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## A Case Study on the Straight Bill of Lading

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### I. Introduction

It is our common understanding that the carrier is undoubtedly contractually bound to deliver the goods to the consignee named in a non-negotiable straight bill of lading(B/L). There was a lawsuit brought by a holder(L/C issuing bank: other than named consignee; plaintiff) of the original B/L in which specified "non-negotiable unless consigned to order" claiming that original B/L holder had the right to take delivery of the goods. The plaintiff took legal proceedings against the carrier who delivered the cargo to the named consignee in a straight B/L without redemption of the original B/L alleging the carrier is liable for the loss of the goods.

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The Korean Supreme Court held that the plaintiff was not a legitimate holder of the B/L because the plaintiff failed to follow procedures based on the Civil Code (Art. 450) which regulates that the non-negotiable B/L is transferable only when the transferor gives notice to the carrier of the transfer. When notice has been given, the transferee takes the place of the consignee and the carrier is responsible for delivering the goods to him. Therefore, the carrier is immune from the liability when delivering goods to the consignee named in the non-negotiable straight B/L.<sup>1)</sup>

But it is notable that there is a recent Singapore Case<sup>2)</sup> in which the straight B/L should be presented by the consignee to the carrier by sea in order to obtain delivery of the goods. Therefore, this study attempts to analyze the Singapore Case more details.

## II. The facts

The facts of the case are largely undisputed. The respondent shipper, Mr Peer Voss, who carried on an automobile business in Germany, offered to sell a convertible Mercedes Benz motorcar (model CLK 320) to a Korean company in Seoul, Seohwan Trading Co Ltd (Seohwan), at a price of 108,600 DEM. A down-payment of 48,500 DEM was made by Seohwan. Following that payment, Mr Voss made an arrangement with APL to ship the motorcar on board the vessel Hyundai General from Hamburg to Busan, Korea. The motorcar was loaded onto the vessel on 28 August 2000.

The B/L issued for the shipment bore the name of the buyer, Seohwan Trading Co Ltd, in the box entitled "consignee" but without the words "to

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1) Korean Supreme Court 2001.3.27. Judgment 99da 17890, [gong2001.5.15.(130).989], LIM, Suk-min, An Analysis of the Case for the Transfer of Non-negotiable Straight B/L, Haewoon Moolryu Yeonku, Vol. 41, June 2004, The Korean Association of Shipping and Logistics, Inc., p. 94.

2) APL Co Pte Ltd v. Peer Voss, Civil Appeal No. 18 of 2002, 3 October 2002, Court of Appeal of the Republic of Singapore.

order". The B/L also provided that: "A set of three originals of this bill of lading is hereby issued by the carrier. Upon surrender to the carrier of any one negotiable bill of lading, properly endorsed, all others shall stand void."

The three sets of the original B/L issued in respect of the shipment were at all times held by Mr Voss, because the buyer had yet to pay Mr Voss for the remainder of the purchase price. The only disputed point of fact was whether Mr Voss had already been paid by the buyer. APL asserted that the payment had been made.

Soon after the vessel arrived at its destination, APL's office at Busan released the motorcar to Seohwan without the production of any of the three sets of the B/L. In making the delivery, APL relied upon two documents furnished by Seohwan. The first was a copy of Mr Voss' invoice for the balance sum. The second was a copy of an outgoing cable from the Korean Exchange Bank to a bank in Frankfurt showing a remittance of 207,500 DEM, purportedly as payment for the motorcar and another transaction between the parties.

In November 2000 Mr Voss wrote to Seohwan demanding payment of the balance sum. No reply was received. As the balance of the purchase price of the motorcar was still not paid by mid December 2000, Mr Voss demanded payment of the same from APL. APL rejected the claim on the ground that they were not wrong to have delivered the motorcar to Seohwan without the production of the B/L.

The present action instituted by Mr Voss against APL was to claim for the loss of the balance of the purchase price. Mr Voss applied for summary judgment and APL, in turn, applied under O.14 r 12 for the determination of the question of law.

