HOLDER OF A BILL OF LADING

This article discusses the circumstances in which a bill of lading confers rights of possession and rights of suit on its holder.

I. INTRODUCTION

It is well-known that a bill of lading serves three main functions under English as well as Singapore law: as a receipt for goods handed to the carrier, as evidence of the contract of carriage and as a document of title.

Save for an interesting point which has come up with the English Carriage of Goods by Sea Act 1992 (the Singapore Bills of Lading Act, Cap. 384) which will be addressed towards the end of this article, the role of a bill of lading as a receipt no longer raises difficult issues of law. Suffice it to say very generally here that as a receipt, it is evidence (prima facie or conclusive depending on the circumstances) of the quantity and condition of the goods when shipped on board (or received for shipment as the case may be).

The main object of this article is to examine in what circumstances:

(1) A person in possession of the bill of lading becomes entitled to possession of the goods as against the carrier; and

(2) A person becomes a holder of the bill of lading so as to have rights of suit under it.

II. RIGHT OF POSSESSION

It is often said that a holder of the bill of lading is entitled to demand possession of the goods from the carrier, because the bill of lading is the symbolic "key to the warehouse". If "holder" is given its restricted meaning (i.e. consignee, indorsee or bearer of a bearer bill), there is nothing objectionable in the phrase. Unfortunately, the legal import of the word "holder" is often forgotten when the proposition is cited, leading to a common fallacy that anyone who "holds" (in a popular sense) the bill of lading can demand possession of the goods from the carrier.

Leaving bearer bills aside, a bill of lading is an undertaking by the carrier to deliver to either the consignee or his order. It is first of all the consignee who can demand possession. The consignee can, of course, "order" otherwise, and does so by indorsing the bill of lading to somebody else. This indorsee then becomes entitled to possession on the face of the bill. If this indorsee is so minded, he can tell the carrier that he is transferring such right to yet another person. This is done by further indorsing the bill.

If the bill of lading is made out to A or A's order, and B comes into possession of the bill, it does not mean that B can demand possession from the carrier. Likewise, if A has indorsed it to X, Y cannot by mere possession

of the bill claim a right of possession to the goods. The explanation for this is not merely that B or Y may not be "lawful" holders, or holders in good faith, but that they are not "holders" within the concept at all. They are in possession of the bill, yes, but they are not on the face of the bill, persons whom the carrier has undertaken to deliver the goods to.

As against this, the argument is made that a bank who is the pledgee of a bill is entitled to possession of the goods. The answer to this is that a good pledge should come with an indorsement so that proprietary rights, albeit of the "special" kind, can be transferred.[1] One ought to be aware that in the celebrated case of *Sewell* v *Burdick*, the pledgee was also the indorsee of the bill.[2]

It may have happened in practice that occasionally the bill, if it is not a bearer bill, is not indorsed to the bank. While the bank has possession of the bill, and may even have a lien on it, this per se does not translate into possessory rights in the goods. In order to have such rights, the bill must be indorsed to the bank, or as commonly practised, indorsed by the consignee or previous indorsee, in blank. The latter (in effect creating a bearer bill) renders anyone coming into possession a holder, as no specific indorsee is specified.[3]

It may be said that the carrier would not know for sure anyway whether the person identifying himself as the consignee or indorsee is actually such a person. It is possible that the carrier has discharged his duty if he honestly believes that the person making a demand is the consignee or indorsee.[4] This is, however, very different from saying that the person presenting the bill need not even say that he is the consignee or indorsee. Whatever the standard of care required of the carrier in ascertaining the identity of the consignee or indorsee, it is altogether a different premise from the suggestion that any person in possession of the bill can tell the carrier that he is not the indorsee or consignee, and at the same time demand possession.

If anybody in possession of the bill of lading can demand possession of the goods, there is no purpose in an indorsement. For the same reason, a proper indorsement cannot be by a stranger to the bill. A stranger whose name appears on the bill as indorser confers no rights on the purported indorsee. The stranger's signature is a mere defacement of the bill. This is true even if a stranger forges the signature of the current holder.

