

MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

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PRESENT STATUS OF HAGUE RULES  
or  
UNIFORM OCEAN BILL OF LADING

Otherwise Known as the Brussels Convention for Unification  
of Certain Rules Relating to Bills of Lading 1924

1. The Hague Rules have been *enacted* by national legislation as follows:

**Australia**—Law of 1924, in effect January 1, 1925.  
Act No. 22 of 1924.

**Belgium**—Law of November 28, 1928, in effect January 22, 1929 (not applicable to Belgian Congo).  
Belgium signed the Convention August 8, 1924, and signed the Procès-Verbal on September 8, 1924; also ratified the Convention on June 2, 1930, effective on June 2, 1931. (Applicable only to Belgium, and not applicable to Belgian Congo, Ruanda—Urundi Mandates.)

**Great Britain and Northern Ireland**—Law of 1924, in effect January 1, 1925. 14 & 15 Geo. 5, C.22. Known as the: "Carriage of Goods by Sea Act, 1924."

Great Britain signed the Convention on August 25, 1924, and signed the Procès-Verbal on November 15, 1924; also ratified the Convention on June 2, 1930, effective on June 2, 1931. The ratification was originally applicable only to the United Kingdom, and not applicable to any protectorates, colonies, or territories under sovereignty or mandate.

On the 2nd December, 1930, the government notified the adhesion of the following colonies, protectorates and territories under British mandate: Bahamas, Barbados, Bermuda, British Guiana, British Honduras, Ceylon, Cyprus, Falkland Island and dependencies, Fiji, Gambia, Gibraltar, Gold Coast, Hong-Kong, Jamaica (including Turks and Caicos Islands and the Cayman Islands), Kenya (colony and protectorate), Leeward Islands, Antigua, Dominica, Monserrat, St. Christopher, Nevis, Virgin Islands, Malay States, (a) Federated Malay States, Negri Sembilan, Pahang, Selangor, (b) Unfederated Malay State, Johore, Mauritius, Nigeria, (a) colony (b) Cameroons under British mandate, State of North Borneo, Palestine, Seychelles, Sierra Leone, Somaliland Protectorate, Straits Settlements, Tanganyika Territory, Trinidad and Tobago, Islands of Western Pacific, British Solomon Islands Protectorate, Gilbert and Ellice Islands Colony, Tonga, Windward Islands, Grenada, St. Lucia, St. Vincent. Effective June 2, 1931.

Zanzibar ratified the Convention 2nd June, 1931.

**British Colonies, Protectorates and Mandated Territories**—Ordinance of 1926, in effect on various dates, 1926-1928. See *Scrutton on Charter parties*, 13th Ed., p. 548. Known as the "Carriage of Goods by Sea Ordinance, 1926."

(Neither the British Act nor the British Ordinance applies to Canada, Union of South Africa, New Zealand, Newfoundland, Egypt, Malta or Shanghai.)

**India**—Act No. 26 of 1925, in effect January 1, 1926.

**Italy**—Decree of January 6, 1928 and Law of July 19, 1929, effective date postponed in discretion of executive. Italy signed the Convention on August 25, 1924 and signed the Procès-Verbal on September 17, 1925.

**Netherlands**—Commercial Code Revision of 1927, in effect 1927. (Applicable only to the homeland and not to Dutch East Indies, Dutch Guiana and other Dutch possessions, which have their own codes.)

The new Maritime Law is on all important points in harmony with the Convention. Any necessary amendments will be effected by a Bill before Parliament.

The Netherlands ratified the Convention on May 15, 1931, effective November 15, 1931.

2. The following nations have *ratified* the 1924 Convention: Belgium, Great Britain, Netherlands, as above stated.

Hungary—On June 2, 1930, effective June 2, 1931.

Monaco—On November 15, 1930, effective November 15, 1931.

Spain—On June 2, 1930, effective June 2, 1931.

NOTE—The purpose of seeking ratification of the Brussels 1924 Convention in addition to enactment of national bill-of-lading legislation is to place the legal interpretation of inward Hague Rules bills of lading on the same basis as bills of lading issued domestically in Hague Rules countries. For example, Mr. Justice Langton sitting in Kings Bench Division in London in December, 1931, had to consider a bill-of-lading for the carriage of goods from Palestine to Great Britain. The Hague Rules are enacting in the national legislation of both Palestine and Great Britain. Great Britain had ratified the Convention effective June 2, 1931, and Palestine had ratified the Convention effective on the same date. The question before the English Court was whether to construe the bill-of-lading as including the Hague Rules merely as a matter of Palestine contract between the parties to the bill-of-lading or to construe the bill-of-lading as governed by the Common statute. (Lloyd's List, December 14, 1931.)

