CARRIAGE OF GOODS BY SEA—THE HAGUE RULES

The codification of international law is a subject of never-failing interest. "A system of law to be applied between nations exists. Its sources are known and have been stated authoritatively and in sufficient detail."¹ Undoubtedly there are to be found many who would be willing to accept the challenge of this statement, but in the field of maritime law which is probably the oldest branch of the Law of Nations there has been found even within these pages a recent champion of uniformity.² "The question (of the uniformity of maritime law)," writes Professor Wright, "is not one which a lawyer alone should attempt to answer—it is quite as much of fact as of law; and neither should an economist. Together, however, they might accomplish something." That sentence, had it been written five years earlier, would have been prophetic, for the greatest step towards international uniformity which the present century has seen owes much to the commercial world and to economists. That it is still executory is due not to those who created it, nor to the world of commerce, but rather to the extreme tardiness of legislative machinery.

Maritime Transportation is as old as the history of jurisprudence, and there are to be found in many ancient legal codes elaborate provisions governing the rights and duties of the three parties to marine adventures—the captain, the merchants and the crew. Bills of lading bearing a close resemblance to the modern form cannot, however, claim more than two or three centuries of life, and if by "modern form" we should refer to the long documents in minute print with which the modern shipper is all too familiar, we can go back no further than 1880, for it is during the past half century, that shipowners have been so active in the limitation of their liability. To deny all equitable justification to this process of limitation is to betray an ignorance of both the technical business of ship-operation and of the legal duties of ship-

¹ J. B. Scott—Year Book of Carnegie Endowment, 1923—p. 237; *The Paquete Habana*, 175 U. S. 677, 700 (1899).

² Austin Tappan Wright—73 U. OF PA. L. REV. 123-223 (1924).

owners, who were placed by the rules of common law under a burden which threatened to crush all initiative and to paralyse the industry. Even the merchants and shippers realised the necessity of some limitation of liability beyond that given by the legal systems of the great maritime nations, and the early clauses included in the bill of lading to that end were readily accepted. The opportunity thus given them proved too enticing for the shipowners to refrain from taking advantage of it: clause succeeded clause in the bill of lading until it grew almost beyond recognition. National legislation³ seemed to have very little effect and the discontent among the shipping public grew from year to year, until the whole matter was brought to a head during the war and post-war period by the unavoidable and not in all cases undesirable extension of the business of shipowning into the hands of governments, coupled with the creation of new shipping companies, lacking in experience and, in some cases, not motivated by any desire to build up a good reputation such as had been earned by the older companies during their long histories.

Before proceeding to the fruits of this discontent it may be well to touch briefly upon the outstanding grievances against the then-existing bill of lading. Invariably the opening phrase would read "Received in good order and condition . . . to be transported by the good ship X from the port of A and bound for B." There is here no clear definition of the commencement or termination of the contract. Where nothing is expressly stated in the body of the contract American law subjects common carriers by sea to the onerous liabilities of common carriers at common law as soon as the goods are delivered to him for immediate shipment,⁴ and causes his liability to cease upon the lapse of a reasonable time for the removal of the goods after notice of arrival has been given to the consignee.⁵ The English law, and the common practice of the carriers, however, makes the carrier so liable only during such period as the goods are actually within his physical

³ Harter Act 1893 (27 Stat. 445, U. S. Comp. Stat. sec. 8029-8035); New Zealand Shipping & Seamen Act, 1903; Australian Sea Carriage of Goods Act, 1904; Canadian Water Carriage of Goods Act, 1910.

⁴ *Canadian Pacific v. Wieland*, 226 Fed. 670 (C. C. A. 1915).

