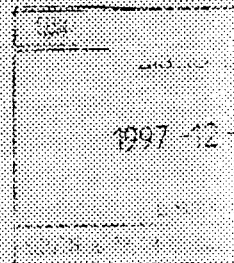


REPUBLIC
OF
SOUTH AFRICA



REPUBLIEK
VAN
SUID-AFRIKA



Government Gazette Staatskoerant

vol. 390

PRETORIA, 12 DECEMBER 1997
DECEMBER

No. 18541

GENERAL NOTICE

NOTICE 1957 OF 1997

DEPARTMENT OF TRANSPORT

DRAFT SEA TRANSPORT DOCUMENTS BILL: INVITATION TO COMMENT

The Chief Directorate Shipping of the National Department of Transport hereby makes known its intention to submit the Bill in the Schedule to Parliament in 1998. Interested parties are invited to submit written comment on the Bill to the Chief Director: Shipping (for attention Mr C. Briesch), Department of Transport, Private Bag XI 93, Pretoria, 0001 [Fax (012) 323-7009], by 9 **February 1998**. Enquiries can be directed to Carl Briesch: Tel. (012) 309-3132. Fax (012) 323-7009.

EXPLANATORY MEMORANDUM

PART 1

1. As is set out in more detail later in this memorandum, bills of lading are documents of very great and usually fundamental importance in international transactions relating to goods carried from one country to another by sea. In these circumstances it has been thought that it is essential that the law of the Republic of South Africa should deal with **bills** of lading and other related documents in a way which can be regarded as acceptable in modern financial circles and has a degree of adaptability to changing usages.
2. For a considerable time it has been felt that the South African **law** relating to bills of lading is out of date and unsatisfactory. Impetus was given to the notion of enactment of up to date legislation by the introduction in the United Kingdom of the legislation which was enacted as the Carriage of Goods by Sea Act 1992. This Act was the result of an investigation by the Law Commission (dealing with English law) and the Scottish Law Commission into a subject originally limited to the law relating to the rights of purchasers of goods forming part of a larger bulk cargo but was eventually expanded to cover the topic of rights of suit in respect of carriage of goods by sea which is dealt with in the report. That report contains an exhaustive review of the position in English and, to a lesser extent, Scottish law and deals with arguments for and against certain aspects which will be referred to in this memorandum. We mention, at the outset, however, that English law has had to deal, firstly, with the rule of English law that contracts for the benefit of a third party are not recognised and, secondly, with some difficulties in the English law in the recognition of assignment of rights of action. Neither of these difficulties exists in South African law.
3. As will appear later in this memorandum the Bill deals with documents other than bills of lading strictly so called. Nevertheless as the most important and most frequently used document is the bill of lading strictly so called it is proposed to deal, firstly, with the nature of such bills of lading and the state of the law with regard to them and then to mention the other documents referred to.
4. The origins of the bill of lading go back for many hundreds of years. In a case in England, towards the end of the 18th century,
Lickbarrow v Mason (1794) 5 TR 683,
it was said that the custom of merchants with regard to bills of lading referred to in that case went back for at least a hundred years. Although the bill of lading now serves other purposes, in its origins it appears to have been a document which acknowledged, to the person shipping the goods, receipt by the carrier by sea of those goods with an indication of the nature of the goods, the destination and the person to whom delivery was to be made together with the terms of the agreement relating to the carriage of the goods.
5. Later developments led to the bill of lading being regarded as the document which reflected the ownership of the goods and the entitlement to delivery at the port of destination of the goods. This recognition produced the situation that it was possible to transfer the ownership of the goods by transferring the bill of lading **and** also to transfer the right to the performance of the contract of carriage of goods by transferring physical possession of the bill of lading together with a reflection of the transfer by writing on the bill of lading in the form of an endorsement.
6. This had the effect that if, for instance, a carrier X issued a bill of lading to A who had shipped goods on X's ship for delivery to B at a named port and A handed the bill of lading to B, B could then transfer his or her right to delivery by endorsing the bill of lading to C, who, in turn, could endorse it to another endorsee. If the endorsee was in possession of the bill of lading the endorsee was the person entitled to delivery of the goods at the named port. If ownership of the goods was transferred from A to B then B could also transfer the ownership of the goods when he or she transferred the right to delivery of the goods at the named port, and so could each endorsee.