An example more familiar to American lawyers is the well-settled construction of a Harter Act bill-of-lading. In the United States, the Harter Act is applied to every bill-of-lading within its terms as a matter of law, and all clauses which are contrary to the Harter Act are treated as invalid. The *Jason*, 225 U. S. 32. But in England, a Harter Act bill-of-lading is received by the court merely as a contract between the parties, the Harter Act clause simply being one of the terms of the contract. *Dobell v. Rossmore* (1895) 2 Q. B. 412, 413; *Scrutton* (13th Ed.) p. 534, notes (e) (f). This situation, as Scrutton remarks, creates difficult questions of construction, which are obviated by ratification of the Brussels 1924 Convention.

France—The (Hague Rules) Convention of August 25, 1924, was submitted by the government to the Chamber of Deputies for ratification and awaits action.

The convention was submitted to the United States Senate for ratification on February 24, 1927. It has not been acted on.

3. National *legislation has made progress* as follows:

Esthonia.—A Bill was laid before Parliament in March, 1931.

France—A Bill embodying the text of the Hague Rules with some additional provisions was passed by the Chamber of Deputies in March, 1931, and is now before the Senate. This Bill, when enacted, will be the national law of France.

Norway—The Convention on Bills of Lading has been embodied in the proposed new Maritime Statute which will be laid before the government in due course.

Bills introducing the text or substance of the Convention are under consideration in Canada, New Zealand, South Africa and the Malay States.

United States—Several bills embodying the Hague Rules have been introduced into Congress, and a number of hearings have been held. The present House bill bears No. H. R. 3830, 71st Congress, 1st Session, and is known as the White Bill. It was introduced on June 10, 1929.

4. The following nations, some whose delegates signed the original Convention in 1924, and some which were not present and did not sign on that occasion, have subsequently formally *signed the Procès-Verbal of Signature* opened by the Government of Belgium in Brussels:

Chile—October 28, 1927.

Dantzic (no date).

Esthonia—April 10, 1926.

France—February 28, 1925.

Germany—August 24, 1925.

Hungary—April 8, 1926.

Japan—August 25, 1925.

Jugo-Slavia—April 10, 1926.

Poland—August 22, 1925.

Roumania—March 12, 1925.

Serbia (no date).

United States of America—June 23, 1925.

5. The secretariat of the International Maritime Committee reports that the following Governments, which have not otherwise signed or adhered to the Convention, regard it favorably:

Albania—By memoranda of the 24th and 25th February, 1931, the government stated its intention of adhering to the Bills of Lading Convention.

Finland

Greece

6. At the recent Pan American Commercial Conference which was held in Washington October 5-13, 1931, the subject of uniform ocean bills of lading was considered and the following resolution was unanimously passed:

#### UNIFORM OCEAN BILLS OF LADING

“The Fourth Pan American Commercial Conference:

“WHEREAS, The Fourth Pan American Commercial Conference is in favor of uniform laws governing ocean transportation and is prepared to support the work which has been done, since 1921, by the International Chamber of Commerce for the purpose of securing the enactment of such laws by the leading commercial countries.

“WHEREAS, The Conference believes that the Hague Rules represent a fair division of the risks of transportation between carriers and the cargo interests and that they should be the basis upon which international uniformity is sought,

“RESOLVES:

“To recommend the prompt enactment of the Hague Rules by all of the Nations of the Americas, and that the subject be placed upon the agenda of the Seventh International Conference of American States to be held at Montevideo in December, 1932.”

7. The International Union of Transport Underwriters (Union Internationale d'Assurances-Transports) adopted the following resolution at its general meeting on September 28, 1931, held at Baden-Baden.

“The members of the International Union of Marine Underwriters (Union Internationale d'Assurances Maritimes) assembled in general meeting are glad to note the progress made in obtaining legislative sanction for the Hague Rules in France and in the United States of America.

“They confirm their conviction that uniformity as to bills-of-lading and the adoption of the Hague Rules must be deemed a necessary legislative reform.”

(The official French text is printed at 24 *Dor Revue*, 649.)

8. The International Chamber of Commerce, at its Washington Congress on May 4-9, 1931, adopted the following *Resolution*:

“BILLS-OF-LADING

“The International Chamber of Commerce again affirms its strong conviction that uniform laws and uniform bills-of-lading are required to facilitate international commerce. When every country has a different law and every carrier has a different form of bill-of-lading, confusion and litigation result and international trade is hampered by a condition which benefits no one and is harmful to all.

“The Chamber notes with satisfaction the recent progress made in the United States and in France toward the adoption of the Hague Rules and welcomes the announcement made by the Pan American Union that at the Fourth Pan American Commercial Conference, to be held in October, 1931, an effort will be made to work out uniformity between the nations of the Americas, on the principles of the Hague Rules.

“The Chamber urges that the strongest affirmative action be taken by the National Committees in all countries to the end that this constructive reform may be accomplished at the earliest possible date.”