⁵ *The Titania*, 131 Fed. 229 (C. C. A. 1904).

control, that is, from the moment they are received by the ship's tackle⁶ until the time that they are placed upon a pier, wharf, or lighter for delivery to the consignee.⁷ Under either practice a twilight zone will clearly exist at each end of the voyage, during which it is difficult to attach liability to any party for any loss or damage which the goods may suffer, and this difficulty appears to have been in no way remedied by the Harter Act.^{7a}

There follows immediately a clause beginning with the somewhat provocative phrase "It is mutually agreed" and proceeding to state that the shipowner shall not be liable for a long and growing list of possible casualties. Taking a bill of lading at random⁸ and omitting the provisions as to deviation and ports of refuge, the clause continues "The carrier shall not be liable for loss, delay or damage occasioned by perils of the sea or other waters, by fire from any cause or wheresoever occurring; by barratry of the master or crew; by enemies, pirates, robbers or thieves; by arrest and restraint of princes, rulers or peoples, riots, strikes, lock-outs or stoppage of labour; by explosion, bursting of boilers, breaking of shafts, or any other latent defect in hull, machinery or appurtenances, or unseaworthiness of the steamer, whether existing at the time of shipment or at the beginning of the voyage, provided the owners have exercised due diligence to make the steamer seaworthy; by, or resulting from, faults or errors in navigation or in the management of the steamer; by heat, frost, decay, putrefaction, rust, sweat, change of character, drainage, leakage, breakage, vermin, damage from smell, sweat or evaporation from other goods, or by explosion of any of the goods, whether shipped with or without disclosure of their nature, or any loss or damage arising from the nature of the goods or the insufficiency of packages; nor for land damage; nor for the obliteration, errors, insufficiency or absence of marks, numbers, address or description, or wrong delivery arising therefrom; nor for risk of

⁶ *Blaikie v. Sternbridge*, 6 C. B. (N. S.) 894 (Eng. 1859); *Harris v. Best*, 7 Asp. M. C. 272 (Eng. 1892).

⁷ *Chartered Bank of India v. British India Stm. Nvg. Co.*, L. R. (1909) A. C. 369.

^{7a} *Gilchrist Trading Co. v. Boston Co.*, 223 Fed. 716 (C. C. A. 1915).

⁸ *Liverpool-New Orleans* (1907) Form.

craft, hulk or transshipment; nor by the prolongation of the voyage, or any cause beyond the carrier's control." Even this stupendous clause is less severe than some that could easily have been found, and it was not unnatural that complaints should have arisen from shippers who had almost come to believe the rather cynical statement that the shipowners were not compelled to do anything but accept the freight money!

It might be imagined that the shipowner was content with such a limitation of his liability, yet a so-called "benefit of insurance" clause almost invariably followed in either one of two forms, (1) "carrier not liable for any damage that may be covered by insurance," or (2) "carrier shall have the benefit of any insurance effected upon the goods."⁹ The effect of the first alternative is to incorporate the marine insurance policy in the bill of lading, and insurance can be had against every conceivable risk if an adequate premium be paid. In the second case, which is still valid and enforceable in the United States, a shipper who sustained a loss was compelled to turn over to the carrier any insurance money he received in settlement. The insurance company paid the shipper and then sued the carrier, if he was liable. If the carrier was compelled to pay the underwriter, he demanded the insurance money previously received by the shipper. To avoid such a contingency the underwriters adopted the practice of granting a loan to the shipper to cover the amount of any claim, and then proceeding against the carrier in the name of the assured. If any recovery is had the shipper repays the amount of the loan; if not he retains it—a method which has been upheld by the Courts.¹⁰

A valuation clause follows, setting out that "it is mutually agreed that unless an higher value be stated herein and an increased freight rate specially arranged therefor, the value of the merchandise hereby receipted for does not exceed the sum of one hundred dollars United States currency." Occasionally the figure was as high as \$200 or even \$250, but the lower figure was more

⁹ Hearings on Theft and Pilferage, July, 1921, p. 85.

¹⁰ Luckenbach v. McCahan Sugar Refining Co., 248 U. S. 149 (1918); The Turret Crown, 297 Fed. 766 (C. C. A. 1924) (holding invalid a "loan clause" in a bill of lading in which the shipper agreed that loans so made should enure to the benefit of the carrier).

general, and such a valuation has been repeatedly held to be legal ¹¹ despite the fact that it enables the shipowner to evade the spirit of the Harter Act while strictly keeping to the letter.

