Privy Council Appeal No. 3 of 1973

The New Zealand Shipping Company Limited – – *Appellant*

v.

A. M. Satterthwaite & Company Limited – – *Respondent*

FROM

THE COURT OF APPEAL OF NEW ZEALAND

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 25TH FEBRUARY 1974

Present at the Hearing:
LORD WILBERFORCE
LORD HODSON
VISCOUNT DILHORNE
LORD SIMON OF GLAISDALE
LORD SALMON

[*Majority Judgment delivered by* LORD WILBERFORCE]

The facts of this case are not in dispute. An expensive drilling machine was received on board the ship " Eurymedon " at Liverpool for transhipment to Wellington pursuant to the terms of a Bill of Lading No. 1262 dated 5th June 1964. The shipper was the maker of the drill, Ajax Machine Tool Company Limited (" the Consignor "). The Bill of Lading was issued by agents for the Federal Steam Navigation Co. Limited (" the Carrier "). The consignees were A. M. Satterthwaite & Co. Limited of Christchurch, New Zealand (" the Consignee "). For several years before 1964 the New Zealand Shipping Company Limited (" the Stevedore ") had carried out all stevedoring work in Wellington in respect of the ships owned by the Carrier, which was a wholly owned subsidiary of the Stevedore. In addition to this stevedoring work the Stevedore generally acted as agent for the Carrier in New Zealand; and in such capacity as general agent (not in the course of their stevedoring functions) the Stevedore received the Bill of Lading at Wellington on 31st July 1964. Clause 1 of the Bill of Lading, on the construction of which this case turns, was in the same terms as bills of lading usually issued by the Stevedore and its associated companies in respect of ordinary cargo carried by their ships from the United Kingdom to New Zealand. The Consignee became the holder of the Bill of Lading and owner of the drill prior to 14th August 1964. On that date the drill was damaged as a result of the Stevedore's negligence during unloading.

At the foot of the first page of the Bill of Lading the following words were printed in small capitals:

> "In accepting this bill of lading the shipper, consignee and the owners of the goods, and the holders of this bill of lading agree to be bound by all of its conditions, exceptions and provisions whether written, printed or stamped on the front or back hereof."

On the back of the Bill of Lading a number of clauses were printed in small type. It is only necessary to set out the following:

> "1. This Bill of Lading shall have effect (*a*) subject to the provisions of any legislation giving effect to the International Convention for the unification of certain rules relating to Bills of Lading dated Brussels, 25th August, 1924, or to similar effect which is compulsorily applicable to the contract of carriage evidenced hereby and (*b*) where no such legislation is applicable as if the Carriage of Goods by Sea Act 1924, of Great Britain and the Rules scheduled thereto applied hereto and were incorporated herein. Nothing herein contained shall be deemed to be a surrender by the Carrier of any of his rights or immunities or an increase of any of his responsibilities or liabilities under the provisions of the said legislation or Act and Rules (as the case may be) and the said provisions shall not (unless and to the extent that they are by law compulsorily applicable) apply to that portion of the contract evidenced by this Bill of Lading which relates to forwarding under Clause 4 hereof. If anything herein contained be inconsistent with or repugnant to the said provisions, it shall to the extent of such inconsistency or repugnance and no further be null and void.
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> . . .
>
> It is hereby expressly agreed that no servant or agent of the Carrier (including every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Shipper, Consignee or Owner of the goods or to any holder of this Bill of Lading for any loss or damage or delay of whatsoever kind arising or resulting directly or indirectly from any act neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this Clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Carrier acting as aforesaid and for the purpose of all the foregoing provisions of this Clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this Bill of Lading.
>
> . . .
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> "11. The Carrier will not be accountable for goods of any description beyond £100 in respect of any one package or unit unless the value thereof shall have been stated in writing both on the Broker's Order which must be obtained before shipment and on the Shipping Note presented on shipment and extra freight agreed upon and paid and Bills of Lading signed with a declaration of the nature and value of the goods appearing thereon. When the value is declared and extra freight agreed as aforesaid the Carrier's liability shall not exceed such value or pro rata on that basis in the event of partial loss or damage."