7. The above is a very simplistic statement of the functions of the bill of lading of lading. It does, however, illustrate the difficulties which have arisen and with regard to which there is a vast amount of legal writing in learned journals and in text books and also a large number of decided cases in various jurisdictions which give rise, in essence, to the following problems. Firstly, if A, the original shipper, transfers his or her rights to B and something occurs which would give rise to a claim by X against A if there had been no transfer (for instance the freight may not have been paid or damage may be caused to the ship because the cargo is a dangerous cargo) can X sue B in respect of those obligations and (which may be at least as important) is A released from his or her obligations? Where B presents the bill of lading at the port of destination and wants delivery of the goods the problem may be regarded as fairly simple. It is obviously more complicated, however, where B has transferred his or her rights to C and it is C who requires delivery at the port of destination. A, the original shipper, has entered into a contract with X, but B has not, and B, having transferred his or her rights to C, has not required delivery of the cargo. As will appear these are problems which must be dealt with and are dealt with in the Bill.
8. Equally from the point of view of X he or she must be in a position to be able to say that he or she has discharged his or her obligation to deliver the goods at the named destination. His or her original contract with A was to deliver the goods to B. If, however, the obligation is transferable then it must follow that if X delivers to C, who produces to him or her the bill of lading duly endorsed in his or her favour, X will be discharged from any further obligation with regard to delivery and cannot be sued by A or B.
9. The United Kingdom Parliament endeavored to deal with these problems by the enactment of the Bills of Lading Act 1855. Unfortunately grave difficulties, which are referred to in the report of the Law Commission, to which reference has been made, arose by reason of the wording of that Act. Those difficulties are some of the considerations which led to the enactment of the United Kingdom legislation in 1992. The position in South Africa, however, is that the Admiralty Jurisdiction Regulation Act 1983 makes the English law, as it stood at the commencement of the 1983 Act, applicable to various matters including bills of lading. The position in South Africa therefore is that, with regard to bills of lading, the South African courts are, by statute, obliged to apply the United Kingdom legislation enacted in 1855 which has been found to be unsatisfactory in the United Kingdom and has been replaced by the 1992 Act.
10. As was mentioned in paragraph 1 of this memorandum, bills of lading are documents of great importance with regard to international commerce. We mention two instances of this importance. They are the documents which are, in general, required to make the rules relating to carriage of goods by sea which are contained in the Schedule to the Carriage of Goods by Sea Act 1986 applicable. Secondly, they are, almost without exception, documents which have to be produced where goods which are to be carried by sea are to be paid for by means of banker's documentary credits.
11. As we have mentioned the classical bills of lading, or what we have referred to as a bill of lading strictly so called, is an ocean bill of lading, that is to say a bill of lading for transport by sea. In addition to such bills of lading there have, for over a hundred years, been what are referred to as through bills of lading, that is to say bills of lading dealing not only with sea transport but with transportation where portion of the transport is other than by sea. That portion may, of course, be by road, rail, canal or, conceivably, by air. In addition, other documents have come to be used which do not have the quality of being transferable which, as we have referred to above, bills of lading have. One category of such documents is referred to in section 1(1)(c) of the Carriage of Goods by Sea Act 1986, namely a non-negotiable receipt. Nevertheless we are informed that it is frequently the case that such receipts are handed by the original recipient of the receipt at the port of loading to another person to enable that other person to obtain the cargo when it is discharged at the port of destination. It seems to us that, although the person in possession of a non-negotiable receipt is, from the nature of things, not entitled to any claim against the carrier, if that claim arises out of the contract of carriage nevertheless the carrier must be entitled to regard his or her obligations as performed if he or she delivers the cargo on discharge to the person in possession of the receipt. Provision to that effect is made in the Bill.

