LEGISLATION COMMENT

CARRIAGE OF GOODS BY SEA ACT, 1972 (NO. 30)*

Introduction

The Carriage of Goods by Sea Act, 1972, which gives statutory effect to the Rules incorporating certain provisions of the 1968 Brussels Protocol, was brought into force in Singapore on January 16, 1978.[1]

The Act has introduced several provisions which have far-reaching consequences. Attention is focussed on (1) the scope of application of the Act; (2) certain new features of bills of lading; (3) the limitation of liability; (4) mis-statement of the nature of cargo or its value; and (5) the limitation periods.

1. Scope of application

Subject to minor exceptions, under section 3 the Rules apply to all contracts of carriage of goods by sea in ships carrying goods from any port in Singapore to any other port whether in or outside Singapore. Section 5 requires every bill of lading or similar document issued in Singapore which contains or is evidence of any contract to which the Rules apply to contain a statement to that effect, *i.e.* the "paramount clause". The scope of application of the Rules[2] is now extended by Article X:

> The provisions of these Rules shall apply to every bill of lading relating to the carriage of goods between ports in two different states if:
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> (*a*) the bill of lading is issued in a contracting state, or
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> (*b*) the carriage is from a port in a contracting state, or
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> (*c*) the contract contained in or evidenced by the bill of lading provides that these Rules or legislation of any state giving effect to them are to govern the contract,
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> whatever may be the nationality of the ship, the carrier, the shipper, the consignee, or any other person interested.

* This comment is based on a talk entitled "New Legislation in Favour of Cargo Interests in Singapore" delivered by the author at the Institute of Shipping Management's Seminar held at Mandarin Hotel on June 24, 1978. The author is the Institute's adviser.

[1] Gazette Notification No. 2/1978. The Singapore Government acceded to the 1968 Brussels Protocol early on April 25, 1972: United Nations, *Register of Texts of Conventions and Other Instruments Concerning International Trade Law,* Vol. II, p. 180, fn. 1. S. 9 of the 1972 Act has repealed the Carriage of Goods by Sea Act (Cap. 184, Singapore Statutes, Rev. Ed. 1970), which gave effect to the Hague Rules. In England, the Carriage of Goods by Sea Act, 1971, was brought into force, subject to certain transitional provisions as regards s. 6(3)(a), on June 23, 1977, by the Carriage of Goods by Sea Act 1971 (Commencement Order) S.I., No. 981 of 1977.

[2] As to their application, see Ying, C.A., "The Hague Rules and the Carriage of Goods by Sea Act, 1972: A Caveat" (1975) 17 Mal. L.R. 86, at pp. 89, 99 *et seq.*

As section 5 is mandatory, most of the bills of lading issued in Singapore by ship agency companies on behalf of their foreign principal companies are affected.[3] The fact that bills of lading or other transport documents issued bear a *foreign* principal company as the carriers and that they are signed by Singapore agents expressly as such will not exclude the operation of section 5. In the interest of international trade certainty, urgent steps should be taken by shipping companies operating in Singapore to ensure that the bills of lading issued in Singapore contain provisions which comply with the requirements of the 1972 Act.[4] Where a cargo claim arises out of a contract of carriage governed by the 1972 Act the fact that the bills of lading issued are expressed to be subject to the Hague Rules or to the repealed Carriage of Goods by Sea Act will not in any way prevent the application of the 1972 Act in favour of the cargo claimant.

2. New features of bills of lading

Article III r. 4 has introduced substantial improvements in the status and position of bills of lading governed by the 1972 Act with regard to the leading marks of the goods; the cargo quantity; and the apparent good order and condition of the goods shipped, provided they are unambiguously stated in the bills of lading.

Leading marks

Article III r. 3 (a) defines leading marks as

> marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage.

Before the 1972 Act came into force, section 3 of the (English) Bills of Lading Act 1855 applied in Singapore by reason of section 5(1) of the Civil Law Act.[5] Thus where a bill of lading containing the leading marks was transferred to a buyer *(e.g.* a consignee or endorsee) for valuable consideration, the person who had signed the document would be precluded from showing that the goods shipped were marked otherwise than as stated. He could escape liability by bringing his case within one of the two provisos to section 3.[6] However, section 3 is now deemed to have ceased to apply in Singapore since, as provided by section 5(1) of the Civil Law Act, "other provision" on the matter is made, *i.e.* Article III r. 4 of the Rules scheduled to the 1972 Act:

> Such a bill of lading shall be prima facie evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a).... However, proof to the contrary shall not be admissible when

[3] It is common practice for Singapore ship agencies handling cargo for foreign companies operating here to sign as agents and issue bills of lading supplied by the foreign companies as the carriers.