9. The Maritime Law Association has adopted several resolutions supporting the Rules, of which the most recent is the following:

“Resolved that the President of this association be empowered to appoint a committee which shall represent this association with authority to appear before any committee of Congress or any department of the Government, and to take any appropriate action for the purpose of securing the adoption of the Hague Rules by the United States, whether by international convention or by an act of Congress.

“THE HONORABLE AUGUSTUS N. HAND, *President*.

“HAROLD S. DEMING, *Secretary*.

“Dated January 27, 1928.”

## EXTENT OF LITIGATION UNDER THE RULES

When the Hague Rules were under discussion some of the opponents considered that, if they were adopted, they would cause a flood of litigation, while those in favor of the Rules expected that litigation would be reduced, substantially, by doing away with the old complicated and obscure forms of B/L. The following figures as to litigation, under the various statutes enacting the Rules, will therefore be of interest.

### A. LITIGATION UNDER HAGUE RULES 1921 VOLUNTARILY ADOPTED BY CONTRACT PRIOR TO NATIONAL LEGISLATION

Cases in Belgium (from Dor) . . . . .	1
Cases in U. S. A. (from A. M. C.) . . . . .	2

### B. LITIGATION UNDER THE BRITISH ACT OF 1924 AND ORDINANCES OF 1926-1928

Leading cases in England cited by Cole (3rd Edition, 1930) and Scrutton (13th Edition, 1931) . . . . .	11
All other cases (Lloyd's List Law Reports to August, 1931) . . . . .	3
Cases in Ireland and Scotland (Lloyd's Law Reports to August, 1931) . . . . .	2
Cases in U. S. A. (A. M. C.) . . . . .	5
Cases in Canada . . . . .	Apparently none
Cases in Union of South Africa (Natal) . . . . .	1
Cases in Australia . . . . .	Apparently none
Cases in New Zealand . . . . .	1
Cases in France (from Dor) . . . . .	1
Cases in Belgium (from Dor) . . . . .	2
Cases in South America . . . . .	No record

### C. LITIGATION UNDER BELGIAN ACT OF 1928

Cases in Belgium (from Dor) holding void clauses denying jurisdiction to Belgian courts or denying effect upon Belgian Law . . . . .	9
Other points under Hague Rules (from Dor) . . . . .	13
Cases elsewhere in Europe . . . . .	Apparently none
Cases in Great Britain (from Lloyd's Law Reports) . . . . .	Apparently none

## D. LITIGATION UNDER AUSTRALIAN ACT OF 1924

Cases in England (from Lloyd's Law Reports) . . . . .	2
Cases in Australia (from New South Wales, Victoria and State Reports) . . . . .	Apparently none
Cases in Canada, Union of South Africa, United States of America . . . . .	Apparently none
Cases in Belgium (from Dor) . . . . .	1

## E. LITIGATION UNDER NETHERLANDS STATUTES 1927

Correspondence with persons in Holland has not revealed the existence of any reported Hague Rules cases in Dutch courts.

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Judge Hough's judgment on the comparative merits of the Hague Rules and the old system, so far as litigation was concerned, was stated in a letter which he addressed to Hon. Joseph C. Grew, Acting Secretary of State, under date of April 28, 1926, as follows:

"So far as the Rules themselves are concerned, it is easy enough to criticize them in detail—they are not perfect; but this fact remains, they have been in force in Great Britain for two years and there has yet to appear one single reported litigation arising out of them. During that time I have myself heard at least twenty cases depending upon the interpretation of the 'Unreformed' bill of lading."

That this point was well founded is shown by the fact that in the Southern District of New York alone, since January 1, 1926, when the British Act went into effect, there have been not less than 78 suits tried where the action was brought under a B/L.

## CITATIONS OF CASES

NOTE: The following list of cases has been carefully checked in London, Antwerp, Paris, Hamburg and other centers of shipping litigation in Europe.

For brevity, the national statutes embodying the Hague Rules are referred to as "Hague Rules Acts," instead of by their proper but longer names, such as the "Carriage of Goods by Sea Act."



## UNITED STATES

*The Samaria* (*Lockett v. Cunard*) E. D. N. Y., 1927, A. M. C. 1057. A cargo of wool and rags from Liverpool to Boston was damaged by sea water. During the voyage a tank was being filled by a hose on deck passing close to a ventilator; the hose burst and water ran down the ventilator shaft onto the cargo. The bill of lading contracted for the Hague Rules of 1921, the voyage occurring prior to the effective date of the English Act. The court held the hose unfit, and the vessel in respect to it unseaworthy on sailing; it held the failure of the carpenter to close the ventilator cover was negligence in care and custody of cargo, and gave a decree against the ship.

Also reported at 28 Lloyds L. R. 181.