1 See Scrutton, *Charterparties and Bills of Lading* (19th ed., 1984), p. 198.
2 (1884) 10 App. Cas. 74.
3 The analogy for this is found in the principles relating to bills of exchange where the person claiming payment ("the holder"), unless the original payee, must be an indorsee or a bearer of a bearer bill: Ryder & Bueno (eds.), *Byles on Bills of Exchange* (1988 ed.), p. 227; Hedley, *Bills of Exchange and Bankers' Documentary Credits* (1994, 2nd ed.), pp. 63–64.
4 *Glyn Mills & Co* v *East & West India Dock Co* (1882) 7 App. Cas. 591; Scrutton, *supra*, note 1, p. 296; *The Sagona* [1984] 1 Lloyd's Rep 194.

A forged indorsement is no indorsement.[5] A purported indorsee claiming under a forged indorsement has no right to possession of the goods from the carrier. Again, this does not mean that the carrier has a duty to verify signatures. The discharge of his duty is not conditional upon delivery of the goods to a bona fide indorsee.[6]

As an end-note, it must be stated that not every consignee or indorsee with possession of the bill of lading is entitled to claim possession of the goods. The transfer of the bill of lading, even if done with the proper indorsement, does not by itself transfer a right of possession to the goods. Together with the transfer of the bill of lading, there must be an intention as well as an ability to transfer property in the goods.

In *The Future Express*, Lloyd L.J., delivering the judgment of the Court of Appeal, held that a bank which is named consignee and is transferred possession of the bill of lading is nonetheless not a pledgee of the goods unless: firstly, the transferor intended to pass a special property in the form of a pledge[7] and secondly, the transferor is capable of passing such property in the sense that he has general or special property in the goods.[8] A bill of lading being only a document transferable by delivery, and not a true negotiable instrument, the transferee obtains no better interest than the transferor is capable of transferring.[9]

While the decision of the Court of Appeal is in line with general principles, it will cause some consternation to banks issuing or confirming letters of credit because such banks will not necessarily obtain a valid pledge in respect of the goods even if the bills of lading are consigned or indorsed to them. They will have to be certain that the transferors, the sellers or buyers as the case may be, have property in the goods. This is an extra burden to banks in letter of credit transactions.[10]

5 In a bill of exchange, a stranger who endorses on the bill, while not able to transmit rights therein, assumes personal liability to a holder in due course. The effect of a stranger's indorsement on a bill of exchange is addressed in *Steele* v *M'Kinlay* (1880) 5 App. Cas. 754, at 782, per Lord Watson. On forged endorsements, see also Ryder & Bueno, *supra*, note 3, p. 227; Hedley, *supra*, note 3, p. 102.

6 *The Sagona*, *supra*, note 4.

7 See also the Australian High Court decision in *The Zhi Jiang Kou* [1989] 1 Lloyd's Rep 43; overruled on another point by the Court of Appeal in [1991] 1 Lloyd's Rep 493.

8 [1993] 2 Lloyd's Rep 542, at 547–548.

9 The editors of Scrutton prefers to describe it as merely "transferable", and not "negotiable" which they feel is better reserved to describe an instrument which can give to a transferee a better title than that possessed by the transferor: *supra*, note 1, p. 185.

10 The actual right of the consignee or indorsee to possession of the goods is not to be confused with the discharge of the carrier's duty. As mentioned earlier, the carrier has usually discharged his duty if he honestly delivers to the consignee or indorsee against production of the bill of lading, regardless of the actual title of the consignee or indorsee to the goods: *Glyn Mills & Co* v *East & West India Dock Co*, *supra*, note 4; *The Sagona*, *supra*, note 4.

The shipper's position merits closer attention. It is widely believed that a shipper who holds the bill of lading can do two things: first, indorse the bill; and secondly, demand possession of the goods. This is, however, an over-simplification.