[4] Often the bills of lading issued contain the "Himalaya Clause" relieving the carriers' agents and servants from liability for loss or damage due to negligence. See Tetley, "The Himalaya Clause — Heresy or Genius?" JML & C (1977) Vol. 9. No. 1, at pp. 111-130.

[5] Cap. 30, Singapore Statutes, Rev. Ed. 1970.

[6] See *infra.*

> the bill of lading has been transferred to a third party acting in good faith.[7]

In several respects, the protection conferred on third-party bill of lading holders by the provision is wider than that conferred by section 3 of the (English) Bills of Lading Act. First, the parties who are estopped may not be confined to the persons, *e.g.* the carrier's agent or ship's master, who sign the bills of lading containing the inaccurate leading marks. Presumably, the carrier in whose name the bills of lading are issued will also be estopped, even though the documents were signed on his behalf by his servants or agents. Second, the provision in Article III r. 4 is not subject to any of the provisos to section 3, *viz.*

> ... unless such holder of the bill of lading shall have had actual notice at the time of receiving the same that the goods had not been in fact laden on board: Provided, that the master or other person so signing may exonerate himself in respect of such misrepresentation by showing that it was caused without any default on his part, and wholly by the fraud of the shipper, or of the holder, or some person under whom the holder claims.

However, to invoke the protection of Article III r. 4, the third-party claimant must prove to have acted in good faith as a bill of lading transferee. It is submitted that since the word "consignee" or "endorsee" is not used in Article III r. 4, the expression "third party acting in good faith" could include a pledgee who takes the bill of lading as security for a loan. The requirement of good faith may imply that the third-party claimant will be unable to take advantage of the provision in Article III r. 4 if it is proved that at the time of receiving the bills of lading he had notice that the goods bearing the particular marks had not been shipped. Third, the provision in Article III r. 4 does not require the third-party claimant to prove that valuable consideration was given.

Cargo quantity

At common law, a ship's master has no authority to sign and issue bills of lading stating a larger quantity of cargo than actually loaded on board. When sued by a third-party bill of lading holder, a carrier can escape liability by proving the inaccuracy of the statement or that a smaller quantity was shipped.[8] Accordingly, a purchaser of a bill of lading in good faith may have no remedies against the carrier. Although under section 3 of the (English) Bills of Lading Act the person who signed the bills of lading may be held liable, he may escape liability by relying on either of the provisos. The loss sustained by the unfortunate bill of lading purchaser in such circumstances is often outside the scope of the cargo policy cover. The serious lacuna in the law is now filled by the provision in Article III r. 4. The scope of its protection has been stated above.

Apparent good order and condition

At common law, the carrier will be estopped as against a third-party claimant who proves that (1) he has relied on the unambiguous

[7] There is no definition of "good faith" in the Act. However, for general information, see the various meanings given to the expression in *Stroud's Judicial Dictionary* (4th ed. 1972), at pp. 1171 and 1172.

[8] *Grant* v. *Norway* (1851) 10 C.B. 665; *Smith* v. *Bedouin S.N. Co.* [1896] A.C. 70.

bill of lading statement that the goods were shipped in apparent good order and condition; (2) the statement is false; and (3) he has thereby acted to his detriment.[9] The protection enjoyed by a third-party bill of lading purchaser under Article III r. 4 is wider than that available under the doctrine of estoppel at common law. Under Article III r. 4, apart from proof by the cargo claimant of having acted in good faith, he is not required to establish the three conditions above. Since the practice is for shipping agents or the ships' masters to issue bills of lading on behalf of their principal companies located overseas, it is submitted that such agents or masters who sign the documents should also be estopped. This view seems to be consistent with the policy of the Rules as reflected by the new provisions in Article IV BIS.

