

New Zealand



ANALYSIS

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1940, No. 31

Title. AN ACT to amend the Law relating to the Carriage of Goods by Sea.

[Reserved for the signification of His Majesty's pleasure thereon.]

BE IT ENACTED by the General Assembly of New Zealand in Parliament assembled, and by the authority of the same, as follows:—

Short Title. 1. (1) This Act may be cited as the Sea Carriage of Goods Act, 1940.

Commencement. (2) This Act shall come into operation on the day on which His Majesty's assent thereto is notified by the Governor-General by a Proclamation published in

the *Gazette*, or on such later date (being not later than three months after the date of the publication of the Proclamation as aforesaid) as is specified in that behalf in the Proclamation.

PART I.

COASTWISE TRADE.

2. (1) This Part of this Act shall apply in relation to and in connection with the carriage of goods by sea in ships from any port in New Zealand to any other port in New Zealand, and shall apply to bills of lading and other shipping documents relating to any such carriage of goods.

This Part to apply to coastwise trade.

(2) In this Part of this Act, and in every bill of lading or other shipping document to which this Part applies, the term "owner" shall, unless the context otherwise requires, include any charterer to whom a ship may be demised.

"Owner" to include "charterer". 1922, No. 58, s. 2, see Reprint of Statutes, Vol. VIII, p. 476

3. If the owner of any ship carrying goods from any port in New Zealand to any other port in New Zealand exercises due diligence to make the ship in all respects seaworthy, and properly manned, equipped, and supplied,—

Owner of ship not liable in certain cases. *Ibid.*, s. 3

- (a) Neither the ship nor her owner or agent shall be responsible for loss or damage arising or resulting from faults or errors in navigation or in the management of the ship; and
- (b) Neither the ship nor her owner, agent, or master shall be responsible for loss or damage arising or resulting from—

- (i) Dangers of the sea or other navigable waters:
- (ii) Acts of God:
- (iii) Acts of public enemies:
- (iv) Inherent defect, quality, or vice of the thing carried:
- (v) Insufficiency of package:
- (vi) Seizure under legal process:
- (vii) Act or omission of the shipper or owner of the goods or his agent or representative:
- (viii) Saving or attempting to save life or property at sea, or deviating in rendering such service.

Restrictions
as to provisions
of bills of
lading.

1922, No. 58,
s. 4

4. (1) Subject to the provisions of the next succeeding subsection, where any bill of lading or other shipping document to which this Part of this Act applies contains any clause, covenant, or agreement—

- (a) Whereby the manager, agent, master, or owner of any ship, or the ship itself, shall be relieved from liability for loss or damage arising from the harmful or improper condition of the ship's hold or arising from negligence, fault, or failure in proper loading, stowage, custody, care, or delivery of any lawful merchandise or property committed to their or its charge; or
- (b) Whereby the obligations of the owner of the ship to exercise due diligence to properly equip, man, provision, and outfit the ship, to make the hold of the ship fit and safe for the reception of cargo, and to make the ship seaworthy and capable of performing her intended voyage are in anywise lessened or avoided; or
- (c) Whereby the obligations of the master, officers, agents, or servants to carefully handle and stow the cargo, and to care for and properly deliver it, are in anywise lessened or avoided,—

that clause, covenant, or agreement shall be null and void and of no effect, unless the Court before which any question relating thereto is tried adjudges it to be just and reasonable.

(2) This section shall not apply in relation to the carriage of live animals.

Provisions as
to condition
of goods on
delivery to ship.

Ibid., s. 5

5. (1) Any clause written or stamped upon the face of a bill of lading or other shipping document to which this Part of this Act applies, purporting to describe the condition or defect of packages or goods referred to therein, shall be null and void unless,—

- (a) The attention of the shipper or his agent, or where there is no agent at the port of shipment known to the owner of the ship then of the person delivering the packages or goods alongside the ship, has been called to the condition or defect of the packages or goods at the time of their delivery to the ship; and

- (b) The condition or defect of the packages or goods has been noted on the receipt given at that time or, where no receipt is given, on any shipping document given at the ship's side on the delivery of the goods; and
- (c) The fact that attention has been so called to the condition or defect of the packages or goods at the time of their delivery to the ship has been noted on the bill of lading or other shipping document given in respect of the packages or goods.

