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BILLS OF LADING - CURRENT PROBLEMS

by

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The purpose of this paper is to consider certain problems relating to Bills of Lading, those problems being current, although not necessarily only of recent origin. It is convenient to classify them by reference to the three principal aspects of a Bill of Lading.

The traditional conception of the Bill of Lading is that of a document, issued by the master of a vessel, acknowledging that goods referred to in the document have been received for carriage aboard the vessel. Commercial law, giving expression to mercantile practice, has expanded the significance of such a receipt in two major respects. First, the Bill of Lading has come to be treated as a document of title, representing the goods themselves, the indorsement or negotiation of which will be effective to transfer property in the goods. Second, the document is regarded as evidence of the contract pursuant to which the transportation of the goods is undertaken, and the terms and conditions printed on it, commonly at considerable length, are terms and conditions of that contract. These principles are reflected in statutory provisions, such as s.5 of the Usury, Bills of Lading, and Written Memoranda Act of New South Wales, to the effect that every consignee of goods named in a Bill of Lading, and every indorsee of a Bill of Lading, to whom the property in the goods therein mentioned shall pass upon or by reason of such consignment or indorsement, shall

have transferred to and vested in him all rights of suit and be subject to the same liabilities in respect of such goods, as if the contract contained in the Bill of Lading had been made with himself.

It is by reference to the role of the Bill of Lading as a negotiable document of title to goods, evidence of a contract of carriage, and a receipt, that the matters the subject of this paper will be considered.

1. The Bill of Lading as a negotiable document of title.

It is quite possible, and not uncommon, for a carrier of goods for transportation by land, sea or air, to issue a document which serves as a receipt for the goods, and which contains or evidences the contract pursuant to which the goods are to be carried, but which is not intended to operate as a negotiable document of title to the goods. Such a document lacks an essential characteristic of a Bill of Lading, and is sometimes described as a "Waybill". The motives which might lead the parties involved to prefer such a document to a Bill of Lading can be varied. It may be that in the circumstances negotiability is regarded as an unattractive consequence. There may be a desire to avoid the possibility of fraud or theft. There may be no difficulty about identifying the consignee and recognition of him by the carrier at the point of delivery is simple. Whatever may be the reasons for preferring a Bill of Lading, on the one hand, or a different type of document, such as a Waybill on the other, in the case of any given transaction, it is important to avoid confusion between the two. Not only

is there a significant difference between their legal characteristics, but the question may arise whether the contractual arrangements governing the transaction in relation to which the goods are being transported, including those affecting third parties such as financiers, call for one type of document rather than the other.

The problem of ensuring that documents are appropriately identified either as being, or not being, Bills of Lading, appears to have been exacerbated by the developing popularity of "multimodal" transportation arrangements. There is, of course, no reason why a Bill of Lading cannot be used in connection with such arrangements. The use of the combined transport Bill of Lading demonstrates this. However, with the expanding commercial role of persons who provide to members of the public interested in arranging for the transportation of goods a service which comprehends making arrangements for transportation by various means, complications arise. People who are interested in having goods transported may find themselves dealing, not with a shipowner or his agent, but with a person who, as a principal, carries on a business of putting together the necessary arrangements for the transportation of goods by two or more of such modes as sea, air, road or rail. If such a person then issues to the consignor a document evidencing, or containing, the terms and conditions upon which he deals with the consignor, and describes the document as a "Bill of Lading", serious confusion can result. If, for example, the goods are being transported to a purchaser pursuant to a contract of sale, and the purchaser has made arrangements with a Bank or other financier to pay

for the goods, by letter of credit, then those arrangements may call for the delivery to the Bank or other financier of a "Bill of Lading". That requirement would not normally be satisfied merely by the presentation of a document which describes itself in that fashion.

As an illustration of the kind of commercial activity that may be engaged in and in some circumstances give rise to these problems one may consider the description of the business of the defendants given in the New Zealand case, *"The Maheno" (1977) 1 Lloyd's Law Reports 81:*

> *"The trial judge described that business as follows: 'The defendants, who issued the consignment note, are transport operators in Australia. They carry on business as "freight consolidators", a new term replacing the previous expression "freight forwarders". The defendants do not actually effect the carriage of goods to New Zealand although they have shipping of their own for Australian interstate purposes. It is their business to accept small consignments which are consolidated into a type of container called a "sea-freighter" which is supplied by the Union Steamship Company which owns the Maheno. They consigned the loaded sea-freighter, issued a consignment note, and for the sea voyage they received the traditional bill of lading.'"*

It is apparent that on the facts of that case the kind of problem here being referred to did not arise. What would have caused the problem would have been the issuing by the defendants in that case, not of a "consignment note", but of a "Bill of Lading".