12. Unfortunately maritime fraud is a phenomenon which appears, despite all endeavors, to be increasing. Bills of lading are issued for cargo which has never been loaded, persons load containers said to contain goods which they do not contain and large sums of money change hands on the strength of statements made in bills of lading and other shipping documents. For that reason provisions are contained in the draft bill relating to representations made in shipping documents and the position of persons not *bona fide*.
13. Provisions are also made with regard to documents or records produced by electronic means and also for the position where the original bill or bills of lading have been lost.
14. In addition to the provisions relating specifically to bills of lading there are provisions relating to what is commonly referred to, and is referred to in the Act, as title to sue. The reasons for having these provisions are set out in paragraphs 15-26 of this memorandum.
15. South African admiralty procedure recognises two forms of action which are derived from the origins of the South African admiralty jurisdiction, namely the English admiralty law, and which form part of the jurisprudence of those countries which derive their admiralty law from the English law, namely the countries of the British Commonwealth and the United States of America. The action *in personam* is an action against the person who is responsible for the payment of the claim upon which a claimant relies. The form of an action *in rem*, however, is that it is an action against the property rather than the person. The most common form is an action against the ship concerned in circumstances giving rise to a claim, (For example a ship involved in a collision or a ship on which goods have been carried.)
16. The admiralty law also recognises what is known as a maritime lien which has the effect that when the events giving rise to certain types of claim have arisen the potential for the claim attaches to the ship and may be enforced even though the ship passes into another ownership whether by sale or otherwise. So, for instance, if a ship is involved in a collision' caused by the fault of those navigating the ship and the ship is subsequently sold to a new owner the claim for damages arising out of the collision may be enforced by claiming by an action *in rem* against the ship, notwithstanding that the new owner was in no way responsible for any of the loss and had no knowledge of the existence of any claim arising out of the collision or, indeed, possibly, of the collision itself.
17. In terms of the Admiralty Jurisdiction Regulation Act 1983 of the Republic of South Africa an action *in rem* lies against a ship if there is a maritime lien or if there is a claim *in personam* enforceable against the owner. This deals satisfactorily with the position if the ship is operated and all its business is conducted by the owner. This, however, is frequently not the case. Ships are chartered out and the business of the ship is frequently conducted by the charterers.
18. The existence of agreements for chartering (charterparties) gives rise to complications with regard to the action *in rem*. One type of charterparty is a charter by demise also known as a bareboat charter. Under such a charter the owner of the vessel generally parts with possession of the vessel to the person who charters the vessel and the charterer engages the master, officers and crew and generally operates the ship. In particular where a ship is chartered by demise the usual position is that the demise charterer is the carrier of any goods carried on the vessel and the owner is not the carrier. In charters other than by demise the usual position is that the charterer is not the carrier and, where the charter is from the owner, the owner is the carrier. This, however, is not invariably the position.
19. Because the charterer by demise usually has full control of the vessel English and American law generally regard the charterer by demise as being the owner for the purposes of an action *in rem*. The position under the Admiralty Jurisdiction Regulation Act 1983 in South Africa is not absolutely clear, but the indications are that the charterer by demise is **not** regarded as the owner generally although he or she is in some specific instances expressly provided by the Act.
20. In order to clarify the position and in order to bring the South African law into line with the English and the American law it is therefore proposed that the charterer by demise is regarded to be the owner of the ship during the period of the charter.