### III. Appellants' arguments and authorities

#### 1. Appellants' arguments

The argument raised by the appellants is that as a straight B/L is non-negotiable, and being unendorsable to a third party, it is to be equated to a sea waybill whose essential characteristic is also that of non-negotiability.

As far as a sea waybill is concerned, it is settled law that the obligation of the carrier is to deliver the cargo to the named consignee provided that the latter can prove his identity; there is no requirement that the consignee must present the waybill before he can obtain delivery of the goods.<sup>3)</sup>

The advantage of resorting to a sea waybill is that it avoids the problems arising from the late arrival of the documentation; its contents can be telexed to the destination. Sea waybills are often used in trades involving short sea voyages, where the carrying ship may arrive at its destination before the shipping documents do.

#### 2. Appellants' authorities

In support of the proposition which the appellants have advanced, they cited a number of recent authorities. But the writer must add that in none of them was the ratio decidendi on point. Furthermore, reliance is also placed on the views expressed in two works, Benjamin's Sale of Goods (5th edition) and Carver on Bill of Lading. But it must be noted that the relevant chapters in these two works were authored by the same writer,

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3) Scrutton on Charterparties and Bills of Lading, 20th edition, Sweet and Maxwell, 1996, p. 39.

Professor Guenter Treitel.

It may be expedient if the writer should at this juncture set out the views expressed in those two works. In Benjamin's Sale of Goods (5th edition) it is stated that "Two things follow from the fact that a document of this kind is not transferable by endorsement and delivery. First, the consignee (if in possession of the document) cannot, by purporting to transfer it in this way, impose on the carrier a legal obligation to deliver the goods to another person. Secondly, the shipper cannot oblige the carrier to deliver the goods to a different consignee from the one named merely by endorsing and delivering the bill to that other person; for under a straight bill the carrier is entitled and bound to deliver the goods to the originally named consignee without production of the bill, so that, when he delivers the goods, he may have no means of knowing of the purported transfer of the bill. This difficulty cannot arise in the case of an order bill, under which the goods are deliverable only on production of the bill."<sup>4)</sup>

In Carver on Bills of Lading, a similar view is propounded, "A 'straight' bill is not a document of title in the common law sense, so that its transfer does not operate as a transfer of the constructive possession of the goods. It is not a symbol of the goods because the carrier is entitled and bound to deliver the goods to the named consignee without production of the bill. It follows that a carriage document will not be a document of title in the common law sense if it is expressed on its face to be 'non-negotiable'. Sea waybills have the legal nature of 'straight' or 'non-negotiable' bills: they are similarly not documents of title in the common law sense, since under such waybills delivery is to be made to the named consignee, irrespective of production of the waybill, and not to the holder of the waybill as such."<sup>5)</sup>

Furthermore, while Carver on Bills of Lading in paragraphs 1-007 and 1-008, also states that there is no difference between sea waybill and a straight or non-negotiable B/L, the authors seem to imply that that is so

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4) Benjamin's Sale of Goods, 5th edition, Sweet and Maxwell, 1997, §18-014.

5) Treitel, G.H., Carver on Bills of Lading, Sweet & Maxwell, 2001, §6-007.

only in the context of the UK Carriage of Goods by Sea Acts (COGSA) of 1971 and 1992 and this appears from the following passage, "One possible view is that the definitions in this Act assume that it is only an order (or a bearer) bill which is a 'bill of lading', so that a document making goods deliverable to an identified person (and not to his order) is not a bill of lading at all. This may, indeed, be the position for the purposes of the 1992 Act, and the Carriage of Goods by Sea Act 1971, while not using the expression 'sea waybill' also contrasts bills of lading with 'non-negotiable' receipts containing or evidencing contracts for the carriage of goods by sea. But it does not follow that sea waybills or similar non-transferable documents cannot be bills of lading for any legal purposes whatsoever. The definitions and distinctions just quoted apply only for the purposes of the Acts in which they occur and not for the purposes of other legislation or of rules of common law or where a question arises as to the meaning of the phrase 'bill of lading' in a contract. For example, the fact that a document which has the characteristics of a sea waybill (and is therefore not a bill of lading) for the purposes of the Carriage of Goods by Sea Act 1992 does not preclude the possibility of such a document's being regarded as a 'bill of lading' for the purposes of section 1(4) of the Factors Act 1889 and hence of the Sales of Goods Act 1979."