A somewhat different form of business is described in the judgment of the High Court in the case of *Thomas National Transport (Melbourne) Pty. Limited v. May & Baker (Australia) Pty. Ltd. 115 C.L.R. 353 at 369:*

> *"The first appellant...is a company which it will be convenient to call 'TNT'. It has been spoken of as a carrier. This, without more, is misleading. Its business is not so much the carrying of goods by its own servants as procuring for its customers the carriage of their goods from one State to another. But it is not a mere forwarding agent, because it has, by servants or sub-contractors, actual possession of goods as a bailee. This Victorian company is part of a large organisation, there being in the other States associated companies having similar names. The company employs carriers...to pick up goods in and around Melbourne for despatch to other States. Goods are brought by these local carriers to a depot in Footscray, Melbourne. There they are sorted for onward movement. The onward carriage is sometimes by road, sometimes by railway; in the case of goods for Tasmania it is by sea. The goods that go by road are taken from the depot by carriers regularly employed by TNT and by them carried to the State of destination. It is said that most of these interstate carriers and all local carriers are sub-contractors not servants of TNT."*

It is evident that considerable legal difficulties can be involved in disentangling the relationships that exist between the various parties to a transportation arrangemententered into in the above circumstances. The precise significance of these relationships can vary according to whether a claim is being made in contract or in tort. For present purposes, however, what is relevant is the added confusion that can arise by reason of misdescription of the transport document.

The 1980 United Nations Convention on multimodal transport, which so far as Australia is concerned only has the significance of a proposed international regime, is of interest in that it uses the expression "multimodal transport document" to describe the document which corresponds to the traditional Bill of Lading. Article 5 of the Convention provides:

"(1) Where the goods are taken in charge by the multimodal transport operator, he shall issue a multimodal transport document which, at the option of the consignor, shall be in either negotiable or non-negotiable form.

(2) The multimodal transport document shall be signed by the multimodal transport operator or by a person having authority from him."

As is indicated by Article 5, the document may be either negotiable or non-negotiable. In other words, it may have the characteristics of a Bill of Lading, on the one hand, or a Waybill on the other.

The proposed revised set of rules described as *"Uniform Customs and Practice for Documentary Creditors (1983 Revision)"* put out by the International Chamber of Commerce contains provisions to deal with one aspect of the problem here considered. The rules address themselves to the position of a Bank providing documentary credit and the arrangements in relation to that credit, which include the type of document against which credit will be issued. Articles 25 to 29 inclusive provide as follows:

"ARTICLE 25 TRANSPORT DOCUMENTS - GENERAL

Unless a credit calling for a transport document stipulates as such document a marine bill of lading (ocean bill of lading or a bill of lading covering carriage by sea), or a post receipt or certificate of posting :

a) banks will, unless otherwise stipulated in the credit, accept a transport document which:

(i) appears on its face to have been issued by a named carrier, or his agent, and

(ii) indicates dispatch or taking in charge of the goods, or loading on board, as the case may be, and

(iii) consists of the full set of originals issued if issued to the consignor in more than one original, and

(iv) meets all other stipulations of the credit.

b) Subject to the above, and unless otherwise stipulated in the credit, banks will not reject a transport document which:

(i) bears a title as as 'Combined transport bill of lading', 'Combined transport document', 'Combined transport bill of lading or port-to-port bill of lading', or a title or a combination of titles of similar intent and effect, and/or

(ii) indicates some or all of the conditions of carriage by reference to a source or document other than the transport document itself (short form/blank back transport document), and/or

(iii) indicates a place of taking in charge different from the port of loading and/or a place of final destination different from the port of discharge, and/or

(iv) relates to cargoes such as those in Containers or on pallets, and the like, and/or

(v) contains the indication 'intended', or similar qualification, in relation to the vessel or other means of transport, and/or the port of loading and/or the port of discharge.

c) Unless otherwise stipulated in the credit in the case of carriage by sea or by more than one mode of transport but including carriage by sea, banks will reject a transport document which:

(i) indicates that it is subject to a charter party, and/or

(ii) indicates that the carrying vessel is propelled by sail only.

d) Unless otherwise stipulated in the credit, banks will reject a transport document issued by a freight forwarder unless it is the FIATA Combined Transport Bill of Lading approved by the International Chambers of Commerce or otherwise indicates that it is issued by a freight forwarder acting as a carrier or agent of a named carrier.

