

¹[Chapter VIII]

Of Transfers of Actionable Claims

130. Transfer of actionable claim—(1) The transfer of an actionable claim ²[whether with or without consideration] shall be effected only by the execution of an instrument in writing signed by the transferor or his duly authorised agent. ³* * * shall be complete and effectual upon the execution of such instrument, and thereupon all the rights and remedies of the transferor, whether by way of damages or otherwise, shall vest in the transferee, whether such notice of the transfer as is hereinafter provided be given or not:

Provided that every dealing with the debt or other actionable claim by the debtor or other person from or against whom the transferor would, but for such instrument of transfer as aforesaid, have been entitled to recover or enforce such debt or other actionable claim, shall (save where the debtor or other person is a party to the transfer or has received express notice thereof as hereinafter provided) be valid as against such transfer.

(2) The transferee of an actionable claim may, upon the execution of such instrument of transfer as aforesaid, sue or institute proceedings for the same in his own name without obtaining the transferor's consent to such suit or proceedings and without making him a party thereto.

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1. Substituted by the Transfer of Property Act, 1900 (II of 1900) section 4, for original Chapter VIII.
 2. Inserted by Act XX of 1929, section 62.
 2. The words "and notwithstanding anything contained in section 123" repealed by Act XX of 1929, section 62.

Exception—Nothing in this section applies to the transfer of a marine or fire policy of insurance ¹[or affects the provisions of section 38 of the Insurance Act, 1938 (IV of 1938)].

Illustrations

(i) A owes money to B, who transfers the debt to C. B then demands the debt from A, who, not having received notice of the transfer, as prescribed in section 131, pays B. The payment is valid, and C cannot sue A for the debt.

(ii) A effects a policy on his own life with an Insurance Company and assigns it to a Bank for securing the payment of an existing or future debt. If A dies, the Bank is entitled to receive the amount of the policy and to sue on it without the concurrence of A's executor, subject to the proviso in sub-section (1) of section 130 and to the provisions of section 132.

Case Law

Section 130—The true test for determining the nature of the claim sought to be assigned should be to see that the claim when it does accrue, partakes of the character of a beneficial interest in movable property not in the possession, either actual or constructive, of the claimant which can be recovered by an action. 7 DLR 406.

Partners' share in partnership, how may be assigned.

The interest of a partner in a partnership concern is property and can only be assigned under section 130 of the Transfer of Property Act by the execution of an instrument in writing signed by the transferor or his duly authorised agent, and is complete and effectual upon the execution of such instrument.

Where there was only an agreement to transfer and no assignment deed was executed,

there was no transfer of the partner's share. *Abdul Hakim vs Abdul Majid* PLD 1957 (WP) Karachi 379—PLR 1957 (1) WP 409.

Pronote assigned or endorsed in favour of third person—Endorsee may sue surety for the debt as well.

The liability of a surety is co-extensive with the principal debtor and if the debtor remains liable then the surety is also liable in respect of that claim. The mere fact that the creditor has assigned his claim in favour of a third party will not discharge the surety because he is in no way prejudiced by that fact. The guarantee given by the surety is for the payment of the debt and it matters very little who recovers debt. By assigning the debt the surety's position is not in any way changed and prejudiced and he continues to remain liable for the original debt in view of the guarantee given by him. A surety is not discharged if the pronote is assigned in favour

1. Added by the Insurance Act, 1938 (IV of 1938), section 121.

of a third person, the transfer of the right and liabilities under the pronote must be made by assignment or endorsement according to law. The provisions of section 130.

Transfer of Property Act, only require that an assignment should be in writing. It does not require it to be in any particular form or to be couched in technical language. The endorsement of drawee of pronote in favour of plaintiff is in the nature of an assignment and on the assignment of the debt to a third person all the rights attached to it including the guarantee are acquired by the assignee, who can file a suit against the surety. The incidence of the transfer of an assignment is that the assignee acquires all the rights and interest of the assignor and is entitled to sue the person liable for the debt. *Fidaally vs Iqbal Shabbir* PLR 1960 (WP) Karachi 241—PLR 1960 (1) WP 544 Rel (1918) 5 KB 833; *ILR (1942) Cal 11*; *ILR (1944) 2 Kar 516*; *1905 AC 454*; *AIR 1935 All 837*; *IC 212, ILR 30 Mad 75*.