In *The Bill of Lading* by Michael Bools, the author shares the views of Benjamin and Carver when he states, "With respect to a non-negotiable bill, the position is the same in England and America; the carrier need not require that it be produced or surrendered and need not even see the bill. All that is necessary is that the receiver produces identification to show that he is the person named in the bill as the consignee."<sup>6)</sup>

Turning now to the cases relied upon by the appellants, the first is *The Chitral*<sup>7)</sup> where the question before the court was, who had the title to sue

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6) Michael D. Bools, *The Bill of Lading, A Document of Title to Goods, An Anglo-American Comparison*, LLP, 1997, p. 169.

7) [2000] 1 Lloyd's Rep 529.

in relation to the cargo carried on board "The Chitral" from Bremen to Dubai and which cargo was damaged during carriage. The judge, David Steel J, could not accept the argument that the bill in question, where the printed box for naming of the consignee (headed "if order state notify party") was left blank was an "order" bill. The case had nothing to do with the question under consideration in this judgment. It did not deal with the delivery obligation of the carrier.

Next is *The River Ngada*<sup>8)</sup> where again the issue was whether the claimant had the title to sue in respect of the damage caused to the cargo. There, the Deputy Judge opined that in a straight B/L, the production of the B/L by the named consignee was not a necessary pre-condition for delivery. In coming to this view, the Deputy Judge relied upon the passage in Benjamin's Sale of Goods at §18-014, which we have quoted above.

The more recent case, *The Rafaela S*<sup>9)</sup> was also not concerned with the question whether in a straight B/L the shipowner/charterer could deliver the cargo to the specified consignee without the production of the B/L. The issue there was whether the shipowner/charterer could rely on the limitation prescribed under the United States Carriage of Goods by Sea Act 1936 or the more generous regime of Hague or Hague-Visby Rules which had been enacted in the UK Carriage of Goods by Sea Act 1971. To determine this question, it was necessary to decide whether the straight B/L issued by the shipowner/charterer was a B/L within the meaning of s. 1(4) of the 1971 Act, which provided that "nothing in this section shall be taken as applying anything in the Rules to any contract for the carriage of goods by sea unless the contract expressly or by implication provides for the issue of a bill of lading or any similar document of title."

The 1971 Act did not define a "bill of lading". There, Mr Justice Langley held that a straight B/L which was not negotiable was not a "document of title". He was of the view that the definition of a B/L included "the

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8) [2001] LMLN 570.

9) [2002] EWHC 593.

characteristics of transferability of title to the goods" and relied for this proposition on Scrutton on Charterparties, 20th edition, Article 2, pages 1-2, Benjamin's Sale of Goods, 5th edition, §18-007 and Carver on Bills of Lading, §§6-007 and 6-014. He accordingly held that a straight B/L did not fall within the 1971 Act. However, Langley J went further to express the view (obiter) that, while the point was of some nicety, it was not necessary in respect of a straight B/L that delivery must be against the B/L.

In *The Brij*,<sup>10)</sup> the Hong Kong High Court, relying solely on Benjamin's Sale of Goods, held that in the case of a straight B/L, the carrier could deliver directly to the specified consignee without the production of the B/L. The substantive issue in the case would appear to relate to the question of privity of contract.

#### IV. Respondent's contention

On the other hand, the respondent contends that a straight B/L, while it shares the characteristic of non-transferability with a sea waybill, is nevertheless not a sea waybill. The respondent relies upon a number of leading cases on the subject to substantiate his argument that production of the B/L is vital to obtaining delivery, irrespective of whether it is a straight or an order bill. However, like the cases relied on by the appellants, those cited by the respondent also do not contain a ratio to that effect. This was because they did not address, nor was it necessary to address, the specific issue, that in respect of a straight B/L, the carrier could deliver to the named consignee without its production.

In the celebrated case, *The Stettin*,<sup>11)</sup> Butt J held that a shipowner was not entitled to deliver the goods to the consignee named in the B/L

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10) [2001] 1 Lloyd Rep 431.