ARTICLE 26 MARINE BILL OF LADING

If a credit calling for a transport document stipulates as such document a marine bill of lading :

a) *banks will, unless otherwise stipulated in the credit, accept a document which:*

(i) *appears on its face to have been issued by a named carrier, or his agent, and*

(ii) *indicates that the goods have been loaded on board or shipped on a named vessel, and*

(iii) *consists of the full set of originals issued if issued to the consignor in more than one original, and*

(iv) *meets all other stipulations of the credit.*

b) *Subject to the above, and unless otherwise stipulated in the credit, banks will not reject a document which:*

(i) *bears a title such as 'Combined transport bill of lading', 'Combined transport document', 'Combined transport bill of lading or port-to-port bill of lading', or a title or a combination of titles of similar intent and effect, and/or*

(ii) *indicates some or all of the conditions of carriage by reference to a source or document other than the transport document itself (short form/blank back transport document), and/or*

(iii) *indicates a place of taking in charge different from the port of loading, and/or a place of final destination different from the port of discharge, and/or*

(iv) *relates to cargoes such as those in Containers or on pallets, and the like.*

c) *Unless otherwise stipulated in the credit, banks will reject a document which:*

(i) *indicates that it is subject to a charter party, and/or*

(ii) *indicates that the carrying vessel is propelled by sail only, and/or*

(iii) *contains the indication 'intended', or similar qualifications in relation to*

- *the vessel and/or the port of loading - unless such document bears an on board notation in accordance with article 27(b) and also indicates the actual port of loading, and/or*

- *the port of discharge - unless the place of final destination indicated on the document is other than the port of discharge, and/or*

(iv) is issued by a freight forwarder, unless it indicates that it is issued by such freight forwarder acting as a carrier, or as the agent of a named carrier.

.....

ARTICLE 29 TRANSHIPMENT

a) For the purpose of this article transhipment means a transfer and reloading during the course of carriage from the port of loading or place of dispatch or taking in charge to the port of discharge or place of destination either from one conveyance or vessel to another conveyance or vessel within the same mode of transport or from one mode of transport to another mode of transport.

b) Unless transhipment is prohibited by the terms of the credit banks will accept transport documents which indicate that goods will be transhipped, provided the entire carriage is covered by one and the same transport document.

c) Even if transhipment is prohibited by the terms of the credit, banks will accept transport documents which :

(i) incorporate printed clauses stating that the carrier has the right to tranship, or

(ii) state or indicate that transhipment will or may take place, when the credit stipulates a combined transport document, or indicates carriage from a place of taking in charge to a place of final destination by different modes of transport including a carriage by sea, provided that the entire carriage is covered by one and the same transport document, or

(iii) state or indicate that the goods are in a Container(s), trailer(s), 'LASH' barge(s), and the like and will be carried from the place of taking in charge to the place of final destination in the same Container(s), trailer(s), 'LASH' barge(s), and the like under one and the same transport document.

(iv) state or indicate the place of receipt and/or of final destination as 'C.F.S.' (container freight station) or 'C.Y.' (container yard) at, or associated with, the port of loading and/or the port of destination."

The recognition which the law (first, as propounded by the Courts and later, by Statute) has given to the

traditional bill of lading as a document of title is based on mercantile custom. Professor Bonassis, in a paper published in May this year as part of a "Colloquium on Bills of Lading", observed that from the eighteenth century in England commercial practice treated the bill of lading as a document of title and the English Courts gave support to this practice in *Lickbarrow v. Mason (1794) 5 T.R. 683,* whilst it was only in 1859 that the Cour de Cassation established the same rule in France. Once one moves beyond the conventional bill of lading it would be necessary for a party asserting a document to be a document of title to demonstrate the existence of a mercantile custom to support that assertion. The custom would also need to be consistent under the terms of the document (c.f. *Kum v. Wah Tat Bank Ltd. (1971) 1 L.L.R. 439).* The constant interaction between the law and mercantile practice will undoubtedly lead to development in both areas in relation to the subject matter of transport documents as documents of title. It will be important, however whilst this development is going on, that confusion of terms be avoided and that indiscriminate description of documents as "bills of lading" be avoided.