(2) Where any package which has been acknowledged in a bill of lading or other shipping document to have been received in good or apparent good order and condition is delivered in other than apparent good order and condition and is found to have been tampered with or pillaged, the production of *bona fide* invoices shall be *prima facie* evidence that the contents of the package were in accordance therewith, unless the package is one of a number of packages delivered to the same consignee, in which case the production of *bona fide* invoices shall be accepted as such *prima facie* evidence as aforesaid only if the consignee proves that the goods claimed to have been pillaged or not delivered were not contained in one or more of the other packages.

6. (1) Neither the owner nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods to any greater extent than a sum calculated at the rate of ten pounds per cubic foot, but not in any case exceeding fifty pounds per package or unit, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading or other shipping document.

Maximum liability of owner.
Cf. Schedule, Art. IV, Rule 5

(2) This declaration if embodied in the bill of lading or other shipping document shall be *prima facie* evidence, but shall not be binding or conclusive on the owner.

(3) By agreement between the owner, master, or agent of the owner and the shipper another maximum amount than that mentioned in this section may be fixed:

Provided that such maximum shall not be less than the amount above named.

(4) Neither the owner 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 misstated by the shipper in the bill of lading or other shipping document.

(5) This section shall not apply in relation to the carriage of live animals or of other cargo which in the bill of lading or other shipping document is stated as being carried on deck and which is so carried.

PART II.

CARRIAGE BY SEA FROM NEW ZEALAND.

Application of Rules in Schedule.
Cf. Carriage of Goods by Sea Act, 1924, 14 & 15 Geo. V, c. 22, ss. 1, 6 (3) (Imp.)

7. (1) Subject to the provisions of this Act, the Rules contained in the Schedule to this Act (in this Part referred to as "the Rules") shall have effect in relation to and in connection with the carriage of goods by sea in ships from any port in New Zealand to any port outside New Zealand.

(2) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before the commencement of this Act, nor to any bill of lading or similar document of title issued, whether before or after the commencement of this Act, in pursuance of any such contract as aforesaid.

Absolute warranty of seaworthiness not to be implied.
Ibid., s. 2

8. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

Statement as to application of Rules to be included in bills of lading.
Ibid., s. 3

9. (1) Every bill of lading or similar document of title issued in New Zealand which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the Rules as applied by this Act.

Cf. 1922, No. 58, s. 9 (3), see Reprint of Statutes, Vol. VIII, p. 480

(2) Every owner, charterer, master, or agent who issues any such bill of lading or similar document of title without complying with this section shall be liable on summary conviction to a fine of one hundred pounds.

10. Where under the custom of any trade the weight of any bulk cargo inserted in a bill of lading to which the Rules apply 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 to the contrary in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of 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.

Modification of Rules 4 and 5 of Article III in relation to bulk cargoes. Cf. 14 & 15 Geo. V, c. 22, s. 5 (Imp.)

PART III.

GENERAL PROVISIONS.

11. (1) The agents in New Zealand of any ship not registered in New Zealand shall be deemed to be the legal representatives of the master and the owner or charterer of the ship after the departure of the ship from the port at which she was discharged for the purpose of receiving and paying claims for short-delivery, damage, or pillage of cargo, and the amount of any such claim may be recovered from the agents in any Court of competent jurisdiction:

Lodging of claims for damage, short-delivery, and pillage. Cf. 1922, No. 58, s. 7

Provided that it shall be lawful for the agents, by notice in writing delivered to the Collector of Customs not later than twenty-four hours before the departure of any ship, to decline to accept any responsibility under this section in respect of that ship, in which case the master and some other person approved by the Collector shall, before the ship is allowed her clearance, enter into a joint and several bond in a sum not exceeding the value of her cargo, as shown by the ship's papers, for the payment of any sum which, together with costs, may be recovered against the agents of the ship.

(2) No proceedings for the recovery of any claim under this section shall be taken unless notice of the claim is given to the agents not later than fourteen days after the delivery of the cargo in respect of which the claim is made.

