

Confronting British Bullies

Australia and NZ Shipping Law Reform
1888-1907

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The Rafaela S (HL, 2005)

[8] ... the genesis of the Hague Rules lay in a view, widely shared among cargo interests, that carriers, in issuing bills of lading containing or evidencing the terms of carriage contracts, had routinely included conditions exonerating themselves from liability to an extent which was unacceptably prejudicial to the other parties to such contracts. Steps to address this problem had already been taken by the United States in the Harter Act 1893, by **New Zealand in the Shipping and Seamen Act 1903**, by **Australia in the Sea-Carriage of Goods Act 1904** and by Canada in the Water Carriage of Goods Act 1910.

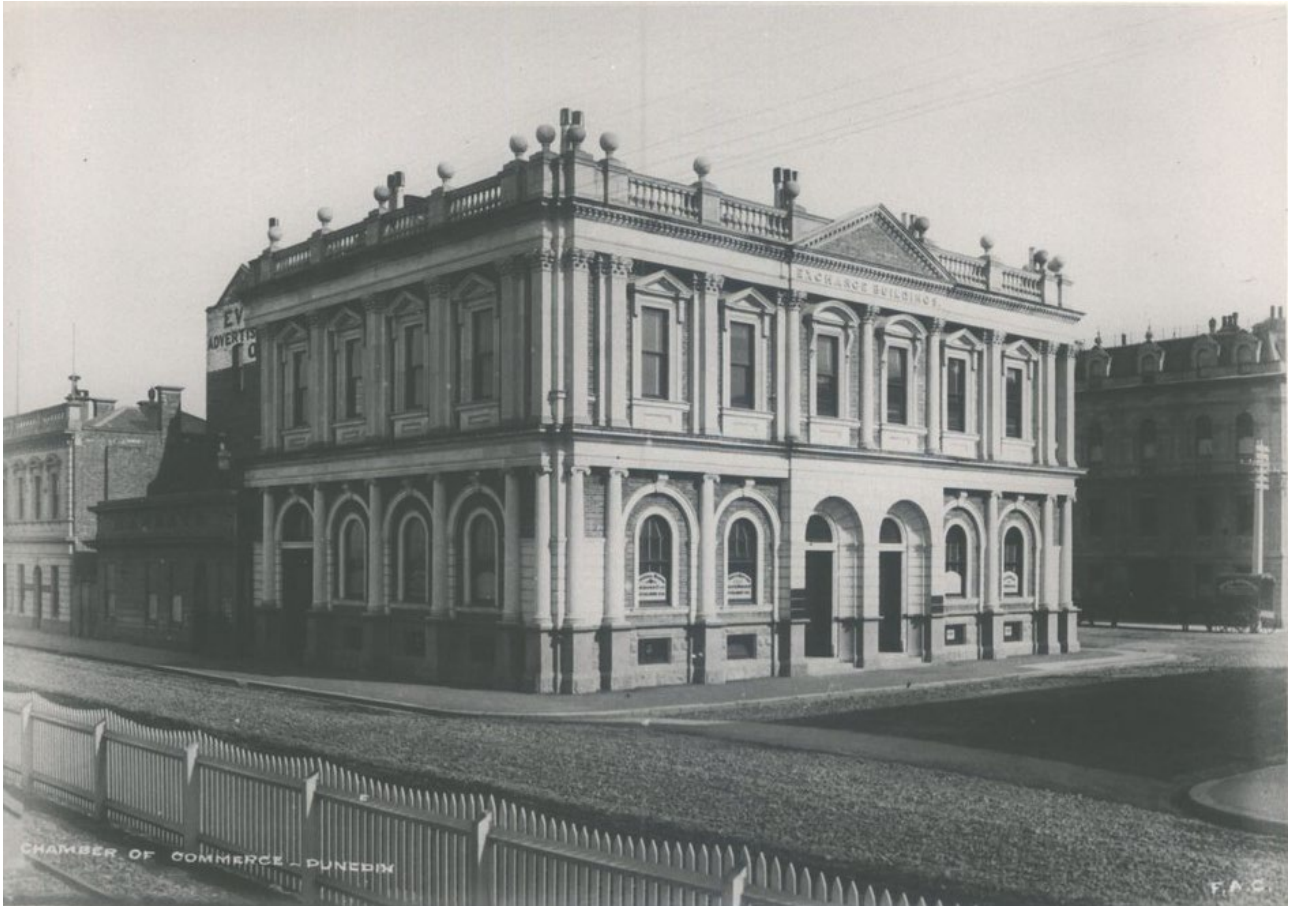
Benjamin Cowderoy, Melbourne Chamber of Commerce (1901)

The controversy between shippers and shipowners ... upon the subject of the form of a bill of lading which would be acceptable by shipowners, and regarded as equitable on the part of shippers and consignees, has given more disquietude among commercial bodies, and extended itself over a more lengthened period without a satisfactory solution being arrived at, than any other single question that has occupied the attention of Chambers of Commerce during the last half-century.