21. One of the advantages of the admiralty procedure *in rem* and one of the established purposes for which that procedure exists is to enable a claimant to have security for his or her claim. In many cases this is necessary for the effective enforcement of the claim. Ships are frequently owned by what is known as a one ship company, that is to say a company whose only asset is the ship, and the ship itself may be heavily mortgaged. We have indicated above the desirability of bringing the South African practice with regard to demise charters into line with the law in other places where the action *in rem* is recognised. This relates to the identification of the defendant. It may, perhaps, be surprising that there may also be difficulties with regard to the identification of the plaintiff.
22. The reason for the difficulty with regard to the identification of the plaintiff is as follows. As we have mentioned the action *in rem* is usually started by the arrest of a ship. The ship may call for a very short period, sometimes only a matter of a few hours if she is calling only for the purpose of taking on stores or bunkers. It may also be the position that, even where the stay is a fairly prolonged one, the existence of a claim with regard, for instance, to damaged cargo or to cargo not landed at the proper destination but landed elsewhere may become known only when the ship is about to leave. As we have indicated above, the rights to sue on the contract of carriage evidenced by the bill of lading may pass from person to person. Nearly all cargo is insured and the rights under the insurance contract also usually pass from person to person together with the rights under the bill of lading and the rights with regard to ownership of the cargo.
23. The person most directly concerned with damage to cargo is usually the insurance company. It frequently is important to establish not only the extent of the damage but also what may have caused the damage. This, in turn, may involve applying to court for an order in terms of the Admiralty Jurisdiction Regulation Act 1983 for an inspection of the ship or various aspects which may throw light on the cause of the damage.
24. At the stage when it is necessary to take such steps and to arrest the ship the insurance company frequently does not know who the owner of the cargo is or who has the right to make any claim based on ownership of the cargo or the contractual rights under the bills of lading of lading. (That is to say who has the title to sue.) Even at a later stage in proceedings questions of title to sue frequently give rise to questions of difficulty.
25. When an insurer has paid a claim on an insurance policy the insurer, by virtue of the right of subrogation, has the right to take proceedings which according to the English and South African practice are in the name of the insured. (In Continental systems the proceedings are in the name of the insurer.) This right, however, depends on the claim under the insurance policy having been paid. At the early stage to which we have referred, there will almost inevitably have been no payment of the claim because, apart from other considerations, the precise extent of the damage has frequently not been established and the insurer will, in any event, wish to establish that the claim is one justifiable under the policy. The insurer may, for instance, wish to establish, before accepting a claim under the policy, that the goods are those described in the policy, that there was a full disclosure of all material facts and that the damage was not caused by ordinary deterioration or wear and tear. These are all perfectly usual and legitimate defences but if the insurer has to investigate these aspects of the matter before taking any steps under his or her right of subrogation which, as we have mentioned, arises only on payment, the opportunity of effectively asserting the claim may have disappeared because the ship has sailed.
26. In those circumstances it is sought to make provision that in cases of urgency and as an interim measure the insurer may take steps to preserve the situation with regard to the claim. There is no suggestion of creating a new claim or anything of that nature. What is sought to be done is to protect the legitimate rights of making a claim and remove technical and procedural difficulties which, at present, provide what maybe thought to be an undue obstacle to the pursuing of such claims.

27. The application of the Act is stated to be, generally speaking, to sea transport documents issued in the Republic of South Africa and goods consigned to a destination within the Republic of South Africa or landed, delivered or discharged within the Republic. It is also proposed that the legislation should apply to **all** documents with regard to which proceedings are to be taken in any court or before any arbitration in the Republic of South Africa. In effect, therefore, the suggestion is that where such documents are in issue with regard to matters in the Republic the legislation should apply. With regard to documents issued before the coming into operation of the Act, the proposal is that the legislation should also apply to those documents. As has been indicated in this memorandum the intention is, to a large extent, to clarify the situation. In some minor respects there may be some liabilities placed on persons with regard to transactions entered into before the commencement of the Act but the difficulties with regard to **retrospectivity** of the Admiralty jurisdiction Regulation Act 1983 and the amendments to that Act justify a clear statement as to the application of the provisions even though that may give rise to the degree of **retrospectivity** referred to.