2. The Bill of Lading as evidence of the contract of carriage.

(a) Identity of the carrier

Where the holder of a Bill of Lading brings an action for loss of or damage to his goods, on the basis of a breach of the contract pursuant to which the goods were carried, he will need to join as defendant to his action the other party to the contract of carriage, the "carrier". If the Bill of Lading by its terms identifies the carrier then no particular

problem will arise. However, quite complex contractual arrangements can exist in relation to the operation of a vessel, and it can be difficult for a plaintiff to identify the correct defendant. In a simple world, one would expect to find a correspondence of identity between the legal entity which owns (in the relevant sense) the vessel, employs the master, and is entitled to receive the freight. It has been said, for example, that as a general rule, if a vessel is the subject of a charter and the charter is not by demise, a Bill of Lading signed by the master or by the charterer as authorised agent of the master is usually regarded as a contract with the shipowner and not the charterer. *(Wehner v. Dene Steam Shipping Company (1905) 2 K.B. 92, Tillmanns & Co. v. S.S. Snutsford Limited (1908) 1 K.B. 185).* However, each individual case falls to be decided in the light of the facts and circumstances of that case including the relevant contract documents *(The Venezuela (1980) 1 L.L.R. 393 at 395; Wilston Steamship Co. Limited v. Andrew Wear & Co. (1925) 22 L.L.R. 521; Samuel v. West Hartlepool Steam Navigation Co. (1906) 11 Com. Cas. 115).*

A recent illustration of the difficulties that can arise is found in *Namchow Chemical Industrial Co. Limited v. Botany Bay Shipping Co. (Aust.) Pty. Limited*, decided by the Court of Appeal of New South Wales on the 19th November, 1982. That was a case in which the Judge at first instance had dismissed the claim brought by an indorsee of a Bill of Lading on the ground that the plaintiff had sued as defendant a company which was not the carrier. The Court of Appeal reversed that decision, holding that in the circumstances the defendant

was the carrier. Shortly stated, the circumstances were as follows. The vessel in question was the subject of a time charter from the owner to the defendant, and a voyage charter from the defendant to an Australian exporter of beef tallow. The plaintiff was a purchaser of some of the beef tallow from the exporter, and, as was mentioned, became the indorsee of a Bill of Lading. The plaintiff's claim was for short delivery. The Bills of Lading were signed by an employee of the defendant "for master". The master was an employee of the owner. The defendant was entitled to the freight. The Bill of Lading was on a printed form with the defendant's name on the head of the form, but it did not in terms identify the carrier. The voyage charter party provided for Bills of Lading to be issued in a certain form and to be signed by the master. The Court held that on the true construction of the document and in the circumstances of the case the defendant was the carrier. Behind all the legal argument, and (although not referred to in the reasons for judgment) perhaps a consideration not far removed from the minds of the judges, was the circumstance that none of the documents which came into the hands of the plaintiff made any reference by way of identification to the owner of the vessel or contained any information as to who the owner was. In practice Courts are likely to go out of their way to avoid a conclusion that the proper party for a plaintiff to sue is someone whose identity the plaintiff can ascertain only with considerable difficulty. It may be remarked, however, in relation to this case that, having regard to the primary characteristic of a bill of lading as a receipt for goods issued by the master of a vessel, into whose physical control they are

placed, it would normally require strong circumstances to the contrary to avoid the conclusion that the carrier is the employer of the master.

(b) Exclusion or limitation of liability clauses for benefit of third parties

It is common for Bills of Lading to contain clauses aimed at attracting to servants or agents of the carrier the benefit of terms of the contract of carriage which exclude or limit the liability of the carrier as, for example, by requiring that cargo claims be brought within a specified time. One method by which this is sought to be achieved is the use of the "Himalaya Clause" which, after a somewhat turbulent history, has been twice held efficacious by the Privy Council (*"The Eurymedon" (1975) A.C. 154; "The New York Star" 144 C.L.R. 300*). Another method is by the use of circular indemnity clauses which provide that the shipper undertakes to the carrier that no claim will be made against any subcontractor of the carrier and that if such claim is made the carrier will be indemnified against all the consequences of such a claim. The efficacy of such clauses has been upheld in *"The Elbe Maru" (1978) 1 L.L.R. 206; BHP v. Hapag-Lloyd (1980) 2 N.S.W.L.R. 572; Sydney Cooke Limited v. Hapag-Lloyd (1980) 2 N.S.W.L.R. 587;* and *Mercedez-Benz Australia Pty. Limited v. Scancarriers* - (Rogers, J. 25th November, 1981).