✓—Section 130 contains a special scheme having some of the features both of the English Common Law and of the principles of equity, But it is unsafe, to decide a case under the section by any extensive reference to the English authorities. *38 CWN 1190*. There is a contradiction between the provisions of section 130 and those of section 134. While section 130 says "all the rights and remedies of the transferor vest in the transferee," the words in section 134 are "the residue, if any, belongs to the transferor." The wording ought to be, "the residue, if any, shall be transferred by the original transferee to the original transferor." *38 CWN 1190*. As to applicability of section, see *1926 C 447*;

1928 MWN 190. Section 130 applies to absolute transfers as well as to equitable charges in respect of future property. An equitable assignment of or equitable charge can only be created by a document in writing as provided by section 130.

A mere contract to assign future salary does not create an equitable charge. *23 PLT 35*. That section 130 can be invoked to justify the assignment of a debt as an actionable claim even in Punjab. *43 PLR 439—1941 L 337*. In provinces where the Transfer of Property Act does not apply, hundi can be assigned orally subject to all equities as a chose in action independently of the Negotiable Instruments Act so as to give the assignee a *locus standi* to sue thereon *195 IC 185—1941 Pesh 45*. Section has no application to an assignment of a mortgage debt which is not an actionable claim under section 3: *123 IC 297—1930 S. 77*. Section is not exhaustive. See *90 IC 111—1926 S 78*. The dedication of an actionable claim to a deity or god or temple is not covered by this section. See *96 IC 1004—1926 N 469*. See also *1927 MWN 525*; *9 MLT 102—9 IC 287*. Transfer of *mesne profits* along with land—Whether right of action continues with transferor. See *1927 MWN 525*.

The transfer of an actionable claim whether as an outright transfer or by way of security is governed by section 130. The deposit of the document creates no charge or lien at all on the debts. Where a letter of authorisation was given directing the addressee to draw out the money due to him from the PWD but there was no assignment of the debt, the letter did not convey any rights to recover the debts. *7 R 365*. A debt

secured on immovable property can be transferred apart from security. 35 CWN 1034—1931 PC 245 (PC). An assignment of a debt to be valid must be of the whole debt. Where partners in a firm become insolvent and there is also a minor partner the assignment by the Official Assignee of debt due to the firm cannot be said to be of the whole debt because the minor's interest in the partnership cannot be assigned. Even assuming that assignment of part of a debt can be made, assignment of part which is indefinite is invalid. 62 C 510—1938 C 377—39 CWN 606. An assignment of a part of a debt is not invalid. 1939 MWN 1054—1939 Comp C 262—1940 M 258. In equity, a part assignment of a debt is valid and a suit brought thereon is maintainable provided the assignor and possibly other assignees, if any, are made parties to the suit. There is nothing in section 130 to prevent the application of this equitable rule. 43 PLR 439—1941 L 337.

Where a mortgaged bond was transferred by an endorsement to the plaintiff who sued on it, the document on which suit was based cannot be regarded as a mortgage bond because the security had not been legally transferred. But there was no reason why the Court should not regard it as a simple money bond which had been transferred by the endorsement to the plaintiff and there was a legal transfer 1935 A 837. The transfer of a right to arrears of rent and current dues can only be made by an instrument in writing under section 130 : 1923 p 165. Debtor cannot recover unpaid balance of consideration in respect of bond executed by him in favour of creditor and such right cannot be assigned. 1930 L 100. When a debt is assigned interest payable on it goes with

it. 1939 MWN 1054—1939 Comp C 262—1940 M 258.

Mortgage failing, as such, can be treated as transfer. 31 CWN 179—1926 PC 129 (PC). On a sale of property a contract to re-sell it to vendor at a particular time is assignable. 32 CWN 850—1928 PC 174—55 MLJ 198 (PC). Whether the definition of "transfer of property" applies to section 130 is doubtful. 1926 N 469—96 IC 1004. As to the meaning of the word "transfer" in this section, see 37 B 198—17 IC 627; 21 IC 316; 14 IC 144. Section refers not merely to the transfer of absolute rights but also to the creation of a mere charge. 57 C 328—34 CWN 605—1930 C 536. Where the transfer is made of a contract, and the transaction amounts to a *novatio* under section 62, Contract Act, no written instrument is required, 31 NLR (Supp) 154—161 IC 787—1936 N 37. The transfer under this section must be of the whole debt and not of a portion only. 48 MLJ 432—1925 M 753; 62 C 510—39 CWN 606. Where a debt is a joint debt, an assignment by one of the joint creditors would not enable the assignee to enforce the payment of the whole debt 174, IC 220—1937 C 532. A right to recover goods lent or damages on failure to return them is a mere right to sue and not an actionable claim. 1923 N 67(2).