Where the shipper is neither consignee nor indorsee, he nevertheless retains certain rights in respect of a bill of lading as long as it has not left his hands since its issue.[11] He has a right to have the bill of lading amended by the carrier, provided the amendment does not amount to a misrepresentation of facts. It flows from this that he retains the power to decide who should be consignee of the goods. As a natural extension of this, he can demand possession of the goods since he can always amend the bill to name himself consignee. If the shipper does not exercise his right to do so, he does not have a right to claim possession of the goods under the bill of lading.[12]

However, where the bill of lading has left his possession and "gone through the circuit" of consignee/indorsees, he should no longer have the right to have the bill of lading amended. If it comes back into his possession, he must be an indorsee to acquire any right to demand possession of the goods or to further indorse it on.[13] Even if the bill of lading never left his possession, the shipper has no right to possession of the goods if ownership in the goods has already passed.[14]

III. RIGHTS OF SUIT

Where rights of suit are concerned, the obvious place to start is the English Carriage of Goods by Sea Act 1992 ("COGSA 92"), which replaced the problematic Bills of Lading Act 1855. COGSA 92 was accepted as part of Singapore law via The Application of English Law Act 1993 and is now enacted in Singapore as Bills of Lading Act, Cap. 384 ("BLA").

The relevant part of S. 2(1) BLA reads as follows:

> Subject to the following provisions of this section, a person who becomes —
>
> (a) the lawful holder of a bill of lading
>
> shall (by virtue of becoming the holder of the bill…) have transferred to and vested in him all rights of suit under the contract of carriage as if he had been a party to that contract.

11 Scrutton, *supra*, note 1, p. 184; *The Lycaon* [1983] 2 Lloyd's Rep 548; *Ishaq* v *Allied Bank* [1981] 1 Lloyd's Rep 92; *Mitchel* v *Ede* (1840) 11 A & E 888; 113 ER 651.

12 *The Future Express* [1992] 2 Lloyd's Rep 79 at 99 per Judge Diamond QC.

13 Carver, *Carriage by Sea* (13th ed.), Vol. 2, para. 1595.

14 *The Kronprinsessan Margareta* [1921] 1 AC 486.

The lawful holder is defined in s. 5(2):

> References in this Act to the holder of a bill of lading are references to any of the following persons, that is to say —
>
> (a) a person with possession of the bill who, by virtue of being the person identified in the bill, is the consignee of the goods to which the bill relates;
>
> (b) a person with possession of the bill as a result of the completion, by delivery of the bill, of any indorsement of the bill or, in the case of a bearer bill, of any other transfer of the bill;
>
> (c) a person with possession of the bill as a result of any transaction by virtue of which he would have become a holder falling within paragraph (a) or (b) above had not the transaction been effected at a time when possession of the bill no longer gave a right (as against the carrier) to possession of the goods to which the bill relates;

and a person shall be regarded for the purposes of this Act as having become the lawful holder of a bill of lading wherever he has become the holder of the bill in good faith.

1. Consignee

Category (a) is simple enough. It refers to the consignee of the goods who has been identified as such on the bill of lading. For purposes of BLA, the bill of lading must never be made to a named consignee alone. It must be to the order of the consignee, i.e., it should be in the form of "to X or order". If it is written to X alone, it is non-transferable and would not fall within the definition of a "bill of lading" under the Act [s. 1(2)(a)]. However, such a bill is in effect a sea waybill and still confers rights of suit to the person named: [s. 2(1)(b)].

It must be remembered that BLA is concerned with rights of suit in contract. The removal of the condition that property must pass by reason of or upon consignment before the consignee obtains rights of suit in contract is one of the main improvements of BLA over the repealed Bills of Lading Act 1855. As seen in *The Future Express*, the consignee, however, may not necessarily obtain rights of suit in tort or bailment as the transfer of a bill of lading naming him as consignee does not always coincide with an intention to pass him property or security in the goods.[15]

15 *Supra*, note 8, at 547–548 (discussed in text above).