There are two interesting recent developments in this area of the law.

First, in *Godina v. Patrick Operations Pty. Limited*, a judgment delivered on the 7th February, 1983, the New South

Wales Court of Appeal held that the Himalaya Clause is applicable even in cases where there exists only the slightest evidence of the authority of the carrier to contract for the benefit of the stevedore, which is one of the elements of the "agency basis" upon which the clauses are founded. In fact the Court went so far as to suggest that the onus of proof in regard to this element would in the ordinary case lie upon the plaintiff who seeks to prove that the clause is not available to the stevedore. The Court said :

> *"The contract as a whole is in a relatively common form directed to special problems which arise in international commerce and to the Australian trade. The position of stevedores and their immunities qua consignees, where such immunities are procured and contracts initially entered into by the carrier with the shipper of goods, has been settled by judgments of the Privy Council and settled in a manner which fixes their nature. In other words, it would be a special and strange situation where dealing with regular shipping lines for ordinary carriage, the bill of lading would not at least endeavour to confer upon the stevedores these immunities, and the stevedore can be taken to be relying upon the carrier when entering into the contract of carriage having the needs of the stevedore and the protection of the stevedore in this well formulated way in mind.*
>
> *As a matter of commercial practice, we are here concerned with an established system of doing business in which it can be taken, unless, I would have thought, the contrary is shown, that both carriers and stevedores have fitted themselves in a manner by which an attempt will be made to confer immunity upon the stevedores in the bill of lading, and it can be taken that stevedores have authorised the carriers to endeavour to obtain immunity on their behalf."*

Additionally, clauses of this kind have been held effective in relation to the portion of a combined transport contract of carriage which takes place on land, and to a contract which is simply a contract for the carriage of goods by land. *(Celthene Pty. Limited v. W.K.J. Hauliers Pty. Limited (1981) 1 N.S.W.L.R.606; Life Savers (Australasia) Limited v. Frigmobile Pty. Limited & Anor.* New South Wales Court of Appeal, 2nd June, 1983).

These cases represent a substantial victory of commonsense and commercial practicality over legal technicality. It was surely an affront to ordinary notions of justice that the terms of a contract by which the liability of the principal contracting party was excluded or limited could be circumvented by the taking of action against a servant or agent who was employed or engaged by the contracting party to perform his obligations under the contract. If a man normally parks his car in a parking station which has a large sign on the wall at the entrance stipulating that if some damage is suffered by his car his rights of action against the owner of the parking station will be excluded or limited (and telling him by implication, that he ought to make his insurance arrangements accordingly) the notion that, faced with an inability to sue the owner of the parking station, he could successfully sue an employee of the owner is repugnant to commonsense. Other systems of law readily recognise the notion of a contractual stipulation being used for the benefit of a person who is not a party to the contract, and the cases referred to above represent, in truth, a significant move by the common law in the same direction. The common law of contract, with its doctrines as to consideration moving from the promisee, and privity of contract, has long been seen as productive of injustice. In the classic case of *Dunlop Pneumatic Tyre Co. v. Selfridge (1915) A.C. 847* a Scots law lord said *"this case is to my mind apt to nip any budding affection which one might have had for the doctrine of consideration".* Cases such as *Coulls v. Bagot's Executor Trustee Co. 119 C.L.R. 460* and *Beswick v. Beswick (1968) A.C.58* show the highest Courts striving for, and achieving, greater

flexibility, and the cases on bills of lading referred to above fall in with this line of progress.

(c) Who may sue and be sued

It should be mentioned, for the sake of completeness, that claims for loss of or damage to goods may be founded in tort as well as contract, depending upon the circumstances, and that in such a case the identity of the appropriate parties to the action will not necessarily be the same as it would be if the action were brought on the basis of a contract evidenced by the bill of lading. There is, for example, some conflict of recent English authority upon the question of whether the only person who is entitled to take action in respect of goods damaged during carriage is a person who was the owner of the goods at the time of the damage (c.f. *Elafi v. Eastport Navigation Co. (1981) 2 L.L.R. 679; Wear Breeze (Margarine Union) v. Cambray Prints S.S. Co. (1967) 2 L.L.R. 315; The "Irene's Success (1981) 2 L.L.R. 635.* In the lastmentioned case Mr. Justice Lloyd held that claimants who were C.I.F. buyers of a cargo of coal but who could not sue in contract because they were never holders of the bill of lading could nevertheless sue in tort even though they were not the owners of the coal when the damage was done.