*The Aurania* (*Greenspon-Newman, Inc. v. Cunard*). New York State Courts, 1929 A. M. C. 1741, 21 Dor 330, 277 N. Y. A. D. 737. The £100 per package value provision of the British Hague Rules Act 1924 is valid and enforceable in New York when incorporated in the bill of lading.

*Northwestern Miller* (*American Linseed Co. v. Norfolk & North American Steamship Co.*), Southern District of New York, 1929 A. M. C. 244. Linseed oil in bulk carried from Hull, England, to New York, in 1922, leaked out of the tank. The Bill of Lading, by a clause paramount, provided that it was mutually agreed that the Bill of Lading was subject to the Hague Rules, 1921. The court held the tank unfit for the oil; the approval of the tank by the shipper's surveyor did not affect the shipowner's duty; due diligence was not shown and the carrier was liable; also the one-year limit for suit did not apply to cargo never delivered and was waived by failure to plead it until trial.

*H. Lissner & Co., Inc. v. Oceanic Steam Navigation Co., Ltd.* 2nd C. C. A. (New York) 1929 A. M. C. 441 and 632. This was a cargo damage action under a British Act B/L. The application of the Act was not discussed, and the case went off on a point concerning the form of the record on appeal.

*Sapinkopf v. Cunard* (*The Aquitania*). New York State Court of Appeals, 1930 A. M. C. 1270, 254 N. Y. 111. Carriage of goods from England to New York, the British Hague Rules Act 1924 being applicable. Suit for cargo damage was commenced more than one year after the vessel delivered the goods. The Court of

Appeals upheld the one year time for suit clause, reversing the lower court and modifying its own previous opinion that two years was a reasonable time for suit.

*M. Simiansky & Co. v. Anchor Line, Ltd. (The Cameronia)*, E. D. N. Y., 1930 A. M. C. 443. Damage to bales of jute by seawater on voyage from Glasgow to New York in 1926, under British Act B/L. The Line pleaded heavy weather; the Court, however, said: "But as was said in the *Mongolian Prince* (1928), heavy weather encountered by a steamship which is not catastrophic is not such a 'peril of the sea' as is excepted in a B/L which incorporates the English Carriage of Goods by Sea Act, 1924."

The Line also pleaded latent defect in rivets, and due diligence. The Court found that a hydraulic test prior to sailing had shown rivets to be tight which became springy and leaky during the voyage, and that due diligence was used. The libel was accordingly dismissed.

*Duche v. Brocklebank (The Makalla)*. E. D. N. Y., 1929, A. M. C. 1297, affirmed by 2nd C. C. A., 1930 A. M. C. 717. Damage to cocoanut by seawater on voyage from Colombo to New York in 1925. The carrier pleaded heavy weather, a heavy sea shipped during a hurricane squall, which smashed several ventilators; the Court found the ventilators to have been seaworthy on leaving Colombo, and the damage due to sea peril. The carrier also argued that the Indian Act should apply, but the lower Court held that the Indian Act did not apply to cargo laden at Colombo in Ceylon.

*Harry Meyers v. Cunard (The Caronia)*. New York State [1930] City Court of New York City. 137 Misc. 875. A crate of antique furniture was shipped from London "in apparent good order and condition," under a British Act B/L. Damage of \$2,448 was claimed. The Court gave judgment for the Line on the ground that the plaintiff had failed to show the condition of the parcel when shipped; hence it was unnecessary to pass on the £100 valuation clause.

*The Lake Flattery (Aron v. Panama)*. New York State Court of Appeals, 255 N. Y. 513, 1931 A. M. C. 685. A contract limit of six months on the time for suit is fair between Ecuador and New York. The Court referred to the Hague Rules as follows (p. 519):

"We are not unmindful of the fact that 32 nations have adopted a statute which provides that an action to recover damages under a shipping contract must be commenced within one

year. A statute of limitations does not, however, prevent the parties to a shipping contract from agreeing upon a shorter time within which action must be commenced, and the statutory limitation throws very little light upon the question of what constitutes a just and reasonable time under such an agreement."

*Berengaria (Gerli v. Cunard)* 2nd C. C. A. (New York) 1931 A. M. C. 1861. Shortage of two cases of a lot of ninety-two cases of silk shipped from Milan to New York via Southampton in 1926. The B/L (issued at Milan) required notice before removal of goods, agreed the value at £20 per package, and was "governed by English law" which at that date was the British Act of 1924: Held: 1. Where delivery is in instalments, notice of shortage need not be given until delivery is taken of what is understood to be the last instalment. 2. A specific £20 value clause in an Italian contract over-rides the general £100 value clause of the British Act, unless law of Italy is pleaded and proved to invalidate it. 3. The £20 value clause was valid in American law.