11) (1889) 14PD 142.



without the production of the bill and that the shipowner who so delivered must bear the consequences. But the fact remains that the case itself was concerned with a negotiable bill which specified that the goods were "to be delivered to the consignee named in the B/L or to his assigns". While it is true that the distinction between a straight and negotiable bill was raised in argument, Butt J did not specifically refer to it in his judgment. Arguably, it could be inferred that Butt J did not think that the distinction was relevant as far as the delivery obligation of the carrier was concerned.

In an earlier case, *Henderson & Co v The Comptoir d'Escompte de Paris*,<sup>12)</sup> the Privy Council (PC) assumed that where a B/L did not include the words "or order or assigns", it was not a negotiable document. The PC held that, while the absence of those words in a B/L was unusual, that would not suffice to put a man of business, or a bank, on inquiry into the nature of the special arrangement. It did not constitute constructive knowledge. It seems to us that apart from the fact that it decided that a straight B/L was not transferable, nothing more should be read into it.

In *Thrige v United Shipping Co Ltd*<sup>13)</sup> where it was unnecessary to decide the question whether, where a B/L was made out to a consignee and the property passes on shipment, the shipowner who delivered to the named consignee without production of the B/L was or was not liable for breach of contract, Scrutton LJ stated that if Stettin had decided that there was such a duty, he thought Stettin might require further consideration. He also declined to express a view whether such a B/L was or was not a negotiable instrument.

*Barclays Bank Ltd v Commissioners of Customs & Excise*<sup>14)</sup> involved a negotiable B/L as goods were shipped under the B/L to "order of the shipper". To that extent, the point may be made that the following general statement of Diplock LJ should be viewed with some circumspection, "So

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12) (1873-4) LR 5 PC 253.

13) [1924] Lloyd's Rep 6.

14) [1963] 1 Lloyd Rep 81.

long as the contract is not discharged the bill of lading, in my view, remains a document of title by endorsement and delivery of which the rights of property in the goods can be transferred. It is clear law that where a bill of lading or order is issued in respect of the contract of carriage by sea, the shipowner is not bound to surrender possession of the goods to any person whether named as consignee or not, except on production of the bill of lading ..."

It is difficult to say whether in that pronouncement, Diplock LJ also had in mind a straight B/L, where words such as "to order" were absent.

In *The Houda*,<sup>15)</sup> there was a shipment in August 1990 of a cargo of crude oil by a time-charterer from Kuwait shortly before the invasion of that country by Iraq. The B/Ls were left by the master in Kuwait and were never seen. After the invasion, the management of the charterers moved to London where the charterers gave orders relating to the voyage of the vessel. Eventually, a settlement was reached and the cargo was discharged. The charterer sued for the loss of services of the *Houda* for a period of some 36 days. One of the questions which the court was asked to address was whether the owner was obliged to deliver without the production of the B/Ls and it held that the owner was not so obliged. But again we recognised that the B/Ls which the charterers instructed the shipowners to issue were negotiable.

In *Evans & Reid v "Cornouaille"*,<sup>16)</sup> which also concerned an "order" B/L, and where the shipowner parted with the cargo without the production of the B/L, Hill J said, "The fact that the coal was intended to be delivered to the Societe Union did not entitle the Master to deliver to anybody without production of the Bill of Lading. It would not have entitled him to deliver even if the Societe Union had been the consignee named in the Bill of Lading. It is said that the plaintiffs ought to have informed the defendants that the buyers of the coal had not taken up the documents. There is no

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15) [1994] 2 Lloyds 541.

16) [1921] Lloyd's Rep 76, at p.77.

such duty upon the plaintiffs. The transaction between the buyers and the plaintiffs had nothing to do with the shipowners. The latter were only concerned with the fulfillment of their Bill of Lading contract, and the plaintiffs were entitled to rely upon this, that the ship would not give delivery of the goods until the Bill of Lading, with the plaintiffs' endorsement upon it, was presented to the Master."

We now turn to the views of textbook writers. As indicated before, not all writers hold the same view on the question as Benjamin or Carver. Moreover, the relevant chapters in both Benjamin and Carver were written by the same author.