A claim for money due on a settlement of accounts regarding some across transactions between the parties is an actionable claim, and can be assigned. 32 Bom LR 894—1930 B 409. The position and rights and obligations of one partner in a partnership in relation to the other partners is clearly not a chose in action and cannot be assigned. But the share of a partner in a partnership is property and the right to recover it is a chose

in action assignable under the Transfer of Property Act. *194 IC 380—1941 s. 73*. The section is not exhaustive of the modes by which the interest of one person may be transferred to another. *90 IC 111*. Assignment must be in writing *9 IC 287—9 MLT 102; 1923 p 163*. Transfer of bales of cotton held as security from one creditor to another—Substitution of liability—Necessity for writing. See *34 Bom LR 837*. Oral assignment is not valid. *15 IC 380—11 MLT 246*. But an oral assignment is valid in the Punjab since the Act is not in force there. *134 IC 121 (Lah)*. The writing effecting the transfer may be on a separate deed and need not necessarily be on the document transferred. *12 MLJ 351*. Transfer may also be effected by way of a separate and independent letter: *16 IC 708; 7 R 365—1929 R 318; 37 B 198*; or entry in an accounts book: *47 IC 749*; or recitals in a partition deed: *8 IC 83*. An assignment of the right under an instalment bond, by the person in whose favour it was executed by means of a letter of assignment, accompanied by delivery of the bond of the assignee, is a valid assignment of debt. (*30 M 75, R*); *13 MLT 77—16 IC 708*.

A document authorising a person to recover the amount of a promissory note from a person, with whom it was deposited by the owner, operates as an assignment of the promissory note, and an attachment of it after assignment is void as against the assignee. *1912 MWN 524—14 IC 279*. Power given by a submission clause in a contract, being a personal covenant, cannot be validly transferred. *26 SLR 368*. When the amount deposited by a person as security for the due performance of the office is assigned to a

third person, the attachment by a creditor of the assignor, after the assignment, is not valid, as under section 130 the assignee's right was complete against the assignor on the date of the assignment. Though section 130 does not apply the principle therein applies. *1912 MWN 461—14 IC 144*.

The right to recover the insurance money payable under a policy of life assurance on the death of the assured person in an actionable claim as defined by section 3 and section 130 governs the assignment of such a policy. *31 SLR 98—1937 S. 181*. Life Insurance policy—Assignment to wife of assured—Provision for reverter to assured in certain contingencies—If absolute assignment (*1939*) *1 MLJ 261*. *IC 130* applies not only to absolute assignments of actionable claims but also to assignments by way of charge, and a deposit of a policy of insurance by way of security can, therefore, be effected only by an instrument in writing, showing that the deposit is being made with the intention of creating a title in the person with whom the deposit is made. *44 CWN 593*. Mere deposit of an insurance policy with the payee of a property by way of a security does not operate as a transfer or assignment of the same and no security is created thereon. *30 IC 602—8 Bur LT 157; 1941 M 147—(1940) 2 MLJ 891; 37 B 198—40 IA 24—24 MLJ 60 (PC)*. Nor does mere *delivery of documents of title* constitute a transfer. *51 C 972—28 CWN 894*.

But where clear words are used mentioning the sale of a bond, the transfer is complete. *1924 L 684*. A decree constitutes an actionable claim. The words "duly

authorised agent" in section 130 must be taken to mean "lawfully authorised" agent. When the law requires a person to be lawfully authorised, ratification has retrospective effect and cures a defect in the authority. Where an agent holding a power of attorney which does not give him power to assign a decree obtained by his principals, assigns that decree to a third person purporting to act under the power, the assignment would not be valid so as to entitle the assignee to obtain execution; but if the decree-holders (principals) ratify the action of the agent, expressly recognising the assignment and receiving consideration, that validates the assignment retrospectively 188 IC 878; 49 LW 375—1939 M 543. Assignment of money lying in Court—Form or words necessary—Attachment of amount before judgment followed by decree on admission—Court requisitioning amount from custody Court in pursuance of admission of defendant—Effect of 1937 ALJ 348—1937 A 424.