#### GREAT BRITAIN

*The City of Baroda*, [1926] Kings Bench Division, 25 Lloyds L. R. 437. A cargo of bristles was stolen on passage from China to Great Britain, 21 cases arriving empty. The shipowner attempted to show that there was no want of care. The bill of lading contracted for the British Hague Rules Act 1924. Held, on the evidence, the shipowner was liable for lack of care.

Cited by Cole and Scrutton.

*Golodetz v. Kersten* [1926], K. B. Divisional Court, 24 Lloyd's L. R. 374. Pilferage on passage from Rotterdam to London. Bill of lading contained a clause embodying the British Hague Rules Act 1924. The court enforced the Act as part of the contract, declined to give effect to exception clauses, and held the shipowner liable.

*Angliss v. Peninsular & Oriental*, [1927] 2 K. B. 456. Refrigerated cargo of frozen lamb turned out tainted by oil from fuel tanks which leaked through a bulkhead because of defective design and poor workmanship. Held, applying the British Hague Rules Act 1924, that neither condition could have been detected by the shipowner or his employees by due diligence. Decree for the ship.

Cited by Cole and Scrutton.

*Pendle & Rivett v. Ellerman*, [1927] Kings Bench Division, 29 Lloyds L. R. 133. A case of woollens shipped from England was delivered empty at Piraeus. The mate's receipt stated its weight; the bill of lading stated the weight and added "weight unknown." Held, applying the British Hague Rules Act 1924, that the vessel was bound by the mate's receipt and was liable for the loss up to £100, the value of the stolen goods being £256.

Cited by Cole and Scrutton.

*Hourani v. Harrison. Brown v. same.* [1927], C. A. 28 Lloyd's L. R. 120. Pilferage by stevedores at Vera Cruz of cargo shipped from Great Britain under British Hague Rules Act 1924. Held, lack of care of cargo, and ship liable.

Cited by Cole and Scrutton.

This case raised the point that the word "or" in Article 4 (2) (q) of the convention should read "and."

See *Scrutton*, 12th ed. p. 501, note (k) and 13th ed. p. 516, note (n).

*The Devanha*. [1927], Mayor's and City of London Court, 27 Lloyd's L. R. 281. Voyage from Sydney, Australia, to London in 1925. The bill of lading referred to the Australian Hague Rules Act 1924, which the court applied. Cargo was damaged by sweat; the ventilators were closed in bad weather. The court found for the shipowner.

*Maharani Mills v. Anchor Line*. [1927] (C. A.), 29 Lloyd's L. R. 169. Carriage of goods from England to Bombay, the British Hague Rules Act 1924 being applicable. Bill of lading stipulated that litigation should be at port of destination under British law. Cargo sued in London. The writ was dismissed.

*Heyn v. Ocean S. S. Co.* [1927], Kings Bench Division, 27 Lloyds L. R. 334. Cloth shipped from England was stolen during discharge at Shanghai. The mate saw the theft, recovered part of the goods, and pleaded that there was no lack of care. The British Act of 1924 applied. Shipowner was held liable.

Cited by Cole and Scrutton.

*Foremans & Ellams, Ltd. v. Federal Steam Navigation Co.* [1928], 2 K. B. 424, 30 Lloyd's L. R. 52. Damage to frozen meat caused by error of the crew in managing the refrigerator. Voyage from River Plate to Great Britain. The bill of lading

contracted for the British Hague Rules Act 1924. Held, error in care of cargo and ship liable.

Cited by Cole and Scrutton.

*Touraine*. [1928], P. 58, 29 Lloyds L. R. 265. A sailor, during voyage from Australia to Hamburg in 1926, rammed a hole in the bend of a lead waste pipe while trying to clear it, and water leaked onto cargo. The Australian Act of 1924 applied, under a clause paramount endorsed on the B/L. *Held*: error in management and shipowner not liable.

Cited by Cole and Scrutton.

*Goodwin v. Lamport & Holt*. [1929], King's Bench Division, 34 Lloyd's L. R. 192. Carriage of goods from Liverpool to Brazil, the British Hague Rules Act 1924 being applicable. Ship discharged cotton into lighter at Bahia, and then discharged a piece of machinery which fell out of its box, holed the lighter, which sank. The court held there was no negligence and no recovery for the cotton.

Cited with quare by Scrutton.

*Gosse Millard, Ltd. v. Canadian Government Merchant Marine* [1929] A. C. 223. Rain fell on cargo in the hatches during repairs to the ship, the hatches being left uncovered. Applying the British Hague Rules Act 1924, this was held negligence in care of cargo and decree was given against the shipowner.

Cited by Scrutton for the proposition that the Rules have fundamentally changed the legal status of sea carriers under English law, limited the previous freedom of contract, and left the burden of proving due diligence on the ship.