In contrast, in Schmitthoff's *Export Trade*, the authors opine that "A shipper who wishes to obtain a bill of lading which is not negotiable does not insert the word "order" in the appropriate box of the bill but inserts the name of the consignee in the following box. The effect of this procedure is that, although the shipper can transfer title in the goods to the consignee by delivering the bill of lading to him, the consignee cannot further pass on title in them to a third party by transfer of the bill of lading. ... Logically, the function of the bill of lading on a document of title is distinct from its negotiable quality. Even a bill of lading which is not made negotiable operates as a document of title, because the consignee named therein can only claim delivery of the goods from the shipowner if able to produce the bill of lading. However, a great practical value of the bill of lading as a means of making goods in transit rapidly transferable is due to the customary combination of the two features of the bill, namely, its quasi-negotiability and its function as a document of title."<sup>17)</sup>

In Paul Todd's *Bill of Lading and Bankers' Documentary Credits* the author states "If a bill of lading is issued, the carrier must deliver only upon tender of an original bill of lading at the port of discharge. A bill of lading may be made out to a named consignee, in which case he alone

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<sup>17)</sup> Schmitthoff's *Export Trade*, *The Law and Practice of International Trade*, 10th edition, Sweet & Maxwell, 2000, pp. 276-292.

may validly present it to obtain goods from the vessel. Alternatively, it may be made negotiable ... Because delivery of the goods can be made only against presentation of an original bill of lading, it follows that transfer of the document can also transfer the right to take possession of the goods on discharge. Hence, the bill of lading is said to be a 'document of title', representing the goods while they are goods on sea."<sup>18)</sup>

It is also of significance to note that Tetley on Marine Cargo Claims (3rd edition), classified the documentation relating to carriage of goods by sea, on the basis of negotiability or transferability, into the following three categories -

( i ) Fully transferable and a document of title as well:

a bill of lading to bearers,

a bill of lading to a name left blank or to order or to assigns,

a bill of lading to a named person or to order or to assigns.

( ii ) Not transferable but still a document of title:

a bill of lading to a named person,

a U.S. straight bill of lading ( a hybrid governed by the Pomerene Act, it is marked non-negotiable, has certain of the qualities of a document of title, and yet it need not be presented to take delivery)

( iii ) Not transferable and not a document of title:

a waybill or non-negotiable receipt.<sup>19)</sup>

It would be seen that a straight B/L is classified by Tetley as distinct from that of a sea waybill and is regarded nevertheless as a document of title, requiring its production to obtain delivery.

Cooke on Voyage Charters cited *Sze Hai Tong* for the production that "... the bill of lading, by implication if not expressly, makes the goods deliverable upon, and only upon, the surrender of the bill of lading."

Gaskell on Bills of Lading: Law and Contracts, which was cited by the

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18) Paul Todd's *Bill of Lading and Bankers' Documentary Credits*, 3rd ed., LLP, 1998, pp. 13-14.

19) Tetley on *Marine Cargo Claims*, 3rd edition, Butterworths, 1988, p. 995.

appellants, notes that a straight B/L "is probably little more than a waybill by another name".<sup>20)</sup> It goes on to observe that "there are doubts if a carrier would get a good discharge for delivery without production of a (straight) bill of lading in English law." Then at para 14.24 the author states "it is unclear whether a carrier is obliged to deliver to the consignee named in a ... straight bill, even without production of that bill" and against this statement there is a footnote which states "... the US legal position is that a straight bill does not have to be presented, but that general practice elsewhere is to require a straight bill to be surrendered, rather like an order bill". This is in line with the comment of Tetley at p. 232 where it is stated that sea waybill are called "straight bills of lading in the US."

