyer becomes insolvent (ss. 50 to 52). These rights exist only to secure payment of the price; they let the seller hold on to or regain possession, but do not end the contract. The contract therefore continues to bind both parties: the buyer may still pay or tender the price and claim the goods, and the seller remains bound to deliver on payment. Nor does the seller, merely by exercising these rights, become free to treat the goods as his own and sell them to someone else. The opening words "subject to the provisions of this section" point to the exceptions in the rest of s. 54, under which the seller may resell: where the goods are perishable, or where he gives the buyer notice of his intention to resell and the buyer does not pay within a reasonable time (s. 54(2)); or where the contract expressly reserves a right of resale on the buyer's default (s. 54(4)). In such a resale the second buyer gets good title (s. 54(3)). For example, J sells 200 cartons of soap to K on the term that payment is due on delivery. K fails to pay, so J keeps the goods in his warehouse, exercising his lien. The contract is not thereby cancelled: if K later pays the price, J must deliver the cartons, and J cannot simply sell them to a third party instead. However, if J gives K notice that he will resell unless paid, and K still does not pay within a reasonable time, J may resell under s. 54(2) and recover any loss on the resale from K as damages for breach.

54.2 An unpaid seller may re-sell perishable goods, or goods held under lien or stopped in transit after notice to the buyer, if the buyer fails to pay within a reasonable time, and may recover the resulting loss from the buyer.

Section 54(2) of the Sale of Goods Act, 1930 gives an unpaid seller (s. 45) a right to re-sell the goods and so end the uncertainty created when the buyer defaults. Ordinarily, exercising a lien (s. 47) or stopping goods in transit (s. 50) only lets the seller keep the goods; it does not cancel the contract (s. 54(1)). This provision allows the seller to go further and re-sell in two

situations: where the goods are perishable, since waiting would cause them to rot or lose value; and where the seller, having exercised lien or stoppage in transit, gives the buyer notice of his intention to re-sell. In either case, the buyer must first have failed to pay or tender the price within a reasonable time, and the re-sale itself must take place within a reasonable time. If the seller re-sells after giving notice, he may recover from the original buyer damages for any loss caused by the buyer's breach, usually the shortfall between the contract price and the re-sale price plus reasonable expenses, but any profit on the re-sale belongs to the seller, not the buyer. If he re-sells without giving notice, he loses the right to claim damages, and the buyer is entitled to any profit made on the re-sale. The notice therefore protects the buyer by giving him a last chance to pay before the goods are sold to someone else. For example, J agrees to sell 100 boxes of mangoes to K for ₹1,00,000 on credit. Before delivery, K becomes insolvent, and J, still holding the mangoes, exercises his lien and notifies K that he will re-sell them if not paid within two days. K does not pay, and J re-sells the mangoes for ₹85,000. J may sue K for ₹15,000 plus reasonable expenses of the re-sale. Had the mangoes fetched ₹1,10,000, J would keep the ₹10,000 profit. But if J had re-sold without any notice, he could not claim the ₹15,000 loss, and if the re-sale produced a profit, K would be entitled to it.

54.3 A person who buys goods from an unpaid seller who has exercised his lien or right of stoppage in transit shall acquire a good title to them as against the original buyer, whether or not notice of the re-sale was given.

Section 54(3) of the Sale of Goods Act, 1930 protects the second buyer when an unpaid seller re-sells goods. An unpaid seller (s. 45) has a lien, that is, a right to keep possession of the goods until paid, while they are still with him (ss. 46–47), and a right to stop them in transit and resume possession if the buyer becomes insolvent (s. 50). Once the seller has exercised either right and so holds the goods, s. 54(3) provides that if he re-sells them, the new buyer gets a valid title that the original buyer cannot challenge, even though no notice of re-sale was sent to the original buyer. The absence of notice matters only between the seller and the original buyer: under s. 54(2), a seller who re-sells without giving notice (where the goods are not perishable) cannot recover any loss on the re-sale from the original buyer

and must hand over any profit made on it. It does not affect the new buyer's title. The provision thus lets the seller turn unpaid goods into money and gives certainty to people who buy from him in good faith. For example, J sells 100 bags of cement to K on credit, but K fails to pay and J keeps the cement in his godown, exercising his lien. J then re-sells the cement to L without informing K. L becomes the owner of the cement, and K cannot claim it from L. Since J gave no notice, however, if J sold the cement at a lower price, he cannot recover the shortfall from K, and if he sold at a higher price, he must account to K for the profit.

54.4 Where the seller has expressly reserved a right of resale on the buyer's default and resells the goods on such default, the original contract of sale shall stand rescinded, and the seller may still claim damages.

Section 54(4) of the Sale of Goods Act, 1930 deals with one form of the unpaid seller's right of resale, namely the right the seller expressly keeps in the contract itself. It applies when three conditions are met: the contract expressly gives the seller a right to resell if the buyer defaults; the buyer does default, usually by failing to pay or take delivery; and the seller actually resells the goods. When these conditions are met, the resale automatically brings the original contract to an end, so the buyer's rights under it are extinguished and the goods are treated as having returned to the seller before being sold again. Because the original contract is rescinded, any gain on the resale belongs to the seller, and the defaulting buyer cannot claim it. At the same time, the rescission does not cancel the seller's right to recover damages for the buyer's breach, such as any shortfall between the contract price and the resale price, and the expenses of reselling. This differs from a resale under s. 54(2), which is made after notice to the buyer (or without notice for perishable goods) and does not depend on a clause in the contract. The person who buys at the resale gets good title against the original buyer (s. 54(3)). For example, J agrees to sell 100 bags of wheat to K for ₹2 lakh, and the contract states that if K fails to pay by 10 October, J may resell the wheat. K fails to pay by that date, and J resells the wheat to L for ₹1.7 lakh. The contract between J and K is rescinded upon the resale, L acquires good title, and J can still sue K for the ₹30,000 loss and the costs of

resale. If J had instead resold for ₹2.2 lakh, J would keep the extra ₹20,000, and K would have no claim to it.