Referred to by Cole as settling that as between the carrier's duties and exemptions, the duty to carry safely is paramount. As the English law stood before the Hague Rules, the onus of proving unseaworthiness was on the cargo owner, and, if he proved it, the onus of proving due diligence was on the shipowner; this position remains unaffected.

*Sewaram v. Ellerman*. [1930], King's Bench Division, 37 Lloyd's L. R. 97. Damage to cotton from a leak in a ballast tank air pipe. Voyage from Birkenhead to Calcutta in 1928. The British Hague Rules Act 1924 was applicable. The shipowner could not prove that the pipe was in good order on sailing. The court held the ship unseaworthy and liable.

*Silver & Layton v. Ocean Steamship Co.* [1930] 1 K. B. 416, 35 Lloyd's L. R. 49. A cargo of frozen eggs was damaged, the tins being gashed and pin-holed. Held, applying the British Hague Rules Act 1924, that there was lack of care in custody of cargo, and the shipowner was liable.

Cited by Cole and Scrutton.

*Foscolo Mango v. Stagg Line* [1931] C. A. 39 Lloyds L. R. 101. Deviation on voyage from England towards Greece. Applying the British Act of 1924, a deviation to land guarantee engineers (who had been working on the ship's machinery at sea) was unreasonable and the ship, subsequently stranding, was liable for the cargo.

Appealed to the House of Lords, whose reserved judgment is now awaited.

Cited by Scrutton.

*The Media* [1931], Adm. Div., Nov. 16. The bill of lading provided that claims should be determined at destination in India, according to British law, or at the shipowner's option in the U. K. The parties corresponded about the damage until the time to sue in India had gone by. The shipowners never exercised their option as to the place of suit. After the year, cargo sued in England and argued that the failure of the shipowner to exercise the option extended the time for suit. The Court denied the argument, upheld the shipowner's objection to the suit and stayed the proceedings. Citing and following *Maharani v. Anchor Line*.

#### SCOTLAND

*Harland & Wolff v. Burns & Laird* [1931], Court of Sessions, Scotland, 40 Lloyd's L. R. 286. A vessel carrying machinery from Glasgow to Belfast, under letter of affreightment without any bill of lading, capsized and lost her cargo. The ship owners subsequently acknowledged that they had the machinery on board. The cargo claimed that this acknowledgment, if not a bill of lading, was "a similar document of title," but the court held that the British Hague Rules Act 1924 did not apply to the transportation.

#### IRELAND

*The Ida Blumenthal*. Irish Free State, [1927], 29 Lloyd's L. R. 84. On passage from Stettin to Dublin, with briquettes, the ship's machinery broke down in a storm and she put into Rotterdam as

port of refuge for bunkers. After resuming the voyage, fire broke out in her cargo. The bills of lading stipulated that the British Hague Rules Act 1924 should apply. The court held the deviation was reasonable and justified and there was no liability for the fire.

#### SOUTH AFRICA

*Smith's Coasters, Ltd. v. Wilson.* [1928], 49 N. S. (Natal), 468. A British Hague Rules B/L contained a clause permitting the option of settling claims on invoice or on the arrival market value. The shipowner claimed that cargo must in its complaint elect on which basis to claim. *Held:* No; the option is for ship, not cargo, and cargo need not anticipate ship's election.

#### NEW ZEALAND

*Commonwealth & Dominion Line v. Laery Beveridge & Co.* [1928], New Zealand L. R. 141. A case of whiskey was delivered in New Zealand empty. The British Act of 1924 was applicable. *Held:* the carrier did not bring the shortage within the exception of Article IV (m) (inherent vice, wastage, etc.), and was liable.

#### BELGIUM

*The Morapark.* Tribunal of Commerce of Antwerp [1925], 13 Dor 74. Applying the British Hague Rules Act 1924, a 24-hour notice clause is void, an exception against bad stowage is void and a benefit of insurance clause is void.

*The Flora Park.* Court of Appeals of Brussels [1927], 19 Dor 84. The shipowner voluntarily contracted for the Hague Rules of 1921 on a voyage from Roumania to Belgium. Cargo was short. The court held that if the shipowner could show that the shortage occurred before shipment or after discharge, the Hague Rules provisions would not govern and he could resort to the ordinary negligence clauses of his bill of lading.

*Earle, Stoddart & Clayton v. Captain Roring.* Tribunal of Commerce of Antwerp [1928], 19 Dor 104. Damage to grain, partly by handling, partly by moisture and partly by cutting of bags to fill in the stowage, from Australia to Belgium, under the Australian Hague Rules Act 1924. The court sustained the validity of the Australian clause nullifying negligence clauses in respect of loading, stowage, care and custody of cargo, and held the ship to pay for the cut sacks.