Perhaps no single clause in the whole bill of lading as it then stood has caused more bad feeling and hardship than that which prescribes the conditions on which the shipper must make claims for loss or damage. Generally it reads somewhat as follows: "Claims for loss or damage to be made at port of discharge and at no other port. No claim will be admitted unless agents are notified in writing before the goods are taken receipt of. Claims will not be paid unless rendered within thirty days of the steamer's arrival." An even more iniquitous form reads, "All claims for short delivery, loss or damage must be made in writing to the steamer's agent at the port of destination of the goods within 48 hours after the steamer or lighter has finished discharging and always before the goods are taken away from alongside the ship or lighter. In case such claims shall not be presented in writing within the time and place here designated, such claim shall be deemed to be waived and the steamer to be discharged therefrom." The injustice of these clauses needs no argument. The efficiency with which theft and pilferage are carried on today necessitates a complete examination of the goods before it can be ascertained if they are in good order and condition and it is absurd to suggest that the package must be opened on the pier or dock, and the contents there examined. Admittedly the mobility of conditions in the shipping business renders prompt notice of claim essential to the shipowner, but there is no justification of the absurdly low time limit specified.

The manifest defects and diversity of bills of lading gave rise to a demand for a better and more uniform contract in the United States, and as a result of hearings before the Interstate Commerce Commission, a uniform through export bill of lading was finally prescribed in October, 1921, by order of the Commission.¹² The agitation for improvement was, however, interna-

¹¹ *Hart v. Penna. R. R. Co.*, 112 U. S. 331 (1884); *Reid v. Fargo*, 241 U. S. 544 (1915).

¹² 64 I. C. C. 347 (1921), and amended 66 I. C. C. 687 (1922).

tional in its scope and was perhaps even more marked in the United Kingdom than in the United States. The Dominions Royal Commission in its report presented to both Houses of Parliament in March, 1917, unanimously recommended legislation on the lines of the Canadian Water Carriage of Goods Act, 1910. On the 26th of July, 1918, the Imperial War Conference passed resolutions which recommended the appointment of an Imperial Investigation Board to inquire into and report, *inter alia*, on all matters connected with Ocean freights and facilities. On June 15, 1920, the Prime Minister, Mr. D. Lloyd George, appointed a Committee under the title of the Imperial Shipping Committee, with power to inquire into complaints from persons and bodies interested with regard to Ocean freights, facilities and conditions. The Committee in its Report ¹³ unanimously recommended legislation on the lines of the Canadian Water Carriage of Goods Act, 1910, with certain specified reservations.

The Maritime Law Committee of the International Law Association, realising that legislation in the United Kingdom and the British Dominions would not have a universal character, set to work to prepare an International Code, following the precedent in connection with the rules covering General Average, known as the York-Antwerp Rules, 1890,¹⁴ for which the same Committee was responsible. A draft code was submitted, in July, 1921, to a meeting of the International Chamber of Commerce. Meetings between interested parties, shippers, consignees, bankers, underwriters and shipowners were held in London and elsewhere to consider the situation, and eventually at a Conference at The Hague in September, 1921,¹⁵ The Hague Rules, 1921, were agreed and resolutions were added recommending their coming into effect on all shipments after January 31, 1922. In the following November an International Shipping Conference was held in

¹³ Report of the Imperial Shipping Committee on the Limitation of Shipowner's Liability by Clauses in B's/L, and on certain other matters relating to B's/L, February 25, 1921.

¹⁴ York-Antwerp Rules (General Average); I. Rev. de Dr. Mar. Comp. 1, 638; II id. 719; VII id. 31, 601; VIII id. 1, 616.

¹⁵ Hague Rules. XXXIII Rev. Int. de Dr. Mar. 178, 261, 495, 502, 684, 701, 976; I Rev. de Dr. Mar. Comp. 652; II id. 25, 36, 720, 722; III id. 617, 618, 627, 632; IV id. 13, 49, 55; VII id. 29; VIII id. 366.

London, at which were represented the owners of more than 90 per cent. of the shipping tonnage of the world. While the conference was not in agreement with all the provisions of the Rules, notably the \$100 valuation,¹⁶ it agreed to accept them if there was a real desire on the part of shippers that they should be accepted, provided that they were made uniform in all maritime countries so that all shipowners would be under the same disability.