2. Indorsee

At first sight, category (b) does not look controversial either. However, there is a view that as BLA does not specify who is able to indorse the bill of lading, anybody can do it. Following this, the definition of "holder" in BLA has been said to be unnecessarily complicated as it should have merely made any transferee a holder, without regard to indorsement. Thus, delivery of the bill would be sufficient without an indorsement, much like a bearer bill.

Such argument misses the nature of a negotiable instrument, of which the bill of lading is one, albeit in a restricted sense.[16] Unless it is a bearer bill, the bill of lading does not confer rights on just anybody who comes into possession of it. As we have seen above, a stranger to the bill cannot demand possession of the goods represented by the bill, nor can he confer rights of possession to anyone by signing on the bill. BLA was not enacted to re-invent the wheel. It does not alter the fundamental nature of the bill of lading, and it cannot be intended that "indorsement" under BLA is divorced from its meaning in common law.

Therefore, an indorsee under BLA must have obtained an indorsement naming him as indorsee from his predecessor, i.e. the previous indorsee or consignee. Such indorsement must derive its validity from an unbroken chain of endorsements leading back to the first indorsement by the consignee.

A person claiming under an invalid indorsement (either because it is forged or because it is by a stranger), should not become a holder at all under s. 5(2)(b) of BLA. It is different if a person obtains an indorsement from the previous holder by fraud or duress.[17] Where this happens, the indorsee is nonetheless a holder. However, he did not become a holder in good faith, and therefore is not a "lawful holder". Consequently, a holder by virtue of fraud or duress does not obtain rights of suit under s. 2(1) of BLA.

The position is the same with a transferee of a bearer bill who procured the transfer by fraud or duress. The transferee is a holder, but he is not a lawful holder as he did not become a holder in good faith. On the other hand, if a person steals a bearer bill, he does not become a holder at all. This is because he is not a person with possession of the bill as a result of the transfer of the bill.

16 As discussed above, the bill of lading is more properly termed a "transferable" instrument rather than a truly negotiable one: Scrutton, *supra*, note 1, p. 185; *The Future Express*, *supra*, note 8.

17 On the analogous position regarding bills of exchange, see Ryder & Bueno, *supra*, note 3, pp. 227–229; Hedley, *supra*, note 3, pp. 67–68, 102.

One might ask what is the point of delving into the difference between a non-holder and a non-lawful holder when neither has rights of suit under BLA. The distinction matters because a non-lawful holder is able to pass on a valid indorsement while a non-holder, being a stranger to the bill, cannot.

This can be compared to the position of holders of bills of exchange in due course or for value.[18] However, the comparison is valid only up to a point. As noted earlier, a bill of lading holder does not have a better title in the goods than his predecessor in title, as the bill of lading is only transferable and not negotiable. Nonetheless, the indorsement by a previous holder with a defective title is still a valid indorsement. For purposes of right of suit under BLA, the predecessor's defective title in the goods is irrelevant. An indorsee who is unaware of the fraud or duress of his indorser is a holder in good faith, i.e. a lawful holder, and thereby acquires rights of suit under BLA.[19] This is an altogether different question from his right of possession or property in the goods.

3. Stale bills of lading

Subject to two exceptions, a person who becomes a lawful holder of a bill of lading only when possession of the bill of lading no longer gives a right (as against the carrier) to possession of the goods to which the bill relates does not acquire rights of suit under BLA. Thus, while such a person becoming indorsee when the bill no longer confers a right of possession to the goods can become a lawful holder under s. 5(2)(c), he does not acquire rights of suit under s. 2(1)(a) unless he falls within the two exceptions in s. 2(2).

(a) When is a bill of lading exhausted

When possession of the bill of lading no longer gives a right of possession to the goods is not legislated, and will have to be determined according to the nature of the bill of lading under common law.