No declaration as to the nature and value of the goods having appeared in the Bill of Lading, and no extra freight having been agreed upon or paid, it was acknowledged by the Consignee that the liability of the Carrier was accordingly limited to £100 by the application of Clause 11 of the Bill of Lading. Moreover, the incorporation in the Bill of Lading of the Rules scheduled to the Carriage of Goods by Sea Act 1924 meant that the Carrier and the ship were discharged from all liability in respect of damage to the drill unless suit was brought against them within one year after delivery. No action was commenced until April 1967, when the Consignee sued the Stevedore in negligence, claiming £880 the cost of repairing the damaged drill.

The question in the appeal is whether the Stevedore can take the benefit of the time limitation provision. The starting point, in discussion of this question, is provided by the House of Lords decision in *Midland Silicones Ltd. v. Scruttons Ltd.* [1962] A.C.446. There is no need to question or even to qualify that case in so far as it affirms the general proposition that a contract between two parties cannot be sued on by a third person even though the contract is expressed to be for his benefit. Nor is it necessary to disagree with anything which was said to the same effect in the Australian case of *Wilson v. Darling Island Stevedoring & Lighterage Company* (1956–7) 95 C.L.R. 43. Each of these cases was dealing with a simple case of a contract the benefit of which was sought to be taken by a third person not a party to it, and the emphatic pronouncements in the speeches and judgments were directed to this situation. But *Midland Silicones* left open the case where one of the parties contracts as agent for the third person: in particular Lord Reid's speech spelt out, in four propositions, the prerequisites for the validity of such an agency contract. There is of course nothing unique to this case in the conception of agency contracts: well known and common instances exist in the field of hire purchase, of bankers' commercial credits and other transactions. Lord Reid said this:

> " I can see a possibility of success of the agency argument if (first) the bill of lading makes it clear that the stevedore is intended to be protected by the provisions in it which limit liability, (secondly) the bill of lading makes it clear that the carrier, in addition to contracting for these provisions on his own behalf, is also contracting as agent for the stevedore that these provisions should apply to the stevedore, (thirdly) the carrier has authority from the stevedore to do that, or perhaps later ratification by the stevedore would suffice, and (fourthly) that any difficulties about consideration moving from the stevedore were overcome. And then to affect the consignee it would be necessary to show that the provisions of the Bills of Lading Act, 1855, apply." (*l.c.* p.474)

The question in this appeal is whether the contract satisfies these propositions.

Clause 1 of the Bill of Lading, whatever the defects in its drafting, is clear in its relevant terms. The carrier, on his own account, stipulates for certain exemptions and immunities: among these is that conferred by Article III (6) of the Hague Rules which discharges the carrier from all liability for loss or damage unless suit is brought within one year after delivery.

In addition to these stipulations on his own account, the carrier as agent for (*inter alios*) independent contractors stipulates for the same exemptions.

Much was made of the fact that the carrier also contracts as agent for numerous other persons; the relevance of this argument is not apparent. It cannot be disputed that among such independent contractors,

for whom, as agent, the carrier contracted, is the appellant company which habitually acts as stevedore in New Zealand by arrangement with the carrier and which is, moreover, the parent company of the carrier. The carrier was, indisputably, authorised by the appellant to contract as its agent for the purposes of Clause 1. All of this is quite straightforward and was accepted by all of the learned judges in New Zealand. The only question was, and is, the fourth question presented by Lord Reid, namely that of consideration.

It was on this point that the Court of Appeal differed from Beattie J., holding that it had not been shown that any consideration for the shipper's promise as to exemption moved from the promisee, i.e. the appellant company.