Subsequently some British interests opposed the Rules, especially with regard to bulk cargoes,¹⁷ but the Board of Trade held a conference of owners and shippers, and an agreement was reached—largely on account of the threat of the government to pass legislation on this subject, which the shipowners feared would be worse than The Hague Rules. An international conference was then called to London in October, 1922, by the Comité Maritime Internationale, and after much discussion and the incorporation of several amendments the Rules were unanimously accepted and the text was presented to a conference at Brussels of the diplomatic representatives of twenty-four commercial nations, including Great Britain and the United States, which finally adopted them. It remained for the several States to enact legislation which should incorporate the Rules. Great Britain has done this in the Carriage of Goods by Sea Act,¹⁸ which is already in full effect; France has passed an act which will not take effect until other nations shall have done likewise, and a Bill¹⁹ has been before Congress for two years, which after an interminable series of Hearings seems to have a good prospect of becoming law in the near future. The Rules are stated in French in the official version, and for a while it seemed that important discrepancies would exist in the English and American Acts, but this possibility has been eliminated by an agreement as to the official translation into English.

Article I of The Hague Rules concerns itself entirely with definitions of the various terms used throughout the Rules. The

¹⁶ Art. IV, sec. 5.

¹⁷ Art. III, Rules 4 and 5; and also sec. 6, Carriage of Goods by Sea Act, 14 Geo. 5, 1 c. 22 (1924).

¹⁸ 14 Geo. 5, c. 22 (1924).

¹⁹ H. R. 14166, A Bill Relating to the Carriage of Goods by Sea.

definition which is probably of most importance, and certainly that which has been most frequently amended, is the one which refers to the contract of carriage. "The term 'contract of carriage' applies to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charter-party from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and an holder of the same."²⁰ A bill of lading is a document evidencing the contract of shipment,²¹ but seems not to have been defined in any English or American statute. Where there is no charter-party and the bill of lading is issued by the shipowners or their agent the case presents no difficulties, but the existence of a charter-party complicates the question. In such a case the bill of lading could only serve the purpose of a receipt as between the owner and charterer, the complete terms of the contract being contained in the charter-party,²² but as regards third parties, the definition states that the term shall include a bill of lading issued under a charter-party, from the moment at which the bill of lading "regulates the relations between the carrier and the holder of the same" (that is in practice from the time at which the bill is negotiated) while Article V of the Rules requires that "if bills of lading are issued in the case of a ship under a charter-party they shall comply with the terms of these Rules." The Rules therefore seem to apply to all bills of lading: if the charterer wants a mere receipt for goods put on board he must take it in some other form than a bill of lading. It must however be clearly borne in mind that for this purpose the chief quality in a bill of lading, as envisaged by the Rules, is negotiability—for it is expressly provided in Article VI that such other form must be non-negotiable. This raises a matter, more pertinent to the

²⁰ Art. I (b).

²¹ *HUGHES—ADMIRALTY*, 161; *The Montana*, 129 U. S. 401 (1883); *Mason v. Lickbarrow*, 1 H. Bl. 357 (Eng. 1790); *Sewell v. Burdick*, 10 A. C. 74 (Eng. 1884).

²² *Leduc v. Ward*, 20 Q. B. D. 479 (Eng. 1888), per Lord Esher; *Turner v. Haji* (1904) A. C. 826.

American than to the English lawyer, of the difference between a private carrier and a common carrier by sea, and the question may arise as to the right of a shipper to demand a bill of lading when he has loaded goods on a vessel chartered by himself for that purpose. Clearly as between the charterer and the shipowner the terms of the charter-party will govern, and The Hague Rules will not apply. They will also not apply if the charterer takes a non-negotiable receipt for the goods shipped—but if the shipowner issues a bill of lading in negotiable form the Rules will apply to such bill from the time at which it is negotiated. The right of a charterer to demand a negotiable bill of lading from the shipowner is therefore of great importance.

The definitions of "Carrier," "Ship" and "Goods" are substantially in line with previous statutory and juristic statements and need no comment, but it will be noted that the definition of "Carriage of Goods"²³ does not in any way alter the twilight zone which was seen to exist at each end of the voyage. The Rules, in fact, relate only to the period which was covered by bills of lading before those documents had developed into contracts providing for a variety of additional services which may include collection and delivery before and after the voyage, and sometimes also transport overland and warehousing while in transit. Before the Rules apply, and after they have ceased to govern the contract the existing legislation and maritime custom of the country will govern the rights and duties of the parties.²⁴

Article II²⁵ provides that all contracts of carriage by sea shall be subject to the Rules. The Rules so far as they go are a complete and self-contained set of rules: they constitute the complete basis of the contract between the parties. As pointed out by Sir Norman Hill in evidence before the Joint Committee of Par-

²³ Art. I (e) "Carriage of goods" covers the period from the time when the goods are loaded on to the time when they are discharged from the ship; see also *Gilchrist Trading Co. v. Boston*, 223 Fed. 716 (C. C. A. 1915) as to the position of the law under the Harter Act.