The *hypothecation of an actionable claim operates as a deed of assignment* under section 130. 19 p 715—1940 p 683. A mere "hypothecation" or "charge" is a "transfer" for the purpose of section 130(1). 175 IC 786—1938 R 1. A *promissory note* executed in the name of a particular person which is allotted to another on a partition is not transferred to the allottee by operation of law; and the allottee of the note cannot therefore maintain a suit on it without an endorsement by the payee. 36 Bom LR 807—1934 B 356. The *Negotiable Instruments Act* has not affected the transferability of a promissory note by assignment as a chose in action apart from endorsement 61 C 425—38 CWN 465—1934 C 549. The endorsee of a negotiable

instrument for value, which was secured by a mortgage, cannot have the benefit of the mortgage security, in the absence of a registered assignment of that also 44 M 965—41 MLJ 297.

A *deposit receipt* is not a negotiable instrument. But, where the money is immediately payable, an endorsement or the receipt, together with an order to pay an individual, will entitle that individual to receive the money 58 B 618—28 IC 114—16 Bom LR 534. The mere fact of deposit of an insurance policy by way of pledge creates no lien in favour of the creditor. A letter setting out the policy as an article pledged is merely evidence of the deposit and does not amount to a valid assignment of the policy and confers no rights on the creditor. 52 LW 822—(1940) 2 MLJ 891—1941 M 147—ILR (1941) M 378. A fixed deposit receipt held by a depositor of moneys in a Bank is not a negotiable instrument and an endorsement on the back thereof by the holder does not have the same effect as an endorsement of a bill of exchange or promissory note. To pass title, there must be an assignment in writing as required by section 130.

An endorsement on the back and a letter by the depositor to the Bank informing the Bank that he had assigned the amount to the endorsee would not amount to an assignment in writing within the meaning of section 130. 50 LW 759—1939 Comp C 285—1940 M 157. Where it is agreed between the parties to a document that one portion of certain money lying in deposit in a bank in the name of one of those parties should thence forward belong to one of them and the other portion to the other, the document can be viewed as an

assignment of an actionable claim within the meaning of section 130. If the intention is fairly clear that the money in deposit in the bank should be split up into two parts, one of which is to go to one of the parties and the other to the other party, that operates as an assignment of the entire debts in two separate portions to two separate individuals. *1938 M 236—(1938)1 MLJ 56.*

Where a subscriber to a chit fund conducted by a company deposits money in a Bank and authorises the Bank to pay the future instalments of subscriptions in respect of the chit to the company as and when they fall due from and out of the deposit in the Bank, it operates as an assignment of the moneys in favour of the company under section 130 of the Transfer of Property Act. *1939 MWN 1054—1939 M 258*, executing a document authorising a person to collect the amount due under a pronote is an assignment of it. *14 IC 279—1912 MWN 524.* Mere recital of receipt of the amount due under a pro-note without express words of transfer does not effect a transfer. *59 IC 943—39 MLJ 273.* But no technical language in any particular form is necessary. Only the intention to transfer must be made out; consent of debtor is unnecessary. *42 C 684; 89 IC 735—42 CLJ 43; 87 IC 382—48 MLJ 462.* Section 130 applies to Muhammadans and a Muhammadan woman wishing to release her husband from his liability to pay her dower, must, if the release is to be valid and binding, do so by means of an instrument in writing. Such a transaction cannot be effect orally. *20 P 798—23 PLT 72—1942 P 210.*

Where one coparcener retires from the membership of a joint Hindu Mitakshara

family business and renounces his share therein, no assignment is necessary by him in favour of the other coparceners in respect of the actionable claims belonging to the family. The legal representative of the retiring member is not a necessary party to suit by the surviving coparcener or coparceners on the basis of the debt due to the family. *63 C 194—40 CWN 888.*

Equitable Assignment.—An agreement between a debtor and a creditor that the debt shall be paid out of a specific fund coming to the debtor, to his creditor upon a person owing money or holding funds belonging to the giver of the order directing such person to pay such fund to the creditor, operates as an equitable assignment of that part of the debt or funds to which the agreement or order refers. *14 L 325—1933 L 102.* Equitable chose in action—Amount left with mortgagee to pay off creditor of mortgagor—Less sum required than amount left—Assignment by mortgagor of right to recover balance left with mortgagee—Validity of—If mere right to sue. *1937 ALJ 518—1937 AWR 444.* The right of a vendee, where it is found that the vendor had no title, to recover the purchase price from the vendor is an actionable claim which can be validly assigned. *54 LW 491—(1941) 2 MLJ 695.* Liability to arise in future.