Finally, having reviewed the different opinions on the matter, the author came to the conclusion that "the view of Benjamin is to be preferred, on the basis that there is no real distinction between a waybill and a straight bill, and that neither are needed to obtain delivery of the goods (unless the contract so requires)". But rather interestingly, the author goes on to explain that "In practice, most of the standard form fills (which are mainly designed to be negotiable) do contain express terms which singly or together provide that a bill is to be surrendered before goods will be delivered. There is no apparent distinction, as a matter of construction, between cases where the bill is made out to order and when it is consigned 'straight' to a named consignee. Thus, the express terms on the surrender of bills such as Conlinebill or the P&O Nedlloyd Bill state that 'an original bill of lading, duly endorsed, must be surrendered ...' This clause is to be found on the face of most bills. It might be said that the reference to 'duly endorsed' indicated that the term only applies to negotiable and not straight bills. The better view is probably that the carrier is only requiring that any bill presented should apparently entitle the holder to claim delivery (as with a bearer bill), so there is no reason to restrict the application of the clause to

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20) Nicholas Gaskell, David Jackson, Gaskell on Bills of Lading: Law and Contracts, University of Southampton, LLP, 2000, §1.49.

negotiable bills when it is well known that the forms could easily be used as non-negotiable documents, e. g. straight consigned bills."<sup>21)</sup>

What is clear from Gaskell is that the views offered by the author are rather equivocal.

We must observe that while the B/L issued in the present case does not have a clause with the identical words "an original bill of lading, duly endorsed, must be surrendered", it contained somewhat similar words "upon surrender to the Carrier of any one negotiable bill of lading, properly endorsed, all others shall stand void." The reasoning of Gaskell on the expression "duly endorsed" can similarly be applied to the expression "properly endorsed" which is found in the present B/L.

We now turn to Charles Debattista's *The Sale of Goods Carried by Sea* where he refrains from stating the law definitively and instead opines that "given the guidance given by the Law Commissions in their Report accompanying COGSA 1992, it is extremely likely that the courts will regard non-order bills as sea waybills".<sup>22)</sup> Debattista's observations are revealing in its heavy reliance on COGSA but overlooked the fact that while the English and Scottish Commissions in their report on Rights of Suit in respect of Carriage of Goods by Sea, had observed that the straight B/Ls and the sea waybills are much the same type of document, they added the qualification, "save that the sea waybill is not required to obtain delivery". In short, while the two Commissions accepted that a straight B/L and a sea waybill are very similar documents, they are not identical and that the production of a straight B/L is necessary to obtain delivery.

It is of interest to note that in *The Happy Ranger*,<sup>23)</sup> while the Court of Appeal held that the bill in question was not a "straight" B/L, nevertheless two Lord Justices, Tuckey and Rix, expressly made the observation that the

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21) Gaskell, *ibid.*, §14.25.

22) Charles Debattista's *The Sale of Goods Carried by Sea*, 2nd ed., Butterworths, 1990, §2-32.

23) [2002] EWCA Civ 694.

views of textbook writers that the production of a straight B/L was not necessary for delivery, referring no doubt to Benjamin and Carver, were not necessarily correct. Even the third member of the quorum, Aldous LJ, would appear to agree with that reservation because he adopted the judgment of Tuckey LJ.

The only Singapore case which had the occasion to consider the issue was *Olivine Electronics Ptd Ltd v Seabridge Transport Pte.*<sup>24)</sup> There the seller of 320 coloured television sets shipped them on board a vessel. The B/L stated the buyer as the consignee and notifying party. The shipowner delivered the goods to the buyer without presentation of the B/L. As the seller did not receive payment for the same, he instituted an action for conversion to recover the loss from the defendant shipowner for releasing the goods without the production of the B/L. The defendant argued that as this was a straight bill, and not a document of title, and as it was similar to a sea waybill, its production was not needed to obtain delivery. Goh Joon Seng J, applying the *contra proferentem* rule, held that it was a term of the contract that delivery must be against the presentation of the B/L. Thus, it was unnecessary for the court to answer the more general question. However, the judge did remark that the law on the duty on the part of the carrier to deliver only against production of the original B/L in a straight consigned B/L was still "somewhat open".

## V. Court of Appeal's opinion and judgment

### 1. Court of Appeal's opinion

Court of Appeal of Singapore (C.A.) thought that some of the confusion in this area of the law could perhaps have been caused by a

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24) [1995] 3 SLR 143.

misunderstanding of the Carriage of Goods by Sea Act 1992 (COGSA 1992), which requires a bill to be transferable before it is a B/L for the purposes of the Act. Indeed, that was also the position under COGSA 1971. The Act is only concerned with rights of suit in respect of carriage of goods by sea. It does not, in any way, deal with the question whether presentation of a straight bill is necessary to obtain delivery.