²⁴ *Coggs v. Bernard*, *Smith's Leading Cases*, 12th ed., Vol. I, pp. 226, 257.

²⁵ "Subject to the provisions of Article VI, under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, carriage, custody, care and discharge of such goods, shall be subject to the responsibilities and liabilities and entitled to the rights and immunities, hereinafter set forth."

liament in 1923, "The responsibilities and liabilities imposed on the shipowner by the Rules are to take the place of all existing warranties and implied undertakings under either English or other laws."

Article III ²⁶ sets out the responsibilities and liabilities of the shipowner. This is one of the fundamental innovations of the Rules; heretofore we have been very largely content with negative statements of what the shipowner might not do, but now we are confronted with a complete and positive statement of the extent

²⁶ Responsibilities and Liabilities.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—
 - (a) Make the ship seaworthy;
 - (b) Properly man, equip, and supply the ship;
 - (c) Make the holds, refrigerating and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.
2. Subject to the provisions of Article IV, the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.
3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—
 - (a) The leading 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;
 - (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
 - (c) The apparent order and condition of the goods;

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. 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), (b) and (c).
5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper.

of the liabilities and responsibilities which he is to bear. First of all the carrier shall use due diligence to make the ship both seaworthy and cargoworthy, and to properly man and equip her.²⁷ Read in conjunction with Article IV, it will be seen that this does not reduce the shipowner's liability below that to which he could by appropriate stipulation reduce his liability under the Harter Act,²⁸ but whereas the Harter Act was merely a permissive statute there is found in the Rules a positive statement of the reduced liability. It marks an even greater change in English law where an absolute warranty of seaworthiness had previously been implied when there was no specific exemption contained in the con-

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading.

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper shall have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted, at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.
8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

²⁷ Article III, section 1.

²⁸ 27 Stat. 445 (U. S. Comp. St. sec. 8031), *The Irrawaddy*, 171 U. S. 187 (1897); *The Prussia*, 93 Fed. 837 (C. C. A. 1899); *The Carib Prince*, 170 U. S. 655 (1897).

tract.²⁹ Secondly, and again subject to the provisions of Article IV, the shipowner must properly and carefully "load, handle, stow, carry, keep, care for and discharge the goods carried."³⁰ This provision agrees generally with the legislation of the United States and of the British Dominions, but is new to English law. The obligation will be limited to the duration of the "carriage of goods," as set out in Article I (e), and the construction of the terms would seem to be that existing in the Admiralty judgments of the several states so that there will be little change in existing law apart from the statement of a positive liability of the shipowner. Having received the goods the carrier must issue to the shipper a bill of lading³¹ giving the leading marks and general details of the goods, such particulars being guaranteed by the shipper.³² It is however provided in section 3, that the carrier is not bound to issue a bill of lading showing particulars which he has reason to doubt or which he has no reasonable means of checking, a provision substantially similar to that of the United States Bills of Lading Act.^{32a} It should be noted also that the British Act provides³³ that "where under the custom of any trade the weight of any bulk cargo inserted in a Bill of Lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then, notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of the goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper." This provision will give considerable relief from the Rules to those engaged in the shipment of bulk cargoes of produce which is graded and weighed by a marketing organization (*e. g.* wheat), but in every other case the bill of

²⁹ *Steel v. State Line*, 3 A. C. 86 (Eng. 1877), per Lord Blackburn.

³⁰ Article III, section 2.

³¹ Article III, section 3.

³² Article III, section 5.

^{32a} 39 Stats. 538.