3. Limitation of liability

Sub-paragraphs (a), (*b*), (c), (*d*), (*f*) and (g) of Article IV r. 5 are designed to promote certainty and to avoid the expensive litigation of the past. Moreover, the six sub-paragraphs provide a flexible approach of the quantum of compensation. Subject to the relief enjoyed by the carrier where "the nature or value of the goods shipped is knowingly mis-stated by the shipper in the bill of lading",[10] the policy of Article IV r. 5 is to confer on the shipper the option of pre-determining the quantum of compensation recoverable should the cargo shipped be lost or damaged.

High-valued cargo

There are two alternative ways open to a shipper of high-valued cargo, which will enable him or the bill of lading consignee to recover in excess of the "per package" liability. First, the shipper or his agent may before shipment declare to the carrier or his agent the nature and value of the cargo and later insert them in the copies of the bills of lading. Under Article IV r. 5(*f*), the carrier's liability will accordingly be quantified. Since cargo value is outside the scope of the "conclusive evidence" provision of Article III r. 4, transfer of the bill of lading to a third party[11] acting in good faith does not prevent the carrier, who is sued by the consignee, from proving the over-valuation.

[9] In *Dent and Others* v. *Glen Line Ltd.* (1940) 67 Ll.L. Rep. 72, the groundnuts in a green and moist condition were shipped in dry bags. Clean bills of lading were issued by the ship's master although he had been warned by the carrier's agent as regards the condition of and danger of shipping such goods. The cargo was discharged in a mouldy and deteriorated condition. The carriers were held to be estopped as against the third-party bill of lading holders from proving that the goods were not in good condition at the time of shipment. Here the ship's master knew that the cargo was too green and moist to be shipped; *Silver* v. *Ocean S.S. Co.* [1930] 1 K.B. 416 (C.A.). See also *The Problem of Clean Bills of Lading,* ICC Brochure 233 (1963). The doctrine of estoppel would only apply as regards cargo condition, *e.g.* where a clean bill of lading is issued stating the goods to be shipped in "apparent good order and condition", though they were known to the carrier or his servant, *e.g.* the ship's master, to be otherwise at the time of shipment. S. 3 of the (English) Bills of Lading Act, 1855, was inapplicable as regards the leading cargo marks, unless they were essential to the identity of the goods: *Parsons* v. *New Zealand Shipping Co.* [1900] 1 Q.B. 714.

[10] In *La Fortune* v. *Irish Shipping Ltd.* 1974 AMC 2184, it was held that a Hague Rules carrier was not liable despite the issue of clean bills of lading where (1) the shipper had knowingly and fraudulently mis-stated the cargo value, and (2) the damage arose from insufficient packing.

[11] S. 1, (English) Bills of Lading Act, 1855.

Second, under Article IV r. 5(g), the carrier, master or agent of the carrier and the shipper may enter into a binding agreement providing for payment as compensation an amount if it is in excess of the liability limits provided for in Article IV r. 5(a). It is submitted that this compensation-fixing agreement, if stated in the bill of lading, will operate in favour of the bill of lading consignee or endorsee.

Cargo packages or units

The definition of package or unit is clear from the language of Article IV r. 5(c):

> Where a container, pallet or similar article of transport is used to consolidate goods, the number of packages or units enumerated in the bill of lading as packed in such article of transport shall be deemed the number of packages or units for the purpose of this paragraph as far as these packages or units are concerned. Except as aforesaid such article of transport shall be considered the package or unit.

In normal practice, the quantity of goods to be loaded will first be stated in pre-shipment forms[12] supplied by the carrier. However, the actual number of packages or units comprised in a consignment is determined by the enumeration inserted in the bill of lading. A bill of lading issued for the shipment of "one container of bagged cement" or "one pallet of cameras" will entitle the holder to recover in Singapore currency the equivalent of *10,000* francs per package or unit. However, Article IV r. 5*(a)* provides for an alternative method of computing compensation on the basis of *30* francs per kilo of gross weight, and gives the cargo claimant the benefit of whichever method that provides for a higher quantum. Generally, where cargo is shipped under the FCL (full container load) system,[13] and the bill of lading contains no package or unit enumeration, the compensation awarded will be based on the gross weight of the cargo and the container.[14] Unfortunately, Article IV r. 5*(a)* does not take cognizance of a fraction of a kilo. Is any weight less than a kilo to be excluded in computing compensation? It is suggested that the alternative is to award compensation on the *pro-rata* basis.