Right of suit.—As to who can sue after transfer of an actionable claim, see *1927 M 817.* The express right of the assignee to sue a debtor in his own name conferred by section 130(1), and the "possession, order or disposition" giving rise to a condition of "reputed ownership" under section 52(2)(c), Presidency Towns Insolvency Act, are two

entirely separate and distinct things. It may very well be that so far as the assignee's right to sue is concerned it is complete, and yet there may be left with the assignor such an appearance of continued or reputed ownership as to invoke the order and disposition clause 175 IC 786 1938 R 1. The hypothecation of a pronote is a transfer of an actionable claim and the transferee is entitled to sue on it. 38 M 297—25 MLJ 356. Lease by mortgagor—Covenant by lessee to pay Government dues—Default—Assignment of mortgagor's rights to mortgagee—Suit by mortgagee—Maintainability. 59 IA 41—11 P 266—36 CWN 280—62 MLJ 287 (PC).

When debts are transferred by way of sale and the vendor in spite of the sale, realises one of such debts, it is only just and equitable that the vendee should be allowed credit for the amount so realised out of the consideration. 128 IC 763—1930 A 875. Partnership—Dissolution—Partners taking payment and giving up interest in assets in favour of others—Document in writing is

necessary. *ILR (1939) Kar 344—1939 S. 288*. See also 1941 S. 73. The effect of section 130 (I) is, in the cases which it covers, to confer without notice to the debtor, a legal title on the transferee as opposed to an equitable title only. 175 IC 786—1938 R 1. A *pahunch* is an ordinary receipt. At best it evidences acknowledgment of a debt, and is a chose in action or an actionable claim. Under section 130 it is only transferable by an instrument in writing, such transfer being subject under section 132, to the equities provided therein. 32 SLR 640—1938 S 24.

Section 130—Actionable claim, transfer of—The right under a contract of reconveyance is transferable or assignable unless it is taken away by express or implied terms of agreement and, after taking into consideration the recitals in the deed of agreement and in the absence of any limitation of the right of repurchase within the family of the promisee the right is validly assignable to the stranger. *Seru Mia vs Most Fazilatonnaessa & others 1 BSCD 296*.

¹[130A—Transfer of policy of marine insurance—(1) A policy of marine insurance may be transferred by assignment unless it contains terms expressly prohibiting assignment, and may be assigned either before or after loss.

(2) A policy of marine insurance may be assigned by endorsement thereon or in any other customary manner.

(3) Where the insured person has parted with or lost his interest in the subject-matter insured, and has not, before or at the time of

1. Section 130A inserted by the Transfer of Property (Amendment Act, 1944 (VI of 1944), section 2.

so doing, expressly or impliedly agreed to assign the policy, any subsequent assignment of the policy is inoperative:

Provided that nothing in this sub-section affects the assignment of the policy after loss.

(4) Nothing in clause (e) of section 6 shall affect the provisions of this section.]

131. Notice to be in writing, signed—Every notice of transfer of an actionable claim shall be in writing, signed by the transferor or his agent duly authorised in this behalf, or, in case the transferor refuses to sign, by the transferee or his agent, and shall state the name and address of the transferee.

Case Law

To attract the operation of the exception in section 130, there must be a strict compliance with the requirements of section 131. *27 CWN 733—1923 C 719*. The notice must give the address of transferee. Mere giving of the address of the solicitors of the assignee is insufficient. *27 CWN 233—1923 C 719; 30 IC 278—8 Bur LT 266*. The validity of an assignment must be tested with reference to the law as it stood at the assignment. The provisions of section 131 as it originally stood did not invalidate an assignment for want of a notice to the debtor, but it only suspended the operation of the assignment until notice was given *13 CLJ 641—10 IC 510*. The debtor cannot refuse to recognise the transfer, provided he has notice of it. Payment to the assignor, after notice of assignment, will not absolve the debtor from liability to the transferee. Notice of assignment may have conditions or qualifications attached to it, and such notice is perfectly valid. If the transferor gives an invalid notice, the transferee is entitled to give a legal notice, so as to prevent the original debtor from defeating the assignment. *33 M 123—4 IC 420*.

132. Liability of transferee of actionable claim—The transferee of an actionable claim shall take it subject to all the liabilities and equities to which the transferor was subject in respect thereof at the date of the transfer.

Illustrations

(i) A transfers to C a debt due to him by B, A being then indebted to B. C sues B for the debt due by B to A. In such suit B is entitled to set off the debt due by A to him; although C was unaware of it at the date of such transfer.