³³ Carriage of Goods by Sea Act, 14 Geo. 5, c. 22, sec. 5 (1924).

lading is to be *prima facie* evidence of the receipt by the carrier of the goods as described therein—a practice in conformity with existing law in both Great Britain and the United States, as in almost all maritime countries.³⁴

The question of notice of loss or damage is dealt with in section 6 of Article III, by the terms of which acceptance of the goods by the consignee is to be *prima facie* evidence of their good order and condition, although if the loss or damage is not apparent the consignee is given three days after removal of the goods in which to give notice in writing of such loss or damage.³⁵ In any case even if notice is not given ^{35a} the consignee may take legal proceedings against the carrier or the ship within one year after the delivery of the goods or the date when the goods should have been delivered. The provisions of this section are infinitely more liberal towards the shipper than those contained in the majority of the bills of lading customarily in use before the drafting of the Rules ³⁶—and it is with these clauses that comparison should be made rather than with the Statute of Limitations in the various States which will be superseded by the Rules in this particular respect. It should however be borne in mind that this section is governed by the definition of “carriage of goods” found in the first article of the Rules, and consequently the “time of removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage” in this Rule is the time when the goods are discharged from the ship.

“Received for shipment” bills of lading have become necessary to modern commerce by reason of the growing complexity of marketing and transportation organisations. The legal value of

³⁴ *Smith v. Bedouin*, (1896) A. C. 70; *Elder Dempster v. Dunn*, 101 L. T. R. 578 (Eng. 1909); *Brittan v. Barnaby*, 21 How. 527 (U. S. 1858); U. S. Fed. B/L Act—secs. 20, 21, 22.

³⁵ In the original draft of the American bill this section differed very considerably from the English translation, but the discrepancy has been remedied in the draft now before Congress.

^{35a} Sec. 13 Report of Joint Committee (1923) on p. ix—a provision which seems to make some change in American law.

³⁶ LEGGETT—BILLS OF LADING, p. xlviii, xliii; CARVER—CARRIAGE OF GOODS BY SEA, p. 161; *Australian U. S. N. Co. v. Hunt*, 2 A. C. 351 (Eng. 1876).

such a document under English law is however doubtful,³⁷ and appears not to have been decisively passed upon by the American courts.^{37a} In order to avoid any doubt as to the validity of this document the Rules provide³⁸ that after the goods have been loaded on board the vessel a "received for shipment" bill of lading may be surrendered in return for a shipped bill of lading issued by the carrier or his agent. Alternatively the carrier may note upon the existing document the name of the vessel and the particulars of the voyage, in which case it shall be deemed to be a shipped bill of lading. It will be seen that no complete solution of the thorny problem has been attempted, particularly as regards *c. i. f.* contracts,—but it is apparent that received for shipment bills of lading will tend to be exchanged for the more widely recognised document as soon as the goods are actually shipped.

Finally, to round off Article III,³⁹ it is provided that any clause in a bill of lading which sets out to limit in any way the obligations placed upon the shipowner by these rules shall be null and void, and it is specifically provided that "a benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability."

Under the third Article of the Rules the carrier has assumed a considerable number of positive responsibilities, and in Article IV is found the counterpoise for the contract—the rights and immunities conferred upon the shipowner. First of all the shipowner is not to be held liable for latent defects in the hull or equipment of the vessel, unless a loss resulting from such defect can be directly attributed to a failure to exercise due diligence to make the ship seaworthy and cargoworthy as provided in the first

³⁷ In the *Marlborough Hill* (1921) Privy 1 A. C. 444 Lord Phillimore indicated that a "received for shipment" bill of lading is a bill of lading for all purposes, but in *Diamond Alkali Export Co. v. Bourgeois*, (1921) 3 K. B. 443, Mr. Justice McCardie held that "a received for shipment bill of lading is not a fulfilment of the seller's obligation under a *c. i. f.* contract."

^{37a} In the "*Caroline Miller*," 53 Fed. 136 (C. C. 1892) a received for shipment bill of lading was held to be "no bill of lading at all," but in the "*Guiding Star*," 53 Fed. 936 (C. C. 1893), such a document was held to be covered by a State statute regulating bills of lading. Both of these however are old decisions and the question appears not to have come before the Courts in recent years.

³⁸ Art. III, sec. 7.