If the choice, and the antithesis, is between a gratuitous promise, and a promise for consideration, as it must be in the absence of a *tertium quid*, there can be little doubt which, in commercial reality, this is. The whole contract is of a commercial character, involving service on one side, rates of payment on the other, and qualifying stipulations as to both. The relations of all parties to each other are commercial relations entered into for business reasons of ultimate profit. To describe one set of promises, in this context, as gratuitous, or *nudum pactum*, seems paradoxical and is *prima facie* implausible. It is only the precise analysis of this complex of relations into the classical offer and acceptance, with identifiable consideration, that seems to present difficulty, but this same difficulty exists in many situations of daily life e.g. sales at auction; supermarket purchases; boarding an omnibus; purchasing a train ticket; tenders for the supply of goods; offers of rewards; acceptance by post; warranties of authority by agents; manufacturers' guarantees; gratuitous bailments; bankers' commercial credits. These are all examples which show that English law, having committed itself to a rather technical and schematic doctrine of contract, in application takes a practical approach, often at the cost of forcing the facts to fit uneasily into the marked slots of offer, acceptance and consideration.

In their Lordships' opinion the present contract presents much less difficulty than many of those above referred to. It is one of carriage from Liverpool to Wellington. The carrier assumes an obligation to transport the goods and to discharge at the port of arrival. The goods are to be carried and discharged, so the transaction is inherently contractual. It is contemplated that a part of this contract, *viz.* discharge, may be performed by independent contractors—*viz.* the appellant. By clause 1 of the Bill of Lading the shipper agrees to exempt from liability the carrier, his servants and independent contractors in respect of the performance of this contract of carriage. Thus, if the carriage, including the discharge, is wholly carried out by the carrier, he is exempt. If part is carried out by him, and part by his servants, he and they are exempt. If part is carried out by him and part by an independent contractor, he and the independent contractor are exempt. The exemption is designed to cover the whole carriage from loading to discharge, by whomsoever it is performed: the performance attracts the exemption or immunity in favour of whoever the performer turns out to be. There is possibly more than one way of analysing this business transaction into the necessary components; that which their Lordships would accept is to say that the Bill of Lading brought into existence a bargain initially unilateral but capable of becoming mutual, between the shippers and the appellants, made through the carrier as agent. This became a full contract when the appellant performed services by discharging the goods. The performance of these services for the benefit of the shipper was the consideration for the agreement by the shipper that the appellant should have the benefit of the exemptions and limitations contained in the Bill

of Lading. The conception of a " unilateral " contract of this kind was recognised in *Great Northern Railway Co. v. Witham* L.R. 9 C.P.16 and is well established. This way of regarding the matter is very close to if not identical to that accepted by Beattie J. in the Supreme Court: he analysed the transaction as one of an offer open to acceptance by action such as was found in *Carlill v. Carbolic Smoke Ball Company* [1893] 1 Q.B.256. But whether one describes the shipper's promise to exempt as an offer to be accepted by performance or as a promise in exchange for an act seems in the present context to be a matter of semantics. The words of Bowen L. J. in *Carlill v. Carbolic Smoke Ball Co.,* " Why should not an offer be made to all the world which is to ripen into a contract with anybody who comes forward and performs the condition? " (*l.c.* p.268) seem to bridge both conceptions: he certainly seems to draw no distinction between an offer which matures into a contract when accepted and a promise which matures into a contract after performance, and, though in some special contexts (such as in connection with the right to withdraw) some further refinement may be needed, either analysis may be equally valid. On the main point in the appeal, their Lordships are in substantial agreement with Beattie J.

The following other points require mention:

1. In their Lordships' opinion, consideration may quite well be provided by the appellant, as suggested, even though (or if) it was already under an obligation to discharge to the carrier. (There is no direct evidence of the existence or nature of this obligation, but their Lordships are prepared to assume it.) An agreement to do an act which the promisor is under an existing obligation to a third party to do, may quite well amount to valid consideration and does so in the present case: the promisee obtains the benefit of a direct obligation which he can enforce. This proposition is illustrated and supported by *Scotson v. Pegg* (1861) 6 H. & N. 295 which their Lordships consider to be good law.