The less controversial example of this is when the carrier has delivered the goods to the consignee or indorsee who also produces the bill of lading. In such a case, the function of the bill of lading as a document of title/possession, insofar as the carrier is concerned, is "exhausted" ("spent" or "stale" are two other words used to describe a bill of lading that has lost its function as a document of title). Subsequent transfers of the bill, and the trade in the goods which it represents, should not be of concern to the carrier.[20]

18 See Ryder & Bueno, *supra*, note 3, pp. 227–229; Hedley, *supra*, note 3, pp. 67–68, 102.
19 S. 5(2) BLA.
20 Scrutton, *supra*, note 1, p. 199; cf. *London Joint Stock Bank* v *British Amsterdam* (1910) 16 Comm. Cas. 102 at 105.

What happens if the consignee takes the goods, but without production of the bill of lading? Authorities are divided over this question. In *London Joint Stock Bank* v *British Amsterdam Maritime Agency* Channell J held that, provided the consignee who took possession was entitled to have the goods delivered to him, the bill of lading was exhausted from the time of delivery.[21] In *The Delfini*, Channell J's view was accepted by both counsel and Phillips J,[22] as well as by Mustill J, albeit in a dictum only, in the Court of Appeal.[23]

The Law Commissioners responsible for COGSA 92 (the Singapore BLA) seemed to be of the same mind. They based their recommendations relating to rights of suit partly on the premise that delivery to the rightful party (consignee or indorsee) against an indemnity would exhaust the bill of lading.[24]

However, without referring to Channell J's judgment in *London Joint Stock Bank*, Lord Diplock thought that the question was still open in *Barclays Bank Ltd* v *Commissioners of Customs & Excise*.[25] Judge Diamond QC in *The Future Express* refrained from expressing a concluded view on the point, but observed in passing that:

> To hold that a bill of lading becomes spent when goods are delivered against an indemnity would greatly detract from the value of bills of lading as documents of title to goods, would diminish their value to bankers and other persons who have to rely on them for security and would facilitate fraud.[26]

On the facts of *The Future Express*, delivery of the goods was not made to some person having a right to claim them under the bills of lading, but to a party who was neither consignee nor indorsee against an indemnity. Therefore, on either view, the bill of lading was not exhausted and still operated as a document of title.[27]

21 *Ibid*., note 25.

22 [1988] 2 Lloyd's Rep 599, at p. 608.

23 [1990] 1 Lloyd's Rep 252 at p. 269; citing *Meyerstein* v *Barber* (1870) LR 4 HL 317, at pp. 330 and 335.

24 The Report of the Law Commission and Scottish Law Commission on Rights of Suit in Respect of Carriage of Goods by Sea, Law Com. No. 196; Scot. Law Com. No. 130, p. 18.

25 [1963] 1 Lloyd's Rep 81 at p. 91.

26 *Supra*, note 12, at pp. 98–99. Judge Diamond QC's comments found favour with Clarke J in *The Sormovskiy 3068* [1994] 2 Lloyd's Rep 266 at 273 who declined to decide the question as it was not relevant in that case.

27 This is consistent with the decision in *Short* v *Simpson* (1866) LR 1 CP 248 where it was held that the bill of lading remained in force where the goods were delivered to the wrong party; see also *Pirie* v *Warden* (1871) 8 Sc LR 360 on the same point. Judge Diamond QC's decision was affirmed on other grounds by the Court of Appeal; *supra*, note 8.

What if a person becomes an indorsee when the goods have been destroyed? Logically, it may be said that a bill of lading in respect of non-existent goods really represents nothing. Insofar as it is a document of title in respect of nothing, it gives no right of possession against the carrier. This was the line taken by counsel for the defendants who argued before the Court of Appeal in *The Future Express* that a bill of lading is a document of title only so long as the goods represented by the bill are in existence.[28]

The Court of Appeal did not find it necessary to comment on counsel's submission on this point as they accepted his alternative arguments. It may be said that counsel's stand is unsatisfactory because it would undermine the utility of the bill of lading when it is needed most. If goods are lost in transit, it ought not to lie in the mouth of the carrier to say that the bill of lading is from that moment on a worthless piece of paper. It happens too frequently that the bill of lading is traded before the actual fate of the goods is known.