Disentitlement to limitation of liability benefits

One major safeguard for cargo interests[15] is provided by Article IV r. 5*(e)*:

[12] E.g. shipping order and mate's receipt generally to be completed in triplicate by the shipper.

[13] The conference tariff rules often provide that the vessel's liability is limited to US$500 per container and covering bill of lading shall contain provisions to that effect: *North Atlantic United Kingdom Tariff,* No. 45, 27K: see also Far East Tariff No. 23, 22 B(1).

[14] It is fair that under the FCL system the container weight should be included, since the shipper who leases the container from a third party may, under a separate lease agreement with the container owner, be fully answerable for the loss of or damage to the container.

[15] Carriers who come within the ambit of ss. 294 and 295 of the Merchant Shipping Act (Cap. 172, Singapore Statutes, Rev. Ed. 1970) may nevertheless take advantage of the immunity and the limitation of liability benefits conferred thereby; see s. 8, Carriage of Goods by Sea Act, 1972. Ss. 293 and 300 of the Merchant Shipping Act extend the immunity and the limitation of liability benefits to charterers, ship managers, ships' masters, crew members and others. It is submitted that, even if the carriers' servants or agents are not, by reason of Article IV BIS r. 4, able to avail themselves of the defences and limitation of liability benefits under the Rules scheduled to the 1972 Act, they should, subject to the requirements being met, be able to invoke ss. 293 and 300.

> Neither the carrier nor the ship shall be entitled to the benefit of the limitation of liability provided for in this paragraph if it is proved that the damage resulted from an act or omission of the carrier done with intent to cause damage, or recklessly and with knowledge that damage would probably result.

A cargo claimant has to establish the extent of the loss or damage sustained.[16] The *prima facie* value inserted in the bill of lading or the value as agreed, if any, may provide the criterion. If there is no such value, the guidelines provided by Article IV r. 5(*b*) will be followed. To invoke Article IV r. 5(*e*), the cargo claimant must adduce evidence to establish the facts required including the mental element. It is uncertain as to whether the mental element required is subjective or objective. Since physical cargo damage and the issue of bills of lading containing false statements as to the cargo condition, cargo quantity and/or the leading cargo marks will equally result in financial loss, Article IV r. 5(*e*), which is directed against the carrier, should also be contrued as applying to the three matters. A similar provision which disentitles a carrier's servant or agent from the limitation of liability benefits and the defences under the Act is contained in Article IV *BIS* r. 4. The reasoning is certainly sound that the limitation of liability benefits and the defences should not avail a party who is not carrying out his obligations under the Act. One practical difficulty encountered by the cargo claimant is to pick out and sue the person in the chain concerned with the cargo transportation, by whose reckless or intentional act or omission the loss or damage was caused. Failure to meet such requirements will enable the claimant to recover only the compensation computed according to the limitation of liability rules.

Singapore currency equivalents

Article IV r. 5(*d*) provides:

> A franc means a unit consisting of 65.5 milligrammes of gold of millesimal fineness 900. The date of conversion of the sum awarded into national currencies shall be governed by the law of the Court seized of the case.

There is at present no legislation which fixes an amount in Singapore currency as the equivalent of the franc.[17] Since the conversion rate varies, the actual amount recoverable will depend on a ruling to be made by the court with regard to Article IV r. 5(*d*) as to which is

[16] As regards practical difficulties facing cargo claimants, who are holders o f clean bills of lading, in meeting the burden of proving cargo damage, see *Vagnar Suppiah & Sons* v. *K.M.A. Abdul Rahim & Another* [1974] 2 M.L.J. 183 (C.A.). The cargo owners lost the case because the cargo surveyors' reports were held to be inadmissible under s. 32 of the Evidence Act (Cap. 5, Singapore Statutes, Rev. Ed. 1970). The surveyor who carried out the cargo inspection or survey must be present in court to testify as regards the damage. For proof regarding damage sustained during warehouse in Penang, see *Tithe Dental and Photo Supply Sdn. Bhd.* v. *Express Lines M.A. and Ors.* [1977] 2 M.L.J. 13.