3. The Bill of Lading as a receipt

The probative value of a bill of lading as a receipt is relevant both in relation to the condition and to the quantity of the goods received. What, then, is the situation where the bill of lading acknowledges receipt of a metal box "said to contain" certain cargo? There is a

detailed analysis of this question in a learned article entitled *"The Container Bill of Lading as a Receipt"* published in Volume 10 Journal of Maritime Law and Commerce p. 39. Decided cases indicate that much can turn upon the role, if any, played by the carrier in placing the goods in the container or the opportunity, if any, which the carrier has to make on some observation as to the contents. The learned author makes the following observations.

> *"Assuming a genuine impossibility to verify the contents of a container, what is the validity and effect of reservations such as 'said to contain', 'contents unknown' and 'shipper's load and count' under the Hague Rules?*
>
> *The answer is much less self-evident than may seem at first sight. A description of the number of packages, etc. pursuant to art. 3(3)(b) is 'prima facie evidence of the receipt by the carrier of the goods (thus) described', according to art. 3(4). It follows, of course, that in the absence of such a description the bill of lading does not serve even as prima facie evidence as to the number of packages included in the consignment. Now, we have seen that in a considerable number of container operations the carrier is under the liberty, under the proviso of art. 3(3), to refrain from mentioning the number of inner packages because that number is unverifiable on receipt. But nothing in art. 3 gives the carrier the right to waive that liberty by mentioning the number of inner packages, and at the same time disclaim responsibility for the accuracy of that number. The number of packages mentioned in the bill of lading, it could be argued, is still within art. 3(3)(b), and the disclaimer of responsibility is void as repugnant to art. 3(8). The argument, in other words, is that where the number of packages is unverifiable, the carrier who wishes the bill of lading not to acknowledge this number, even prima facie can achieve this as far as the Hague Rules are concerned only by refraining from mentioning that number altogether, not by mentioning it with a reservation.*
>
> *That this is the only strictly correct interpretation of art. 3 is beyond doubt. It also carries no little commercial commonsense. In most of the international carriage of goods operations performed at present, bills of lading (or at least the copies by which the document of title function of the bill is performed) are accompanied by the shipper's invoice. This, it can be argued, is*

where the shipper gives his own account of the details of the consignment. The bill of lading, on the other hand, functions as the carrier's receipt, his means of giving such an account of the consignment as can be guaranteed by him to be true (if only prima facie). To mix these two sources of information, it could be asserted, would serve no purpose except to mislead the unwary about the degree of objective reliability of the details, even if words of caution (often abbreviated) are added to the bill of lading.

The argument against qualified bills of lading finds support among some writers on maritime law, all of them at least partially French-orientated. The Canadians Tetley and Pourcelet, as well as the French writers Fraikin and Lafage, share the view that omitting any unverifiable detail altogether is the only valid way for the carrier to avoid prima facie responsibility for the accuracy of the details.

And yet, this argument must be rejected as both futile and against the spirit of the law. It is futile because the practice of using bills of lading with qualified details has become such an integral part of transport in general, and containerisation in particular, that it is impossible to imagine a court interfering with it in any significant way. The argument is also against the spirit of the law because the Hague Rules make manifest an unmistakable intention that carriers be exempted from even prima facie responsibility for unverifiable details, and there is little logic in declaring void words which purport to bring about exactly that effect whenever the details are indeed unverifiable. The proviso to art. 3(3) gives too little attention to the technique of achieving exemption in the cases mentioned there to warrant an outright rejection of a technique which was already in wide use before the Rules, and has never been abandoned since their enactment."

Although containerisation has exacerbated the problem here under consideration, it would be wrong to assume it is novel. It seems that reservations as to the matters such as "shipper's weight, load, count", or "weight, quality and contents unknown", are as old as the general use of standard or printed forms of bill of lading and were in common use in the nineteenth century. The Pomerene Act of 1916 in the United States dealt with the matter. Transportation of parcels, packages and containers the contents of which are

invisible to the carrier, and which he has no opportunity to check, is no novelty. However, as this becomes the rule rather than the exception, the role of the bill of lading, as a receipt, bound up as it is with its function as a document of title to goods, must be somewhat diminished.