At the end of the day, C.A. thought that the issue must be resolved on the basis of contract law and the intention of the parties. The entire argument of the appellants is that a straight B/L is the same as a sea waybill. While it is true that a B/L, devoid of the characteristic of negotiability, is substantially similar in effect to that of a sea waybill, that is not to say that they are the same. If the parties had intended to create a sea waybill they would have done so. Ordinarily, the main characteristics of a B/L are twofold. First, it is negotiable (i.e., transferable). Second, it is a document of title, requiring its presentation to obtain delivery of the cargo. In the case of a straight bill, while the characteristic of transferability is absent, there is no reason why one should thereby infer that the parties had intended to do away with the other main characteristic, i.e., delivery upon presentation. As the Judge below noted, while one cannot indorse a straight bill to transfer constructive possession of the cargo, it does not necessarily follow that the straight bill does not impose a contractual term obligating the carrier to require its production to obtain delivery.

C.A. thought that clear words must be present to imply that the parties intended the instrument to be treated, in all respects, as if it were a sea waybill and that its presentation by the named consignee is not necessary. Indeed, if the parties had wanted to have a sea waybill they could have quite easily adopted that format. They would not have issued a B/L with three originals. By issuing the instrument as a B/L, it must mean that they wished to retain all the other features of a B/L, other than the characteristic of transferability.

Clearly, the option is with the parties. And if they nevertheless choose to



adopt the format of a B/L, the court should not be astute to convert their arrangement into something they do not want to have in the first place.

Secondly, even looking at the matter from the perspective of the market place, there is much to commend the rule that even in respect of a straight bill presentation of it is a pre-requisite to obtaining delivery. If nothing else, the advantage of this rule is that it is simple to apply. It is certain. It would prevent confusion and avoid the shipowners and/or their agents having to decide whether a bill is a straight bill or an order bill [e.g., *Happy Ranger* (supra)], and run the risk attendant thereto if the determination they make on that point should turn out to be erroneous. The rule would obviate such wholly unnecessary litigation. In this connection, C.A. thinks the following words of Clarke J in *The Sormovskiy* 3068<sup>25</sup>) (which concerned an order bill) have much to commend themselves. "It makes commercial sense to have a simple rule that in the absence of an express term of the contract the master must only deliver the cargo to the holder of the bill of lading who presents it to him. In that way both the shipowners and the persons in truth entitled to possession of the cargo are protected by the term of the contract."

Thirdly, to accept the arguments put forward by APL is to envisage two broad categories of documents which could be used by shippers. The first option is the negotiable B/L; in such a situation, delivery of the goods can only be made upon presentation of the B/L. The second option for shippers is to use a non-negotiable straight B/L or sea waybill; here, the straight B/L or waybill need not be produced for delivery of the goods. In essence, APL's scheme envisages that as long as the shipping document is non-negotiable on its face, presentation of the original B/L or sea waybill is unnecessary for delivery. C.A. thinks that this approach is overly restrictive for an unpaid seller who wishes to use a non-negotiable B/L while retaining his security for payment.

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25) [1994] 2 Lloyd's Rep 266, at p. 274..

Indeed, to hold that a straight B/L is not the same as a sea waybill has the advantage of providing such a seller, or in the case of documentary credit, the bank, with some security against default by the buyer, and the buyer of some assurance that the seller has shipped the cargo before he is required to make payment. In short, it gives both the buyer and the seller, where they, for their own reasons, want only a straight B/L be issued, a fair measure of protection. That was what Mr Voss wanted: payment before delivery by carrier. In contrast, the sea waybill is only a contract of carriage whereby the carrier undertakes to deliver the cargo to the person identified by the shipper as entitled to take delivery of the cargo. The sea waybill is retained by the shipper and all the consignee need show to take delivery is proof of his identity. It is a receipt, not a document of title. It, unlike a B/L, cannot be used as a security to obtain financing.