[17] The Merchant Shipping (Limitation of Liability) (Local Currency Equivalents) Order, 1966, only provides for the Singapore currency equivalents in respect of the liability of the shipowners and others under the Merchant Shipping Act (Cap. 172, Singapore Statutes, Rev. Ed. 1970) and not in respect of the liability of the carriers and others under the Carriage of Goods by Sea Act, 1972. The position under the English Carriage of Goods by Sea Act, 1971, is given in the Carriage of Goods by Sea (Sterling Equivalents) Order 1977, S. 1. No. 1044. The Order specifies £447.81 and £1.34 as the sterling equivalents of 10,000 and 30 gold francs, respectively. See further Bristow, "Goldfranc — Replacement of Unit Account" [1978] 1 LMCLQ 31.

the conversion date — namely, the date of the judgment or arbitration award,[18] the date when the loss or damage was incurred [19] or the date when the action was commenced. Moreover, an inconsistency can arise because the conversion date is left to be governed by the court seized of the case. Unless prohibited by the 1972 Act or a "jurisdiction clause" incorporated in the bill of lading,[20] a cargo claimant may seek to bring a suit under a legal system which provides a conversion date or exchange rate in his favour.

4. Mis-statement of the nature of cargo or its value

Article IV r. 5(*h*) provides:

> Neither the carrier nor the ship shall be responsible in any event for loss or damage to, or in connection with, goods if the nature or value thereof has been knowingly mis-stated by the shipper in the bill of lading.

Suppose a shipper fraudulently mis-states the nature or value of the goods so as to avoid or reduce the freight charges. The carrier, his servant or agent who is deceived may, as regards the loading, stowing, handling, etc., only provide the care which is appropriate to the cargo or its value as stated. Clearly the carrier cannot be held liable for the consequent loss or damage arising from the shipper's mis-statement.[21] By reason of section 1 of the (English) Bills of Lading Act, where a shipper's claim is barred by Article IV r. 5(*h*), the consignee or bill of lading holder is in no better position. Except where the loss or damage "resulted from an act or omission of the servant or agent done with intent to cause damage or recklessly and with knowledge that damage would probably result," the carrier's servant or agent when sued is also entitled under Article IV BIS. r. 2 to avail himself of the immunity enjoyed by the carrier. In each case, the defendant who seeks the relief must meet the burden of proving that the nature of the cargo or its value was knowingly mis-stated by the shipper or his agent. Misdescription as a result of negligence is insufficient.

One point is open to question. Suppose that a shipper knowingly mis-stated the goods in the bill of lading, which were subsequently damaged as a result of the carrier's negligence. Will the cargo claimant be precluded by Article IV r. 5(*h*) from recovering compensation if he is able to establish that the mis-statement in the bill of lading had in no way contributed to the damage?

5. Limitation periods

Under the 1972 Act, a cargo claim against the carrier must be brought within the period of one year of the cargo delivery or of the

[18] E.g. in the recent House of Lords case of *Miliangos* v. *George Frank (Textiles) Ltd.* [1976] A.C. 443, it was held that the correct date for conversion was the date when the plaintiff was given leave to levy execution for a sum of money expressed in sterling.

[19] However, under the old law, as regards claims for breach of contract and for tort, the correct conversion date was when the contract was broken: ***Di Ferdinando*** v. *Simon, Smith & Co.* [1920] 3 K.B. 409; and the date when the loss was incurred: *S.S. Celia* v. S.S. *Volturno* [1921] 2 A.C. 544, respectively.

[20] *Supra.* It is equally open to a carrier to include in the bill of lading a jurisdiction clause which is likely to confer an advantage on him.

[21] Cases at common law have held that, where goods are fraudulently shipped under a wrong description and the carrier is deceived as to the quality and value of the cargo, the carrier is not liable: *Gibbon* v. *Paynton* (1769) 4 Burr. 2298; *Belfast and Ballymena Ry.* v. *Keys* (1861) H.L.C. 556.

date when it should have been delivered.[22] Article III introduces two concessions as to limitation periods — one in favour of cargo interests and the other in favour of carriers.

The first concession introduced under article III r. 6 gives statutory effect to a shipping practice with which cargo claimants and claims managers in Singapore are familiar.[23] "This [one year] period may, however, be extended if the parties so agree after the cause of action has arisen." Although the extension need not be in writing, it is desirable to be evidenced by writing signed by the carrier or his agent. Apart from waiver by a carrier of his right to rely on the expiry of the statutory period or an agreement to extend it, the extension may be implied, *viz.:*

1) In reply to a cargo claimant, the carrier asks for more time to investigate the matter.