(b) When does an exhausted bill of lading confer rights of suit

S. 2(2) BLA provides two situations in which a person who becomes lawful holder of the bill after it has become exhausted can acquire rights of suit:

> Where, when a person becomes the lawful holder of a bill of lading, possession of the bill of lading no longer gives a right (as against the carrier) to possession of the goods to which the bill relates, that person shall not have any rights transferred to him by virtue of subsection (1) above unless he becomes the holder of the bill —
>
> (a) by virtue of a transaction effected in pursuance of any contractual or other arrangements made before the time when such a right to possession ceased to attach to possession of the bill; or
>
> (b) as a result of the rejection to that person by another person of goods or documents delivered to the other person in pursuance of any such arrangements.

Sub-paragraph (a) is an essential exception to the general rule to protect sub-buyers or other persons who enter into contracts relating to the goods while the bill was still in valid circulation. As mentioned above, the Law Commissioners were probably of the view that delivery of the goods to the rightful party, even without production of the bill of lading, would exhaust the bill of lading as a document of title. In recommending that an exhausted bill of lading should no longer confer rights of suit under the new Act,[29] the Law Commissioners were concerned that genuine sub-buyers would be affected by such a provision. S. 2(2)(a) allows sub-buyers or financiers who

28 *Supra*, note 13, at 547.
29 BLA, as seen in s. 5(2)(c).

entered into their respective contracts before the bill of lading is exhausted to obtain rights of suit even if these sub-buyers or financiers obtain possession of the bill subsequent thereto.[30] If the alternative view that a bill of lading is not exhausted until it is handed to the carrier against delivery of the goods to the rightful party is correct, s. 2(2)(a) would be largely redundant.

S. 2(2)(b) is meant to deal with a situation where the buyer rejects the bill of lading or the goods so that the bill of lading finds its way back to the seller. It may happen that the consignee rejects the goods after delivery, and then endorses the bill of lading back to the seller. This indorsement would come only when the bill of lading no longer gives a right of possession against the carrier. However, by virtue of s. 2(2)(b), the shipper who becomes the lawful holder in this situation would obtain rights of suit under BLA. This applies equally to any other consignee or indorsee who has passed the bill of lading and goods down the chain to a sub-buyer.

What if the original party endorses and delivers a bill to a buyer who returns it without further indorsement to the original party? For the sake of clarity, we should consider separately an original party who is shipper, indorsee or consignee.

The shipper's position is clear. He no longer has rights of suit by virtue of extinction of his rights under s. 2(5)(a). Neither will he be a holder under s. 5(2) as he is neither consignee nor indorsee.

The indorsee who regains possession of a bill of lading without an indorsement does not regain rights of suit with it. When the bill of lading was indorsed and transferred to a sub-buyer, the intermediary indorsee's rights of suit are extinguished by virtue of s. 2(5)(b). BLA does not say that these rights are resuscitated by mere re-acquisition of possession. To regain rights of suit, he has to become a holder again. Where the bill of lading has become stale, he must become a holder again *as a result of* the rejection of the bill by the sub-buyer.

However, a person regaining possession of the bill with only an earlier indorsement in his favour is no longer a holder at all. S. 5(2)(b) defines holder as "a person with possession of the bill *as a result of the completion, by delivery of the bill, of any indorsement of the bill* or, in the case of a bearer bill, of any transfer of the bill". Thus, the act of delivery or the obtaining of possession which makes one holder is pursuant to the indorsement of the bill. If one comes into possession not as a result of indorsement, then it does not render one a holder, unless we are talking about a bearer bill. Thus, where the bill of lading is returned to a previous indorsee without a re-indorsement, s. 5(2) is not satisfied.

30 See the illustration given by the Law Commissioners, *supra*, note 25, p. 18.

The position of the consignee is slightly complicated. The definition of consignee in s. 5(2)(a) is different in that no indorsement is needed to make a consignee a holder. While a consignee's rights are extinguished under s. 2(5)(b) like any intermediary party, there is nothing in BLA to stop the original consignee from being a lawful holder again under s. 2(1) as long as the bill of lading reverts to his possession. "Holder" under s. 5(2)(a) merely means a consignee in possession. Indorsement is not a pre-requisite to being a holder where the consignee is concerned. A literal interpretation means that such a consignee regains rights of suit as holder even if the bill of lading is not re-indorsed in his favour. Whether the Court will uphold such interpretation as the legislative intention of BLA remains to be seen.