*The Tallatta.* Tribunal of Commerce of Antwerp [1928], 20 Dor 143. The vessel was discharging copra and wool at Antwerp. Fire occurred in cargo of copra alongside the ship and damaged bales of wool. The carriage was under the British Hague Rules Act of 1924, which the court applied because the cargo was not sorted nor delivered to the consignees. As to fire, the cargo had to prove that it was caused by act or neglect of captain or crew. It was not negligent to place the wool near the copra nor to fail to have the ship's pumps ready to function at the first alarm. Judgment for the ship.

*Belgian Jurisdiction Cases* [1929-1930]. Tribunal of Commerce of Antwerp, 23 Dor, pp. 135 to 140, inclusive. A series of eight cases of similar tenor uniformly applying the Belgian Hague Rules Act of 1928 and holding void clauses in bills of lading attempting to provide that any litigation under the bill of lading should be conducted in Hamburg, Great Britain, Dantzic, Germany and Havre, respectively, in accordance with the laws of those places. All of these clauses are overridden by the public policy of Belgium, as expressed in the 1928 Statute, both as to inward and as to outward movements of goods. The same principle was affirmed by the Court of Appeal in Brussels. *The Ostsee (Capt. B athke v. Melaerts)* Dec. 17, 1930. The clause in that case required litigation in Hamburg under German law; it was held void, and the Belgian Court took jurisdiction and applied the Belgian law. The voyage was from Constanza (Roumania) to Antwerp.

*The Bussard.* Tribunal of Commerce of Antwerp [1929], 22 Dor 169. The Belgian Hague Rules Act of November 28, 1928, is not retroactive.

*The Pasquale Romano.* Tribunal of Commerce of Antwerp [1930], 23 Dor 143. Applying the Belgian Hague Rules Act 1928, a 24-hour notice clause and a 30-day claim clause are invalid.

*The Lieut. Loubert Bi  and the Min.* Court of Appeals of Brussels [1930], 23 Dor 145. Applying the Belgian Hague Rules Act 1928, the bill of lading limit of value does not apply to the stevedore (entrepreneur de d chargement).

*The Velta.* Tribunal of Commerce of Ghent [1930], 23 Dor 142. Applying the Belgian Hague Rules Act of 1928 to a case of shortage, under bill of lading with the words "weight unknown" printed in small letters among 16 other clauses, where it was proved



that the boxes showed signs of having been opened with a sharp instrument, judgment was given against the captain, even assuming that the clause was good, which the court questioned.

*Casablanca; La Suisse Ins. Co. v. Capt. Klaessen.* Antwerp Tribunal of Commerce, Nov. 14, 1930. 24 Dor 164. 1. A B/L clause providing for jurisdiction in a foreign court and also for the application of the law of a foreign country which does not apply the Hague Rules is invalid, being contrary to the public policy of the Belgian Act, which applies to all negotiable Bs/L, even those issued abroad. 2. Delivery of goods is only complete when the goods are placed in lighters; and B/L clause providing for delivery on vessel's deck is invalid. 3. If the carrier pleads sea peril, it must only establish the facts of the peril, whereupon the cargo-owner must show some fault of the carrier or his agents to recover. 4. Rolling of vessel during discharge, causing slings to strike the vessel's side, is not sea peril. The same ruling was made by the Court of Brussels in the *Melilla* [1931], 24 Dor 165.

*Soc. des Affreteurs Françaises v. Langstaff-Ehrenbart & Co.* Tribunal of Commerce of Antwerp [1931]. Not yet reported.

A French shipowner chartered a vessel to a Belgian firm which put her on berth at Antwerp for general cargo to Bourgas. During discharge, some bales fell overboard and were lost; the cargo-owners sued the Captain and recovered, the Belgian Act of 1928 being applied. The shipowner thereupon sued the charterer for reimbursement and was successful. The Court held that the Belgian Act did not govern the relations between shipowner and charterer.

*Toledo; Weddel Beef Co. v. Capt. Koch.* Tribunal of Commerce of Antwerp, March 20, 1931. Not yet reported.

Carriage of frozen beef in refrigeration from Durban to Antwerp in 1929. The Belgian Act applied. Small leaks in the ammonia pipes caused partial failure of refrigeration and damage. The installation was properly built and certificated, and was inspected and certified in good order just before loading the beef; it was also inspected after loading was completed and found in good order. The carrier pleaded sea peril, but its witnesses could not specify any event. The Court held the loss due to unseaworthiness arising from latent defect; the refrigeration machinery pertained no more to care of cargo than to management of ship; the crew cared for the machinery diligently and were not to blame for being unaware of the damage; and the claim was dismissed.

*Duc de Brabant; Soc. Anon. Fratelli Gondran v. Capt. Hulsens.* Tribunal of Commerce of Antwerp, July 6, 1931. Not yet reported.