2) A carrier offers to pay a certain sum as compensation in full settlement of a cargo claim, requesting the claimant to consider whether to accept or reject the offer made.

It is clear that in (1) and (2) above, there will only be time extension if the carrier gives his reply or offer just before or after the expiry of the one-year limitation period.

The second concession which is for the carrier's benefit is contained in Article III r. *6bis:*

> An action for indemnity against a third person may be brought even after the expiration of the year provided for in the preceding paragraph if brought within the time allowed by the law of the Court seized of the case. However, the time allowed shall be not less than three months, commencing from the day when the person bringing such action for indemnity has settled the claim or has been served with process in the action against himself.

The right to indemnity is not confined to the carrier but extends to all who have made good the loss or have been served with the writ of summons. The provision seeks to remove the immunity based on the expiry of the one-year period, which would otherwise avail those responsible for the cargo loss or damage. Its application may be illustrated in the following practical situations.

[22] In *Campania Colombiana De Seguros* v. *Pacific Steam Navigation Co.* [1965] 1 Q.B. 101, the bill of lading contained an exclusive foreign jurisdiction clause providing for proceedings to be heard in England. It was held that commencing proceedings in the New York Supreme Court did not prevent the one-year period from running. The action which was subsequently brought in England was held to be statute-barred. The 1972 Act does not contain any provisions prohibiting the incorporation of exclusive foreign jurisdiction clauses. See *Azimullah* v. *Master of S.S.* "*Hallor*" *& Ors.*" [1965] M.L.J. 248; *Vita Food Products* v. *Unus Shipping Co.* [1939] A.C. 277, at p. 290, *per* Lord Wright. However, in the *"Agelos Raphael"* [1978] 1 Lloyd's Rep. 105, the Canada Federal Court held that, notwithstanding the arbitration clause providing for arbitration to be held in London, on the balance of convenience it was better that the matter be decided in the court where the action was brought. Cf. Articles 21 and 22 of the Draft Convention on the Carriage of Goods by Sea approved by UNCITRAL on May 7, 1976, dealing with jurisdiction and arbitration, respectively.

[23] In *The Mica* [1973] 2 Lloyd's Rep. 478, the Federal Court of Canada held that the defendants who had granted the cargo interests a time extension were estopped thereby, and that consequently the plaintiffs' action was not time-barred.

1. Suppose that the carrier, A, has whether by mistake or otherwise made good to consignee, C, the cargo loss, which was actually caused by the negligence of an on-carrier, O, with whom A has no contractual relationship. Within the period stipulated in Article III r. *6bis,* A may bring an indemnity action against O.

2. Most bills of lading incorporate the provision that " 'carriers' shall include independent contractors, *e.g.* agents, stevedores and container packers". One setback is that, after the carriers have made good a cargo claim due to the independent contractors' neglect or default, the carriers' indemnity against such contractors may be barred by the expiry of the one-year limitation period. Article III r. 6*bis* may therefore serve a useful purpose. Moreover, an agreement made between the carriers and the independent contractors relieving the latter from liability for loss or damage due to their neglect or default may be no defence to an action brought against the independent contractors by the cargo claimants. It is submitted that after the carriers have settled the claim, they are entitled by subrogation to bring an indemnity action in the cargo claimants' name, provided that it is commenced within the period allowed by Article III r. *6bis.*

3. C Ltd., the non-demise charterers of a ship owned by O Ltd., may issue their bills of lading subject to the 1972 Act to cover contracts of carriage of goods belonging to different shippers. The charterparty made between C Ltd. and O Ltd. may also incorporate the provisions of the Act. As between the shippers or bill of lading consignees and the carriers (who are also the charterers) in whose name the bills of lading are issued, the contract of carriage is governed by the 1972 Act. As between the shipowners, *i.e.* O Ltd., and the charterers, *i.e.* C Ltd., their relationship is governed by the charterparty, a separate agreement from the contract of carriage Suppose that as a result of the shipowners' breach of the charterparty the cargo carried was lost or damaged, and just before the one-year period expired the consignees had recovered compensation from the carriers or served on the carriers a writ of summons claiming damages for breach of the contract of carriage. Under Article III r. *6bis*., it is submitted the carriers are entitled to be indemnified by the shipowners even if the action is brought outside the one-year period.