PART 2

28. In this part of the memorandum we deal with those detailed provisions which appear to call for comment and have not been dealt with in PART 1.
29. The Bill is divided into 6 Chapters.
- 29.1 Chapter 1, clauses 1 and 2, deals with the interpretation and application of the Act.
- 29.2 Chapter 2, clauses 3-7, deals only with transferable or negotiable documents.
- 29.3 Chapter 3, clause 8, deals generally with delivery, whether under a transferable document or not.
- 29.4 Chapter 4, clause 9, deals with persons not *bona fide*.
- 29.5 Chapter 5, clauses 10 and 11, deals with title to sue,
- 29.6 Chapter 6, clauses 12-14, deals with the extension of the Act to the Prince Edward Islands, the provision that it binds the State and its short title and commencement.
30. In 1996 the proposals were discussed at the Annual General Meeting of the Maritime Law Association and redrafted in the light of that discussion. After further discussion they were redrafted in March 1997 and, after lengthy discussion mainly of that portion of the proposals which now appears in clause 11 at the Annual General Meeting of the Maritime Law Association in 1997, the proposals were again redrafted in May 1997 and edited in November 1997 in the form in which they are now submitted.
- 30.1 *Clause* 1 defines certain words and expressions. The definition of sea transport document includes both transferable (or negotiable) documents and those which are not negotiable or transferable. The phrase "bill of lading" has an established meaning and it has, therefore, not been thought necessary to endeavour to define it. Any definition might obscure rather than clarify the position. The same applies to the word "goods", definitions of which (as, for instance, in the Value Added Tax Act 1991 (corporeal **moveable** things) appear frequently to add other words which themselves might be regarded as requiring definition.
- 30.1.1 A through bill of lading and a combined transport bill of lading contemplate that portion of the transport will be other than by sea. A sea waybill is, generally speaking, non-transferable as are the other documents referred to in paragraph (e) of the definition of sea transport document.
- 30.1.2 In order to deal with faxed transmission or electronic data, clause 1(2) refers to documents so produced and also to records so produced so that there may be the requisite degree of flexibility where no actual document is produced.
- 30.2 *Clause* 2 deals with the application of the Act and has been **dealt** with in paragraph 27 of PART 1 of this memorandum.
- 30.3 *Clause* 4 deals with the transfer of negotiable or transferable documents. Attention is drawn to clause 4(3) which deals with electronic transfer and clause 4(4) deals with the situation where the bill of lading has been lost. (The desirability of such a provision was drawn to our attention at the 1996 Annual General Meeting by Mr Bernard Eder **O.C.** of the **English Bar**.)

- 30.4 *Clause 5* deals with the transfer of rights and obligations. With regard to the transfer of obligations it is clear from the report of the Law Commission, to which we have referred in the earlier part of this memorandum, that the question whether a transfer should release the transferor from his or her obligations is one on which conflicting views exist. It has appeared to us that a reasonable approach is to say that the transferor of rights should be released from his or her obligations unless his or her personal position was a significant factor in accepting him or her as an obligee. This is the relevance of the reference to *delectus personae* in clause 5(2).
- 30.4.1 It must be borne in mind, in this connection, that the transfer of rights and obligations, as with the question of delivery dealt with in clause 8, that these provisions are subject to the provisions of clause 9 which deals with the position of persons not *bona fide*. There can be no claim by a person who knew that the document related to goods not shipped or received for shipment and there can be no claim for a *defence* on the grounds that goods have been delivered if they have been delivered to someone known or reasonably believed not to have the right to receive delivery.
- 30.5 Clause 7 provides that where a document represents goods to have been shipped on board or to have been received for shipment and is signed by the Master or someone having authority or apparent authority to sign on behalf of the carrier it is to be *prima facie* evidence (that is proof with regard to which contrary evidence can be led) that the goods were shipped if the person against whom (or, unusually, in whose favour) that proof is tendered is the person to whom it was originally issued. If, however, there is a subsequent holder (and this can apply only with regard to a transferable document) then no proof to the contrary can be tendered other than proof that the subsequent holder was not *bona fide* and is, therefore, debarred by clause 9 from relying on the representation.
- 30.6 *Clause 8* relates to the right of the carrier to be regarded as having performed his or her obligation to make delivery. Clause 8(1) provides that the carrier is discharged if he or she makes delivery to the first person presenting the document but subject to the right referred to in clause 8(2)(b) to require the person claiming delivery to establish his or her right to delivery. Again, of course, this is subject to clause 9 relating to *bona fides*.
- 30.6.1 Clause 8(2)(a) makes it clear that a person presenting the document must, if he or she wishes to obtain delivery, perform any obligations to which delivery is subject. He or she may, for instance, have to pay freight. This is the general rule with regard to those presenting bills of lading in order to obtain delivery.
- 30.7 *Clauses 10 and 11* deal with title to sue and have been dealt with in some detail in paragraphs 15–26 of PART 1 of this memorandum.