³⁹ Art. III, sec. 8.

section of Article III.⁴⁰ In this respect The Hague Rules differ greatly from the Harter Act, under the terms of which a shipowner was unable to claim the benefit of the stipulated exemptions if any lack of due diligence, whether responsible for the casualty or not, could be shown by the claimant.

Moreover a large number of individual casualties are set out⁴¹ for which he is not to be held liable. These are in substance the perils which were customarily excepted in bills of lading, but additional clauses limiting the liability of the shipowner will now be null and void,⁴² so that uniformity has at last been secured in a matter where it was most urgently needed. "Any reasonable deviation," it is provided in section 4, "shall not be deemed to be an infringement or breach of these Rules . . . and the carrier shall not be liable for any loss or damage resulting therefrom." Deviation in an attempt to save life or property at sea are specifically mentioned, and "any reasonable deviation" (interpreted in the light of the clause which it replaced) would seem to mean "any deviation authorised by the contract of carriage provided that such deviation shall be reasonable having regard to the service in which the ship is engaged." At the Diplomatic Conference in Brussels in October, 1922, the enlarged sentence was transformed into the three words "any reasonable deviation."⁴³

In the fifth section a value of one hundred pounds sterling per package⁴⁴ is agreed upon as the figure up to which the carrier shall be liable, and while the parties are at liberty to agree upon another valuation if they choose, that valuation shall not be less than £100. Thus the loophole through which the terms of the Harter Act were evaded⁴⁵ has been carefully closed. The remaining section of the Article dealing with dangerous goods is in all respects similar to existing law in both America and Great Britain.⁴⁶

⁴⁰ Art. IV, sec. 1.

⁴¹ Art. IV, sec. 2.

⁴² Art. III, sec. 8.

⁴³ Report of the British Delegates, pp. 22, 72-3.

⁴⁴ In the American bill this is converted into dollars.

⁴⁵ *Calderon v. Atlas S.S. Co.*, 170 U. S. 272 (1897); *Morris v. Oceanic*, 16 L. T. R. 533 (Eng. 1899).

⁴⁶ Act of Congress March 4, 1909; Merchant Shipping Act 1894, sec. 446.

Under Article V the carrier may surrender his rights and immunities in whole or in part, provided that such an agreement is specifically embodied in the bill of lading. On the other hand, under Article VI any special agreement may be entered into between parties in the case of particular goods (not of ordinary commercial shipments) relieving the carrier of his liability in whole or in part. This provision however will allow a diminution in the carrier's liability as to seaworthiness only in so far as such a stipulation is not contrary to public policy, and in any case the Article is only to apply to "shipments where the character or condition of the property to be carried, or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement."⁴⁷ The special provisions as to coastwise traffic contained in the British Act⁴⁸ are subject to this rule—and in any such case the Rules provide that the contract of carriage shall be in a non-negotiable form.

The remaining Articles serve to round off the Rules and to prevent any misunderstanding of the extent to which they might supersede existing national law. Article VII provides that the carrier may enter into any agreement he pleases as to the handling of the goods prior to loading on board his vessel and subsequently to their discharge. This Article is omitted from the bill now before Congress, a fact which is probably due to the provision in American law that the negligence of public servants is contrary to public policy.^{48a} This rule would therefore limit any such contracts that might be made by an American shipowner. Article VIII provides that the Rules shall not in any way "affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of the owners of seagoing vessels." Thus the rights of shipowners under Sections 502, 503 of the Merchant Shipping Act of 1894 and under Sections 4282-4289 Rev. Stat., the Act of June 26, 1884, and Act of June 19, 1886⁴⁹ will remain the same as heretofore.⁵⁰

⁴⁷ Art. VI, (c).

⁴⁸ Section 4.

^{48a} *Railway Co. v. Lockwood*, 17 Wall. 357 (U. S. 1872); *The Montana*, 129 U. S. 397, at p. 438 (1888).

⁴⁹ U. S. Comp. Stat. sections 8020-8027, 8028, 8029.