Bill of lading to be binding if signed by authorized person.

Cf. 1922, No. 58, s. 8

Saving.

Cf. 14 & 15 Geo. V, c. 22, s. 6 (2)

See Reprint of Statutes, Vol. VIII, pp. 358, 398

Ibid., p. 475

Application of Act to Cook Islands and Samoa.

Repeal and Saving.

Ibid., p. 476

12. Every bill of lading or other shipping document relating to the carriage of goods issued by the manager, agent, master, owner, or charterer of a ship, and signed by any person purporting to be authorized to sign it, shall be binding on the master and the owner or charterer of the ship as if the bill of lading or other document had been signed by the master.

13. (1) Nothing in the foregoing provisions of this Act shall affect the operation of sections two hundred and fourteen to two hundred and eighteen, and two hundred and ninety-four to two hundred and ninety-six of the Shipping and Seamen Act, 1908, or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels.

(2) Nothing in this Act shall affect the operation of section three of the Mercantile Law Amendment Act, 1922.

14. The Governor-General may from time to time, by Order in Council, apply to the Cook Islands or to Samoa such of the provisions of this Act as he thinks fit, with such adaptations as he considers necessary to make the provisions applicable to the Cook Islands or to Samoa, as the case may be.

15. The Sea Carriage of Goods Act, 1922, is hereby repealed:

Provided that that Act shall, notwithstanding the repeal thereof, continue to apply with respect to any contract for the carriage of goods made before the commencement of this Act and to any bill of lading or other shipping document issued, whether before or after the commencement of this Act, in pursuance of any such contract as aforesaid.

Schedule.

SCHEDULE.

RULES RELATING TO BILLS OF LADING.

Article I.—Definitions.

IN these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say:—

- (a) "Carrier" includes the owner or the charterer who enters into a contract of carriage with a shipper:
- (b) "Contract of carriage" applies only 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 a holder of the same:

- (c) "Goods" includes goods, wares, merchandise, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried:
- (d) "Ship" means any vessel used for the carriage of goods by sea:
- (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.

Article II.—Risks.

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.

Article III.—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 Rule 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.

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.

Article IV.—Rights and Immunities.

1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped, and supplied, and to 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 in accordance with the provisions of Rule 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this rule.

2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

- (a) Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship:
- (b) Fire, unless caused by the actual fault or privity of the carrier:
- (c) Perils, dangers, and accidents of the sea or other navigable waters:
- (d) Act of God:
- (e) Act of war:
- (f) Act of public enemies:
- (g) Arrest or restraint of princes, rulers, or people, or seizure under legal process:
- (h) Quarantine restrictions:
- (i) Act or omission of the shipper or owner of the goods, his agent or representative:
- (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general:
- (k) Riots and civil commotions:
- (l) Saving or attempting to save life or property at sea:
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods:
- (n) Insufficiency of packing:
- (o) Insufficiency or inadequacy of marks:
- (p) Latent defects not discoverable by due diligence:
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier; but 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 nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained by the carrier or the ship arising or resulting from any cause without the act, fault, or neglect of the shipper, his agents, or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding one hundred pounds per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master, or agent of the carrier and the shipper another maximum amount than that mentioned in this rule may be fixed:

Provided that such maximum shall not be less than the figure above named.

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 misstated by the shipper in the bill of lading.

6. Goods of an inflammable, explosive, or dangerous nature to the shipment whereof the carrier, master, or agent of the carrier has not consented with knowledge of their nature and character may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability on the part of the carrier except to general average, if any.

Article V.—Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these articles:

Provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

The provisions of these Rules shall not be applicable to charter-parties, but 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. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

Article VI.—Special Conditions.

Notwithstanding the provisions of the preceding articles, a carrier, master, or agent of the carrier, and a shipper, shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect.

Provided that this article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other 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.

Article VII.—Limitations on the Application of the Rules.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation, or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

Article VIII.—Limitation of Liability.

The provisions of these Rules shall not 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 owners of sea-going vessels.

Article IX.

The monetary units mentioned in these Rules are to be taken to be New Zealand currency.