(ii) A executed a bond in favour of B under circumstances entitling the former to have it delivered up and cancelled. B assigns the bond to C for value and without notice of such circumstances. C cannot enforce the bond against A.

Case Law

Section 132—Principle of this section is also applied to transfers of mortgage rights carrying with it all the rights and obligations attached to it. *109 IC 195—1928 N 223*. Set-off can be claimed against the creditor's assignee, though the assignee bought the debt in a Court-auction *16 IC 686—1912 MWN 1235; 3 L 414—69 IC 720—1923 L 261; 30 M 235; 1912 MWN 1235; 3 L 414; 16 C 619*. But if the debtor assents to pay the money due as per assignment, he cannot afterwards claim any equity as against the assignee *31 IC 152—1915 MWN 822*. Where the assignee of a

co-sharer's right to profits sued the lambardar in the Revenue Court and the defendant claimed a set-off in respect of a decree for revenue he had obtained against the assignor.

Held: that the defendant could not plead set-off or claim the benefit of section 132. *1934 A 155—56 A. 624 (FB)*. A right to recover arrears of profits assignment in a conveyance of a village share is not an actionable claim but a benefit arising out of land and therefore immovable property. Hence section 132 is not applicable. *165 IC 414—1936 N 217*.

133. Warranty of solvency of debtor—Where the transferor of a debt warrants the solvency of the debtor, the warranty, in the absence of a contract to the contrary, applies only to his solvency at the time of the transfer, and is limited, where the transfer is made for consideration, to the amount or value of such consideration.

134. Mortgaged debt—Where a debt is transferred for the purpose of securing an existing or future debt, the debt so transferred, if received by the transferor or recovered by the transferee, is applicable, first, in payment of the costs of such

recovery: secondly, in or towards satisfaction of the amount for the time being secured by the transfer; and the residue, if any, belongs to the transferor or other person entitled to receive the same.

Case Law

Section 134—Section applies to a charge-holder also. *23 M 35; 34 M 53*. (The holder of a charge on a debt due to his debtor is a transferee of an actionable claim and is entitled to recover the debt from the transferor's debtor. As to whether an hypothecation of a pronote amounts to an assignment without express words to the effect, see *16 IC 601—23 MLJ 430*. If the transferee by the hypothecation of a pronote allows it to be barred, he will be liable to the transferor to that amount. *38 M 297—25 MLJ*

356. The right of the transferee by mortgage of a chose-in-action to sue on the claim arises on the date when the money becomes payable and not date of mortgage *56 IC 146—11 LW 258*. Where a debenture creates a charge on secured debts but the charge is not enforceable against the security on account of its not being registered under the Registration Act, the debts, though secured upon immovable property, are movable assets, which the debenture-holder has the right to realise. *35 CWN 1034—1931 PC 245 (PC)*.

¹[135. Assignment of rights under policy of insurance against fire—Every assignee by endorsement or other writing, of a policy of insurance against fire, in whom the property in the subject insured shall be absolutely vested at the date of the assignment, shall have transferred and vested in him all rights of suit as if the contract contained in the policy had been made with himself.]

Case Law

Section 135—Carriage of goods by railways—Insurer may sue for damages only on formal assignment of right of action by the owner.

assignment can only bring an action in the name of the insured and not in his own name.

Assignment of a claim is an assignment of an actionable claim and not the transfer of a mere right to sue. Such a case would be

The insurer in the absence of an

1. Substituted by the Transfer of Property (Amendment) Act, 1944 (VI of 1944), section 3, for the original section 135.

clearly distinguishable from those where the benefit sought to be assigned was *coupled with liability*. *Co-operative Insurance Society of Pak Ltd vs Federation of Pak* PLD 1960 (WP) Lahore 332—PLR 1961 (1) (WP) 650.

—Subrogated person—Cannot sue in his own name.

Neither section 135A of the Transfer of Property Act nor any other provisions of law,

empowers a person subrogated under that section to sue in his own name by mere virtue of his subrogation. *Queensland Insurance Co Ltd vs British India Steam Navigation Co Ltd* PLD 1958 (WP) Kar 389—1960 KLR 272—PLR 1959 (1) WP 1069.

—This section has no application to sales in execution by virtue of section 2(d) of the Act, 9 IC 729—9 MLT 319.