2. The consignee is entitled to the benefit of, and is bound by, the stipulations in the Bill of Lading by his acceptance of it and request for delivery of the goods thereunder. This is shown by *Brandt v. Liverpool* [1924] 1 K.B. 575 and a line of earlier cases. The Bills of Lading Act 1855, section 1 (in New Zealand the Mercantile Law Act 1908, section 13) gives partial statutory recognition to this rule, but, where the statute does not apply, as it may well not do in this case, the previously established law remains effective.

3. The appellant submitted, in the alternative, an argument that, quite apart from contract, exemptions from, or limitation of, liability in tort may be conferred by mere consent on the part of the party who may be injured. As their Lordships consider that the appellant ought to succeed in contract, they prefer to express no opinion upon this argument: to evaluate it requires elaborate discussion.

4. A clause very similar to the present was given effect by a United States District Court in *Carle and Montanari Inc. v. American Export Isbrandtsen Lines Inc. and Another* [1968] 1 Ll.R.260. The carrier in that case contracted, in an exemption clause, as agent for, *inter alios*, all stevedores and other independent contractors, and although it is no doubt true that the law in the United States is more liberal than ours as regards third party contracts, their Lordships see no reason why the law of the Commonwealth should be more restrictive and technical as regards agency contracts. Commercial considerations should have the same force on both sides of the Pacific.

In the opinion of their Lordships, to give the appellant the benefit of the exemptions and limitations contained in the Bill of Lading is to give effect to the clear intentions of a commercial document, and can be given within existing principles. They see no reason to strain the law or the facts in order to defeat these intentions. It should not be overlooked that the effect of denying validity to the clause would be to encourage actions against servants, agents and independent contractors in order to get round exemptions (which are almost invariable and often compulsory) accepted by shippers against carriers, the existence, and presumed efficacy, of which is reflected in the rates of freight. They see no attraction in this consequence.

Their Lordships will humbly advise Her Majesty that the appeal be allowed and the judgment of Beattie J. restored. The respondent must pay the costs of the appeal and in the Court of Appeal.

[*Dissenting Judgment by* VISCOUNT DILHORNE]

On the 5th June 1964 a Bill of Lading was issued by the agents for the Federal Steam Navigation Co., the carriers, to the Ajax Machine Tool Co. Ltd., the consignor, for the carriage of a drilling machine to Wellington in New Zealand. The respondents were the consignees. The Bill of Lading bore on its face the following words:—

> "In accepting this Bill of Lading the shipper, consignee and the owners of the goods and the holder of this bill of lading agree to be bound by all of its conditions, exceptions and provisions whether written, printed or stamped on the front or back hereof."

The consignees accepted the Bill of Lading and so the consignees agreed to its terms and conditions.

In the course of its discharge from the ship at Wellington, the drilling machine was damaged by the negligence of the appellants, the stevedores, and the question for determination in this appeal is whether the appellants are exempted from liability for their negligence by the terms of the Bill of Lading. That depends on the construction to be placed on and the effect of Clause 1 of the conditions printed on the back of the Bill of Lading, and in particular of the third paragraph thereof. That so far as material reads as follows:—

> "It is hereby expressly agreed that no servant or agent of the Carrier (including every independent contractor from time to time employed by the Carrier) shall in any circumstances whatsoever be under any liability whatsoever to the Shipper, Consignee or Owner of the goods or to any holder of this Bill of Lading for any loss or damage or delay of whatsoever kind arising from or resulting directly or indirectly from any act neglect or default on his part while acting in the course of or in connection with his employment, and, without prejudice to the generality of the foregoing provisions in this Clause, every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Carrier or to which the Carrier is entitled hereunder shall also be available and shall extend to protect every such servant or agent of the Carrier acting as aforesaid, and for the purpose of all the foregoing provisions of this Clause the Carrier is or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including independent contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this Bill of Lading."