1903 “Homeward Trade” Bill of Lading

The Act of God, the King’s Enemies, Pirates, Robbers of Thieves by land or sea, Arrests of Restraints of Princes, Rulers or People, Riots, Strikes, Lock-outs, or other Labour Disturbances, or delay or hindrance caused directly or indirectly thereby, and loss or damage resulting therefrom or from any of the following causes or perils are excepted, viz.:- Insufficiency in packing or in strength of packages, loss or damage from coaling on the voyage, rust, vermin, breakage, leakage, drainage, sweating, evaporation or decay, or from the leakage or flow of or from contact with the urine, manure water, or drainage from animals carried on the said ship or from their stalls however caused or otherwise howsoever; injurious effects of other goods; effects of climate, **insufficiency of ventilation or temperature of holds**; risk of craft, of transshipment, and **of storage afloat or on shore**; fire on board, in hulk, in craft, or on shore; rain, hail, snow, frost or ice; explosion, barratry, jettison; collision, whether with another ship or any other obstacle; stranding, lying upon or touching the ground; perils of the seas, rivers or navigation of whatsoever nature or kind, and howsoever caused; whether or not any of the perils, causes, or things above mentioned, or the loss or injury arising therefore, be occasioned by or arise from any act or omission, negligence, default or error in judgment of the master, pilot, officers, mariners, engineers, crew, stevedores, ship’s husband or managers, or other persons whomsoever in the service of the Owners or Charterers whether on board the said Ship, or on shore, or on board any other ship belonging to or chartered by them, or for whose acts they would otherwise be liable, whether such an act, omission, negligence, default, or error in judgment shall have occurred before or after the commencement of or during the voyage, or any other causes beyond the control of the Owners or Charterers; or by or from any **accidents to or defects latent or otherwise in hull, tackle, boilers or machinery, refrigeration or otherwise, or their appurtenances** (whether or not existing at the time of the goods being loaded, or the commencement of the voyage), or insufficiency of coals at the commencement or any stage of the voyage, if reasonable means have been taken to provide against such defences and unseaworthiness. Accidents, loss, damage, delay or detention from any act or default of the Egyptian Government or the administration of the Suez Canal, when proceeding via Suez Canal, or of the Argentine Government when proceeding via Cape Horn and River Plate are also excepted. It is expressly agreed that all the exceptions and liberties in this Bill of Lading shall equally apply to any other Vessel into which the goods are shipped.

Towards Reform



First Inter-Colonial Free Trade Conference, Adelaide 1887



Second Council meeting, Associated Chambers of Commerce of the Commonwealth of Australia, Adelaide 1903
(Adelaide Chamber of Commerce)



Meanwhile in the USA ...



Re Missouri Steamship Company
(1888, Ch)

Harter Act 1893

NZ Moves First

Shipping and Seamen Act 1903 (NZ)

“When we consider the progress that has been made during the last few years – for it is only a few years since New Zealand first became a colony – and realise the position it is likely to assume from its increasing exports, we can form but a slight idea of what our colony is likely to become in the comparatively near future. Our position with regard to foreign countries, to the Australian Commonwealth, and to the Pacific Islands, the opening-up of countries like China and Japan, the prospects of trade with India, must lead to greatly improve our position and to the further development of the resources of our own country. And as development takes place in those countries New Zealand must keep on extending its trade...”

- William Hall-Jones, NZ Minister of Marine, 1903

Australia Follows

Sea Carriage of Goods Act 1904 (Cth)

“The shipping companies ... have exercised their ingenuity to minimize their responsibility for the carriage of freight to the smallest point, and so fully have they absolved themselves that, if, whilst a cargo was being carried across the seas, the grossest negligence, the grossest thieving, or the grossest abuse should occur, they would not be liable.”

- Prime Minister Reid, 1904

Reaction in London



“The Old Country is conservative ... We are progressive”*

- Did the Acts work in practice?
- Unilateral/regional efforts vs universalism
- Trans-Tasman cooperation
- Impact of technology on law reform
- Not just a “one way” Empire

* Chair, Conference of Australasian Chambers of Commerce, Christchurch, 1901