DRAFT SEA TRANSPORT DOCUMENTS BILL

To make provision in connection with certain documents relating to the carriage of goods, and the tide to sue with regard to goods carried, and for related matters.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

CHAPTER 1 INTERPRETATION AND APPLICATION OF ACT

Interpretation

1. (1) In this Act, unless inconsistent with the context—
 - (i) “holder” means a holder referred to in section 4(2);
 - (ii) “sea transport document” means any of the following documents (whether or not transferable or negotiable) relating to the carriage of goods either wholly or partly by sea:
 - (a) A bill of lading;
 - (b) a through bill of lading;
 - (c) a combined transport bill of lading;
 - (d) a sea waybill;
 - (e) any consignment note, combined transport document or other document relating to the carriage of goods.
- (2) A record or document produced by a telecommunication system or electronic or other information technology system and effecting transactions such as those effected by any of the documents referred to in paragraphs (a) to (e) of the definition of sea transport document is regarded to be a document referred to in the relevant paragraph of that definition.

Application of Act

2. This Act applies—
 - (a) to sea transport documents issued in the Republic, whether issued before or after the commencement of this Act;
 - (b) to goods consigned to a destination in the Republic, and in respect of goods landed, delivered or discharged in the Republic;
 - (c) to sea transport documents and goods in respect of which proceedings are contemplated or have been brought in any court or before any arbitration tribunal in the Republic, whether such proceedings relate to a cause of action arising before or after the commencement of this Act.

CHAPTER 2 TRANSFER AND NEGOTIATION

Application of Chapter

3. This Chapter applies only to sea transport documents that are transferable or negotiable; and references in this Chapter to a sea transport document must be construed accordingly.

Transfer of sea transport documents

4. (1) A sea transport document maybe transferred by the holder, **either—**
- (a) by the delivery of the document, endorsed as may be necessary; or
 - (b) in accordance with any telecommunication system or electronic or other information technology system referred to in section 1(2).

(2) The following persons are holders if they are in possession of an original sea transport document or if possession of such a document is held on their behalf:

- (a) The person to whom the document is issued;
- (b) the consignee named in the document;
- (c) any person to whom the document is transferred in accordance with subsection (1)(a) or (b).

(3) For the purposes of subsection (2), persons are regarded to be in possession or to hold possession of an original sea transport document if the original document of which they were in possession or held possession has been lost or cannot be produced by them or on their behalf, and they or their agent would be in possession of the document if the original could be produced.

Transfer of rights and obligations

5. (1) The holder of a sea transport document is subject to the same obligations to, and entitled to the same rights against, the person by whom or on whose behalf the document was issued, or who is responsible for the performance of the contract of carriage evidenced by or contained in the document as if the holder were a party to a contract with that person on the terms of the document, and is regarded to be the cessionary of all rights of action for loss of or damage to the goods referred to in the document, whether arising from contract or the ownership of the goods or otherwise.

(2) A holder who has transferred a sea transport document is regarded to have ceded his or her rights and to have delegated his or her obligations to the new holder except in so far as those rights or obligations are such as arise from a *delectus personae* relating to the holder.

Saving of rights

6. Subject to this Act, any rights or obligations under the contract of carriage evidenced by or contained in a sea transport document or any liability of the consignee or holder by reason or in consequence of his or her being such consignee or holder or of his or her receipt of the goods by reason or in consequence of such consignment or the transfer to him or her of the document, have full force and effect.

Representations

7. A sea transport document that—
- (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 (other than the master) who had the actual authority, whether express or implied, or the ostensible authority of the carrier to sign such a document,

is, in favour of the holder of the document, as against the **carrier—**

- (i) *prima facie* evidence in favour of the shipper or other person to whom it was issued;
 - (ii) conclusive evidence in favour of a subsequent holder,
- of the shipment of the goods or (as the case may be) of their receipt for shipment.