¹[135A—Assignment of rights under policy of marine insurance:

(1) Where a policy of marine insurance has been assigned so as to pass the beneficial interest therein, the assignee of the policy is entitled to sue thereon in his own name; and the defendant is entitled to make any defence arising out of the contract which he would have been entitled to make if the action had been brought in the name of the person by or on behalf of whom the policy was effected.

(2) Where the insurer pays for a total loss, either of the whole, or in the case of goods, of any apportionable part, of the subject-matter insured, he thereupon becomes entitled to take over the interest of the insured person in whatever may remain of the subject-matter so paid for, and he is thereby subrogated to all the rights and remedies of the insured person in and in respect of that subject-matter as from the time of the casualty causing the loss.

(3) Where the insurer pays for a partial loss, he acquires no title to the subject-matter insured, or such part of it as may remain, but he is thereupon subrogated to all rights and remedies of the

1. Section 135A inserted by the Transfer of Property (Amdt) Act 1944, (VI of 1944), section 4.

insured person as from the time of the casualty causing the loss, insofar as the insured person has been indemnified by such payment for the loss.

(4) Nothing in clause (e) of section 6 shall affect the provisions of this section.]

Case Law

Section 135A—Carriage of goods by air—Insurer may sue for damage to goods only on formal assignment of rights of action.

Section 135A of the Transfer of Property Act does not apply to contracts of insurance relating to carriage of goods by air. There is no statutory law to enable the insurant to sue for the recovery of damages as the substitute of the insured person.

The insurers have, therefore, to make the best use of the doctrine of subrogation alone.

The doctrine, however, requires a formal assignment of the rights of action of the insurant.

In the absence of such an assignment, the insurer cannot sue for damages recoverable by the insurant from the air transport company. *Queensland Insurance Co Ltd vs Pakistan International Airlines*, PLD 1959 (WP) Karachi 275—1960(1) KLR 314—PLR 1959(2) WP 1419 Rel 11 QBD 380.

—Insurer may claim the position of subrogee only—Right to sue for damage.

Subrogation does not cause any extinction of the rights of the insured to sue the person liable to make good the loss suffered by him. All that the subrogee might claim in such circumstances is a similar

equitable right to sue in the name of insured if the latter does not take appropriate action.

Section 135A of the said action neither vests any rights in the subrogee nor does it give him any express right to sue in his own name. *Trans Oceanic Steamship Co Ltd vs Issak Haji Shakoor Haji Jamal Co* PLD 1960 Dacca 885—12 DLR 690.

—There is no justification to engraft the peculiar English procedure of strict common law in this country because it is not possible in this country to compel the insured through a speedy remedy in a Court of equity to lend his name to sue and the very notion on which this English practice is based was got rid of by sub-clause (4) of section 135A of the Transfer of Property Act. *East & West Steamship Co vs Karachi* 317—PLR 1961 (1) WP 263, *Diss* PLD 1958 Kar 389, PLD 1959 Kar 275; PLD 1960 Lah 332, PLD 1960 Dacca 884; AIR 1957 Cal 190.

—Subrogation.

Insurance company can be subrogated in the position of the insured and thereby become vested with the right of the latter to sue the person liable.

Insurance company can be subrogated in the position of the insured and thereby

become vested with the right of the latter to sue the person liable originally to be insured. *12 DLR 690.*

In case of Marine Insurance the Insurer having paid up loss sustained by the assured and being thus subrogated to the position of the assured is entitled to sue tort-feasor i.e., the person who has caused the loss, in his own name. *East & West Steamship Co vs Queensland Insurance 16 DLR (SC) 61.*

Even after subrogation the insured can file a suit for recovery of damages.

Though section 135A of the Transfer of Property Act only has given right to the

insurer after subrogation to sue on his own behalf but that has not taken away the right of the insured to file a suit for and on behalf of the insurer after getting compensation from the insurer. *M Ismail and Sons vs Trans Oceanic Steamship Co Ltd 17 DLR 269.*

Section 135A—Though the introduction of section 135A of the Act only has given right to the insurer after subrogation to sue on his own behalf but that has not taken away the right of the insured to file a suit for and on behalf of the insurer after getting compensation from the insurer. *Dula Meah Cotton Spinning Mills Ltd, and another vs MV Mehedinta and others 47 DLR 551.*

136. Incapacity of officers connected with Courts of Justice—

No Judge, legal practitioner or officer connected with any Court of Justice shall buy or traffic in, or stipulate for, or agree to receive any share of, or interest in, any actionable claim, and no Court of Justice shall enforce, at his instance, or at the instance of any person claiming by or through him, any actionable claims, so dealt with by him as aforesaid.