Carriage of goods from Antwerp to Genoa, where delivery was taken without remark or claim. The Belgian Act was applicable. Held: under Article I, ¶3, (6), acceptance without reservations merely reverses the legal presumptions and places the burden of proving damage on the consignee. The damage was due to scratching against some solid or sharp article. The carrier pleaded sea peril, six days of heavy weather, and damage around the decks. Held: the carrier failed to show that the damage was due to the heavy weather, and was liable.

*Menhir Braz; Soc. Anon. Hanno-Roos v. Capt. Drouet.* Brussels Court of Appeals, Nov. 13, 1931, *reversing* the Antwerp Tribunal of Commerce, 24 Dor 168.

Carriage of grain from Algeria to Antwerp, and claim for shortage. The B/L provided that the Court of Dunkirk should have exclusive jurisdiction over all disputes. The Antwerp Tribunal took jurisdiction. On appeal, *held*: the B/L merely stipulated the jurisdiction and not the law applicable; the Dunkirk judge could and should apply the Belgian law; the Antwerp court had no jurisdiction.

*The Fernebo; Reboudzakof and various insurance companies v. Capt. Erikson and Soc. Anon. Armement Deppe.* Antwerp Tribunal of Commerce, March 10, 1931. 24 Dor 153.

Carriage of iron bars from Antwerp to Piraeus in 1929; several were lost overboard during discharge. The holder of the B/L sued for himself and underwriters, but did not allege subrogation. The Belgian Act was applicable. Held: 1. Lacking allegations of subrogation, the underwriters have no claim. 2. The public policy of the Belgian Act disregards 24-hour notice clauses or 1-month suit clauses, whether provided for by B/L contract or by the law of the port of delivery. 3. The sea-carrier may not exonerate itself from the obligation of care in discharging the cargo; discharge into lighters is not complete until the goods are placed in the lighter. 4. The shipowner is liable to the consignee.

*Royal Sceptre; Cie. Européenne d'Assurance de Marchandises v. Capt. Pierce.* Antwerp Tribunal of Commerce, Jan. 20, 1931. 24 Dor 168. Carriage of goods from Antwerp to Alexandria, and claim of shortage. The B/L provided that the Court of Havre should have jurisdiction. The plaintiff asserted that the Belgian

Act applied, and nullified the provision. The defendant replied that the Act did not apply because the B/L was à personne dénommée (a named party). Held: while a B/L to a named party is difficult to negotiate, it is negotiable, and the Act may apply to it. But as it was not shown to have been negotiated, the Act did not apply, the provision was valid, and the Court had no jurisdiction.

*Belgian Notice Clause cases.* Tribunal of Commerce of Antwerp [1931]. Not yet reported. In one case, the ship delivered goods into Custom House at Buenos Aires; in another case, into Custom House at Piræus. In each instance, the B/L holder gave notice of claim when he took delivery from the Custom House. Held: valid and timely notice under the Belgian Act of 1928; the Master's general responsibility for goods does not terminate until delivery to the B/L holder.

*Platon; Appiani v. Cie. de Nav. d' Orbigny*, June 2, 1931. (Antwerp to Buenos Aires.)

*Andros; Soc. Anon. la Suisse v. Capt. Freese and Frangopolos Frères*, March 10, 1931. (Antwerp to Piræus.)

#### FRANCE

*The Salabangha.* Tribunal of Commerce of Marseilles [1926]. 4 Dor Supp. 407. Applying the British Hague Rules Act 1924 to a case of theft, the ship was held liable for failure in care and custody of cargo up to £100 per package.

TEXTS

In addition to the Statute Books, the various Hague Rules texts can be found in the following publications:

1921—HAGUE TEXT

*Cole on Hague Rules Explained* (1921, 1st Ed.; 1922, 2d Ed.).

*L. C. Harris*, pamphlet, 1921.

*Jantsen*, pamphlet, 1922 (Norwegian).

1922—BRUSSELS TEXT

1923 A. M. C. 63 (English)

Bank of America, pamphlet, 1927.

1924—BRUSSELS TEXT

U. S. State Dept., Treaty Information Series, No. 17, page 25  
(February, 1931).

BRITISH TEXT

1924 A. M. C. 1338.

*Poor on Charter Parties*, 2d Ed.

*Scrutton on Bills of Lading*, 12th and 13th Ed.

*Cole on Carriage of Goods by Sea Act*, 3 Ed. (1930).

AUSTRALIAN TEXT

*Scrutton on Bills of Lading*, 13th Ed.

BELGIAN TEXT (French and Flemish).

Extracts from *Moniteur Belge* of Jan. 11, 1929. In pamphlet form. Address: 40 Rue de Louvain, Brussels. Price, 3 francs.

GERMAN TEXT

Hansa, 1923, No. 18, p. 467. (Unofficial.)

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