IV. PASSING OBSERVATIONS

A promise was made at the beginning of this article to say something about the nature of the bill of lading as a receipt, in the light of BLA. As an exception to the general purpose of BLA, which is to establish rights of suit rather than substantive rights as the Hague Rules do, s. 4 deals with a substantive point:

> A bill of lading which —
>
> (a) represents goods to have been shipped on board a vessel or to have been received for shipment on board a vessel; and
>
> (b) has been signed by the master of the vessel or by a person who was not the master but had the express, implied or apparent authority of the carrier to sign bills of lading,

shall, in favour of a person who has become the lawful holder of the bill, be conclusive evidence against the carrier of the shipment of the goods or, as the case may be, of their receipt for shipment.

It is well-known that s. 4 is specifically drafted with *Grant* v *Norway*[31] in mind, so as to overrule that long-standing authority and bind the carrier to the statements made by the master which represent goods to have been shipped, or to have been received for shipment, as the case may be.

The problem that arises is that the conclusive evidence rule in s. 4 is available to any person who has become the lawful holder of the bill, including the shipper who is either consignee or indorsee of the bill. The consignee or indorsee who is not also the shipper would not be in a position to know what was shipped. It is fair to allow such a person to rely on the representations of the master in this regard. The shipper, on the other hand, would not need to rely on what the master tells him, through the

31 (1851) 10 C.B. 665.

instrument of the bill of lading, to know what has or has not been shipped. It is the shipper, in the first place, who provides the information relating to the goods shipped, and their quantity. The wordings of s. 4 seem to have gone beyond the principles of agency, insofar as they allow a shipper (who is either consignee or indorsee as well) who does not rely on the ostensible authority of the master to use the master's statement as an estoppel against the carrier.

It may be said that a shipper who relies on s. 4 will not be doing so in good faith. Nevertheless, this does not seem to be an answer, as genuine reliance on the statements is not a pre-condition of the operation of s. 4. The shipper who has *acquired* the bill of lading (by consignment or indorsement) in good faith is a lawful holder, even if he does not show good faith in relying on s. 4.

As a matter of contrast, Article III, rule 4 of the Hague-Visby Rules only allows bill of lading statements to be relied on as conclusive evidence where they have been transferred to a third party acting in good faith. In the hands of the shipper, they are merely prima facie evidence.

In this regard, s. 5(5) BLA is interesting because it reads:

> The preceding provisions of this Act shall have effect without prejudice to the application, in relation to any case, of the rules (the Hague-Visby Rules) which for the time being have the force of law by virtue of section 3 of the Carriage of Goods by Sea Act 1971.[32]

Thus, where the Hague-Visby Rules are applicable, as a matter of law at least, the more limited estoppel in Article III, rule 4 will prevail over the sweeping provision in s. 4 BLA. The wordings of s. 5(5) BLA can be read to give priority to Article III, rule 4 even where the Hague-Visby Rules are only contractually applicable.

Although the English COGSA 92 (the Singapore BLA) has raised some problems of interpretation, most of these should be easily resolved with an interpretation mindful of the purposes which the Commissioners had in mind. The writer understands that Australia is contemplating adoption of the Act, and with the benefit of hindsight, may do so with amendments to address these problems, some of which have been highlighted here.

CHAN LENG SUN*

32 Section 3 of the Carriage of Goods by Sea Act, Cap. 33, has been amended as of 16th March 1995 to, inter alia, emphasise that the Hague-Visby Rules have the force of law in Singapore.

* Advocate & Solicitor, High Court of Malaya; Supreme Court of Singapore. I am indebted to Prof. Reynolds and Prof. Debattista for our discussions on the subject. Responsibility for shortcomings and the views expressed in this article is, however, solely mine.