Case Law

Section 136—Persons mentioned in this section should not be placed in a position in which they may be tempted to use the influence or information which they get by virtue of their office unduly to the prejudice of other persons. *11 M 56—17 IC 544. Right to arrears of rent in respect of property purchased by a pleader along with the property is an actionable claim and it is not*

enforceable. 40 C 657—17 CWN 649; 19 IC 129; 8 PLT 201—1927 P 2; 4 P 43—1925 P 310. But a mere sale of arrears of rent by a legal practitioner is not invalid. 97 IC 373—1927 p 2. Attachment of provident fund in execution—Fund assigned to legal practitioner prior to suit—Right of parties—Suit by assignee—Maintainability 1935 C 756. A decree does not come within the

category of actionable claims, but the principle involved is the same. *ILR (1938) M 399—47 LW 192—1938 M 276 (FB)*.

A decree is not an actionable claim and transfer of it in favour of a pleader is not invalid. *62 IC 255—40 MLJ 124*. A pleader's purchasing an actionable claim from his own client is unprofessional conduct. *37 M 238—23 MLJ 447*. A transfer of an *unpaid dower* debt relates to an actionable claim and is hit at by section 136 where the transferee is a legal practitioner *54 A 499—1932 A 345*. The words "trafficking in" may in certain circumstances include the transaction of sale, but it connotes something more than a mere sale. But whether a mere sale would amount to "trafficking" in any particular circumstances is a question of fact. *97 IC*

373—1927 p 2—8 PLT 201. As to whether section applies to *sales in execution*, see *23 C 805; 1927 C 619; 15 M 389*. In any event the Courts will look with suspicion on such transactions even in Court sales. See *15 M 389; 46 CLJ 225; 1927 C 691*. An assignment of a bond in favour of a Special Magistrate and an Honorary Assistant Collector is void under section 136. The result of it is that no rights pass from the transferor to the transferee, and the owner of the bond has a right to maintain a suit on the basis of it. *162 IC 229—1936 O 275*.

Section 136—It is incumbent on the landlord to call and examine the postal peon who delivered the notice at the premises of the addressee. *Hajee Khabiruddin Ahmed vs Md Salam Kabir. 34 DLR (AD) 271*

137. Saving of negotiable instruments etc—Nothing in the foregoing section of this Chapter applies to stocks, shares, or debentures, or to instruments which are for the time being, by law or custom, negotiable, or to any mercantile document of title to goods.

Explanation—The expression "mercantile document of title to goods" includes a bill of lading, dock-warrant, warehouse-keeper'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.

Case Law

Section 137—Section only deals with the method of transfer, and not with effect or result of transfer. *1923 R 1*. A promissory note can be transferred under the general law by an assignment in writing even in places to which the Act has not been extended, and apart from the Act, such assignment gives to the assignee a right of suit on the note; but it would not render the transferee a holder in due course". *66 IC 401—11 LBR 174*. Section 137 is no bar to the transfer of a negotiable instrument otherwise than by endorsement. The Transfer of Property Act not being in force in the Punjab, an oral assignment is valid in that province. *ILR (1940) L 84—1939 L 501*. Section gives an extended privilege to mercantile documents and is in no way restrictive. There is nothing to prevent the transfer of a promissory note by deed without endorsement. *138 IC 262—35 LW 755*. As to assignment of negotiable instruments, see *21 MLJ 80-8 IC 33; 28 IC 114*.

Negotiable instruments can be enforced by an assignee only when the assignment has been effected in accordance with the provisions of the Act, and transfer of the right of a party under a note to order to someone else, unless effected by operation of law, must be effected by endorsement and delivery and not otherwise *13 P 655—1934 P 382*. Where therefore a pronote is assigned by the real owner and the benamidar executes an acknowledgment admitting that he was merely a benamidar and the assignor was real beneficiary, the assignee is not entitled to sue on the pronote, specially when the payee of the note has expressly released the maker. No consideration is required for such a release and the fact that it was collusive is immaterial. Assignment of railway receipts passes title to goods only when they are proved to be negotiable. *11 LBR 341—1923 R 1*. *Delivery order* is a document of title *38 C 127*. As to *Mate's receipt*, see *22 IC 311*. As to *debentures*, see *57 C 328*.

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1. The Schedule was omitted by the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act VIII of 1973), section 3 and Schedule, (with effect from the 26th March, 1971).

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