4. Under Article III r. 8, any benefit of insurance in favour of the carrier or similar clause contained in a bill of lading relieving the carrier from liability in contravention of Article III r. 8 is null and void. However, a shipper (*e.g.* in a C.I.F., C & F or F.O.B. sale) is required by the terms of the contract of sale or established trade practices, *e.g.* under an agreement subject to the *Incoterms 1953*,[24] to take out appropriate cargo insurance policies to protect his own interests and those of the purchasers. The insurers, who have compensated

[24] Page 34, para. 5 (in a C.I.F. sale); page 26, para. 2 (in an F.O.B. sale); for FPA insurance conditions see pages 40-54. The seller is required to provide certain information to the buyer who has to effect an insurance policy under s. 32(3), (English) Sale of Goods Act, 1893.

the cargo claimants or have been served with the writ of summons, may, subject to the immunities provided by the 1972 Act, seek indemnity from the carrier, even though the action is commenced outside the one-year period provided that it is not brought outside the three-month period allowed under Article III r. 6*bis*.

Conclusion

Under the 1972 Act, shippers in Singapore and purchasers of bills of lading issued in Singapore invariably enjoy better legal protection than their counterparts in countries where the contracts of carriage and the bills of lading are still governed by the Hague Rules.[25] Foreign importers can take advantage of the situation by buying goods shipped in Singapore or transport documents issued in Singapore, *e.g.* in C.I.F. sales. One long-term benefit for Singapore's shipping community is the rise in cargo tonnage and foreign trade.

The higher monetary compensation recoverable from the carrier and/or in some cases from his servant or agent will significantly reduce the claims made by cargo interests against the cargo insurers. This claims reduction coupled with the longer limitation period available to an insurer to recoup his loss by subrogation should make insurance coverage available more cheaply. In some situations, the wider protection conferred on cargo interests by the Act has rendered insurance coverage against certain risks redundant. This development may reduce the prices of certain commodities.

The carriers (both conference and non-conference) operating in Singapore and elsewhere, who are saddled with the increased obligations imposed by the Act, including the higher contributions payable to the policy and indemnity clubs, will be expected to take collective measures to redefine the shipper-carrier relationship so as to generate adequate profits. To be valid, the measures adopted to meet the new situation must not contravene Article III r. 8. It is competent for shipping conferences or even for an individual shipping company by means of tariff rules or otherwise to introduce three categories of freight rates which are related to the carrier's liability limits:[26]

Freight Charges

$x/- — where the container or pallet is shipped as a single unit provided its gross weight is less than (say) 10 kilos.

$y/- — where the gross weight is 10 kilos; however, where it is increased in multiples of 10 kilos, the freight charges shall be double, treble, quadruple, etc.

[25] The cargo claimants' rights as bill of lading holders under the 1972 Act and the Hague Rules differ. There is a clear breach by the seller who tenders bills of lading governed by the Hague Rules where the contract of sale provides for the delivery of transport documents subject to the 1972 Act. Would there not be a breach where a Singapore seller inadvertently tenders to a foreign buyer bills of lading expressed to be subject to the repealed Act (Cap. 184), though the contract of sale does not state that the transport documents tendered should be issued subject to the 1972 Act?

[26] Wong, James, *Changes in the Law concerning the Carriage of Goods by Sea,* (1975), at p. 13. The system suggested may present difficulties in practice. See "FEFC to Revert to Single Rate Tariff System", *The Straits Times,* May 29, 1978, at p. 10.

$z/- — where the number of packages or units declared is 5 or below; however, the freight charges shall be double, treble, quadruple, etc. where the packages or units declared increase in multiples of 5.

Freight to be computed on the basis of the agreed cargo value or the cargo value inserted in the bill of lading.

One significant side effect of the 1972 Act is the stimulation of banks and export houses to extend their finance facilities. The credit-worthiness of the bills of lading issued subject to the 1972 Act[27] increases their acceptability as loan security. A new era of document sales[28] has begun for Singapore's shipping community.

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[27] The several new provisions are designed to enhance the value of the bills of lading as instruments of international trade.
[28] Sassoon, *C.l.F, and F.O.B. Contracts,* (2nd ed. 1975), paras. 24, 227.