CHAPTER 3 DELIVERY

Delivery

8. (1) The carrier is discharged from his or her obligation to deliver if—
- (a) he or she makes delivery of the goods to which a sea transport document relates to the holder of the document or to a person in possession of the document; and
 - (b) such holder or person is the first person presenting the document with regard those goods.
- (2) (a) The person so presenting a sea transport document is entitled to delivery of the goods to which the document relates on the terms set forth in it and subject to compliance with any obligations to which such delivery is subject, but in any case where the carrier doubts the person's right to delivery of any of the goods, the carrier may require the person to establish his or her right to delivery before making delivery to him or her.
- (b) Paragraph (a) does not affect any right to damages that would exist but for the provisions of that paragraph.

CHAPTER 4 PERSONS NOT BONA FIDE

Persons not bona fide

9. (1) Nothing in Chapters 2 and 3 entitles any person in possession of a sea transport document or any person making delivery of any goods to which a sea transport document relates to any rights or to any defence to or discharge from any obligation if, at the time when he or she acquired possession of the document or made any such delivery—
- (a) in the case of a person acquiring possession, he or she knew or had reasonable grounds for believing—
 - (i) that the goods to which the document related had not been shipped or received for shipment; or
 - (ii) that the person from whom he or she acquired possession had no right to transfer the document or any rights thereunder to him or her;
 - (b) in the case of a person making delivery, that he or she knew or had reasonable grounds for believing that the person to whom he or she made delivery had no right to receive delivery.
- (2) The onus of proving that subsection (1)(a) or (b) applies is on the person alleging its application.

CHAPTER 5 TITLE TO SUE

Title to sue in action *in rem*

10. For the purposes of an action *in rem* under the Admiralty Jurisdiction Regulation Act, 1983 (Act No. 105 of 1983), a charterer by demise is regarded to be, and to have been, the owner of the ship for the period of the charter by demise.

Insurers

11. (1) Despite not having paid or admitted liability under the policy, ~~the~~ insurer may in cases of urgency and as an interim measure do any act, including the institution of any action or other proceedings, for the purpose of preserving, asserting or exercising any rights and remedies of the insured in respect of the subject-matter insured or set forth in the policy,

(2) The insurer may do any such act either in his or her own name, or in the name of the insured, who may be described either specifically or collectively.

(3) In doing any such act, the insurer must set forth the facts entitling him or her so to act.

(4) The insurer doing any such act is liable for any costs arising out of the doing of that act.

(5) (a) Despite the doing of any act under subsection (1), ~~the~~ insurer may repudiate liability on any ground that would be available to him or her had the act not been done, but remains liable as provided by subsection (4).

(b) If the insurer so repudiates ~~liability—~~

(i) any proceedings instituted by the insurer continue until the insured has elected to discontinue them;

(ii) the insured may elect to continue any such proceedings, and must be substituted as a party in his or her own name if he or she elects to continue proceedings instituted in the name of the insurer.

(6) Nothing in this section affects any right of the insurer to recover any costs referred to in subsection (4) from the insured.

(7) In this section “insurer” includes any person who has issued a policy insuring cargo or any interest in, or liability relating to, any cargo.