⁵⁰ Art. IX, the remaining Article, merely states that the monetary units

To claim that The Hague Rules will serve as an universal panacea for the ills of shipping, or that they will create that uniformity in Admiralty Law which is so ardently desired would be to crush them out of existence by too heavy a load. They are however a distinct improvement upon conditions as they existed previously. To mention only a few of the manifest advantages that they have achieved, the uniformity of bills of lading might be stated first. In addition, the liability of the carrier has been definitely stated; the minimum valuation per package of cargo has been greatly increased; a more reasonable provision has been made for notice of claims; the burden of proof has been placed upon the carrier in those cases in which he would seek to take advantage of a stated immunity and the much-disliked benefit of insurance clause has been eliminated. Stated in their baldest terms these factors make a rather stupendous array from the point of view of the commercial world, and their value to the Admiralty lawyer is no less startling. Twenty years were consumed in the effort to draft the York-Antwerp Rules, 1890, and these were only a code of rules regarding general average which might be adopted at the option of the parties in any given case. Yet the drafting and preparation of The Hague Rules in the form which received unanimous acceptance at the hands of the Diplomatic Representatives present at the Brussels Conference had taken less than two years!

These things, however, must not blind us to the fact that the Rules are by no means perfect. To point to their weaknesses is not to deny their value but rather to point out the directions in which they can be improved in the near future. First of all no effort has been made to eliminate the "twilight zone" at each end of the voyage. Admittedly this would not have been easy, for, to make the rules applicable to goods before they reached the ship and after they had been discharged from the ship would necessitate their extension beyond the realm of the sea into the territorial jurisdiction of the several States. Such a course would have

mentioned in the Rules shall be taken to be gold value—a provision which has been avoided by the statement of the minimum liability in the national currency of each country enacting the Rules.

greatly weakened the chances of an international acceptance of the Rules. The problem, however, is not a new one, because as we have already pointed out the Harter Act failed also in this respect—and as in the previous case the local law of the state in which the port is situate will apply to the goods during the period before The Hague Rules begin to apply and after they have ceased to apply.

Secondly there is the uncertainty as to the application of the Rules in the case of contracts for the whole reach of the vessel. It is perfectly clear, as has already been stated, that all negotiable bills of lading will be governed by the Rules; it is equally clear that as between the charterer and the owner of the chartered vessel the relations will be determined by the terms of the charter party. Provided such a charterer accepts a non-negotiable receipt for goods shipped on board the vessel, the Rules will not apply, but if he receives a bill of lading and negotiates it the Rules will apply from the time of such endorsement.⁵¹ The third section of Article III provides that the carrier "shall, on demand of the shipper, issue to the shipper a bill of lading," and it would seem that this section applies equally in the case of both common and private carriers. If this is so, the Rules will go far to abolish the distinction in American law between these two groups, a distinction which has already ceased to have any practical significance in the English courts.

The drafting of the Rules in the above case is not as careful as one could have wished—and the same charge may be brought against Article IV, section 2, subsection (q), which provides that "the burden of proof shall be on the person claiming the benefit of *this exception* to show that neither the actual fault or privity of the carrier, etc., . . . contributed to the loss or damage." Again in the first section of the same Article it is provided that "whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be upon the carrier." The specific mention of the burden of proof in these two cases might seem to indicate that in the case of the several other specified exemptions the burden of proof is *not* to rest upon

⁵¹ Art. I (b).

the carrier. The most casual reference to the several reports of the discussion at the conferences from which the Rules were evolved demonstrates the falsity of this assumption, and shows that in every case the burden of proof is to rest upon the carrier who is claiming the advantage of a particular exemption. The vagueness of the Rules however in both this case and the one previously mentioned should be remedied without delay, because vagueness of any sort is not to be tolerated in a document which is designed to secure the international uniformity of maritime law.

.

If the uniformity of Admiralty Law throughout the great maritime states of the world is an ideal which proves attractive to the jurist, how much more attractive will it prove to the economist who finds himself confronted with a world which is daily being more closely knit by the bonds of ocean transportation? Shipping has extended its tentacles to every corner of the world and in many cases the carrier is bound to find himself at the mercy of a jurisdiction with whose concept of maritime law he is totally unfamiliar. Perhaps this cannot be avoided: perhaps the rapid growth of nationalism is to be the characteristic feature of the present generation—but in the universal approval of The Hague Rules there lies a factor which leaves hope that it may be the first step upon the road to a goal that is desired alike by lawyers and economists—the uniformity of maritime law.

F. Cyril James.

*University of Pennsylvania,
Philadelphia.*