Fourthly, adopting the rule that presentation of a straight B/L is a pre-requisite to obtaining delivery also avoids the undesirable consequences of the shipper's rights of suit under the original contract of carriage surviving any transfer of the document to the consignee.

## 2. Judgment

In the light of the foregoing, C.A. held that in respect of a straight B/L, the shipowners should only deliver the cargo against its presentation. In the circumstances, there is no defence to the respondent's claim. Some faint attempts were made to raise triable issues so that the action could go for trial but they are, as found by the judge below, wholly without merits. The appellants' defence rests essentially on the legal point on which they have failed. Accordingly, C.A. affirmed the decision of the High Court and dismissed the appeal with costs. The security for costs, together with any accrued interest, shall be paid out to the respondent's solicitors to account of the respondent's costs.

## VI. Conclusion

There was a lawsuit brought by a holder(L/C issuing bank) of the original B/L in which specified "non-negotiable unless consigned to order" claiming that original B/L holder had the right to take delivery of the goods. In this lawsuit, the Korean Supreme Court held that the carrier is immune from the liability when delivering goods to the consignee named in the non-negotiable straight B/L without presentation of it.

But it is notable that there is a recent Singapore Case in which the straight B/L should be presented by the consignee to the carrier by sea in order to obtain delivery of the goods. The main reasons are as follows : First, clear words must be present to imply that the parties intended the instrument to be treated, in all respects, as if it were a sea waybill and that its presentation by the named consignee is not necessary. Second, it makes commercial sense to have a simple rule that in the absence of an express term of the contract, the master must only deliver the cargo to the holder of the B/L who presents it to him. In that way both the shipowners and the persons in truth entitled to possession of the cargo are protected by the term of the contract. Third, to hold that a straight B/L is not the same as a sea waybill has the advantage of providing such a seller, or in the case of documentary credit, the bank, with some security against default by the buyer, and the buyer of some assurance that the seller has shipped the cargo before he is required to make payment. Fourth, adopting the rule that presentation of a straight B/L is a pre-requisite to obtaining delivery also avoids the undesirable consequences of the shipper's rights of suit under the original contract of carriage surviving any transfer of the document to the consignee.

## Reference

- Benjamin's Sale of Goods, 5th edition, Sweet and Maxwell, 1997.
- Charles Debattista's The Sale of Goods Carried by Sea, 2nd ed., Butterworths, 1990.
- LIM, Suk-min, An Analysis of the Case for the Transfer of Non-negotiable Sraight B/L, Haewoon Moolryu Yeonku, Vol. 41, June 2004, The Korean Association of Shipping and Logistics, Inc..
- Michael D. Bools, The Bill of Lading, A Document of Title to Goods, An Anglo-American Comparison, LLP, 1997.
- Nicholas Gaskell, David Jackson, Gaskell on Bills of Lading: Law and Contracts, University of Southampton, LLP, 2000.
- Paul Todd's Bill of Lading and Bankers' Documentary Credits, 3rd ed., LLP, 1998.
- Schmitthoff's Export Trade, The Law and Practice of International Trade, 10th edition, Sweet & Maxwell, 2000.
- Scrutton on Charterparties and Bills of Lading, 20th edition, Sweet and Maxwell, 1996.
- Tetley on Marine Cargo Claims, 3rd edition, Butterworths, 1988.
- Treitel, G.H., Carver on Bills of Lading, Sweet & Maxwell, 2001.

**ABSTRACT**

A Case Study on the Straight Bill of Lading

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It is our common understanding that the carrier is bound to deliver the goods to the consignee named in a non-negotiable straight bill of lading without its presentation. But recently Court of Appeal, Singapore, held that "where a straight bill of lading is issued it is necessary for the bill of lading to be presented by the consignee to the carrier by sea in order to obtain delivery of the goods. A straight bill of lading, just like a bill of lading to order, confers title including the right to receive the goods mentioned on the bill of lading. Only the possibility of negotiation is excluded. The carrier by sea is liable where he delivers the goods to the consignee named in the straight bill of lading without delivering the bill of lading itself."

Key words : bill of lading, straight bill of lading, negotiable bill of lading, order bill of lading, non-order bill of lading
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