CHAPTER 6 GENERAL PROVISIONS

Extension of Act to Prince Edward Islands

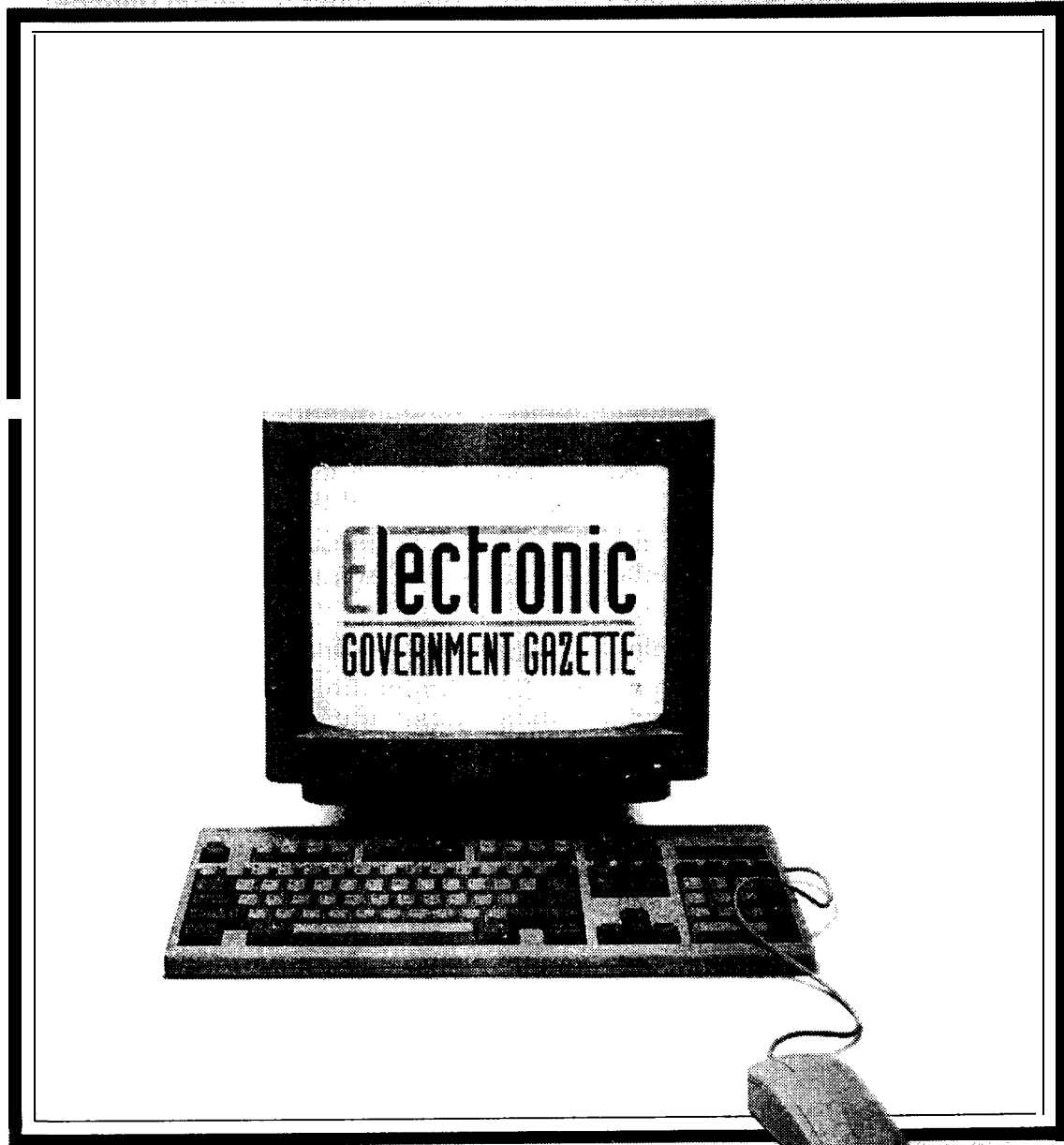
12. This Act extends to the Prince Edward Islands referred to in section 1 of the Prince Edward Islands Act, 1948 (Act No. 43 of 1948); and any reference in this Act to the Republic includes a reference to those Islands.

Act binds State

13. This Act binds the State,

Short title and commencement

14. This Act is called the Sea Transport Documents Act, 1998, and comes into operation on a date fixed by the President by proclamation in the *Gazette*.



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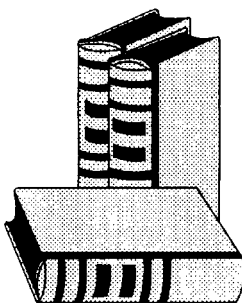
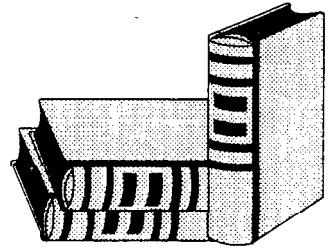
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