Before the Board the appellants advanced four main contentions; first, that the Bill of Lading constituted or was evidence of an immediately binding contract between the shippers and the appellants made through the medium of the carriers as agents for the appellants and supported by consideration: secondly, that the Bill of Lading constituted an immediate bargain between the shippers and the appellants which matured into a binding unilateral contract when the appellants made the bargain unconditional and supplied consideration by performing services in relation to the goods; thirdly, that the Bill of Lading contained an offer by the shippers to the carriers as agents for the appellants to enter into a unilateral contract whereby if the appellants performed services in relation to the goods the shipper would give them the benefit of every exemption from and limitation of liability contained in the Bill of Lading; and, fourthly, whether or not there was any contract between the shippers and the appellants, that the Bill of Lading evidenced the consent of the shippers to the performance of services in relation to the goods upon terms that the appellants would have the benefit of every exemption from, and limitation of, liability contained in the Bill of Lading and that this consent nullified the duty of care which the appellants would otherwise have owed at common law, and, alternatively, that this consent excluded or qualified the liability of the appellants for breaches of that duty.

Dealing with the appellants' third contention first, Clause 1 of the Bill of Lading was obviously not drafted by a layman but by a highly qualified lawyer. It is a commercial document but the fact that it is of that description does not mean that to give it efficacy, one is at liberty to disregard its language and read into it that which it does not say and could have said or to construe the English words it contains as having a meaning which is not expressed and which is not implied.

The Clause does not in my opinion either expressly or impliedly contain an offer by the shippers to the carriers to enter into an agreement whereby if the appellants performed services in relation to the goods the shipper would give them the benefit of every exemption from and limitation of liability contained in the Bill of Lading. I see no difficulty in expressing such an offer in clear and unequivocal language, and if the Clause contained such an offer, I would have been in favour of allowing the appeal.

What the Clause records is not an offer but an agreement, and one agreement only, made between the shippers and the carriers acting in a dual capacity, on their own behalf and on behalf of all persons who were or might be their servants or employed by them as independent contractors, and an agreement to which all such persons are or are to be deemed to be parties.

I agree with Turner P. in thinking that the terms of Clause 1 cannot be read as constituting such an offer. If the terms of the expressed agreement fail to constitute a legally binding contract between the shippers and the appellants, to read them as merely constituting an offer by the shippers capable of acceptance by conduct by the appellants is to rewrite the Clause.

The appellants' first contention, that an immediately binding contract was constituted or evidenced by Clause 1, was rejected by Beattie J. at first instance and by all the members of the Court of Appeal and in my opinion rightly; Beattie J. saying:—

> "In the present case I consider the stevedore did not give any consideration for what could be said to be the promise on the part of the consignee to release it from liability or exempt it in certain respects. There is nothing in the Bill of Lading which suggests that the stevedore could sue the consignee for its stevedoring fees

> or, alternatively, that the consignee could compel the stevedore to carry out the contract which it made with the carrier if it decided not to do so because the agency relationship refers only to the exemption provision which purports to create a benefit only and no detriment or liability is imposed on the stevedore."

and Turner P. in the Court of Appeal saying:—

> "In agreement with other members of the Court I think that in the circumstances of this case it is impossible . . . to regard the consignor and the stevedore as bound *inter se* in contract at the time when the bill of lading was signed and delivered, because at that stage it is impossible to see what consideration moved from the stevedore."

The appellants' second contention recognises that at the time of the issue of the Bill of Lading there was no legally binding contract between the consignor and the appellants. It was not suggested that the agreement set out in Clause 1 was not a legally binding contract between the consignor and the carriers and so this contention involves reading the one agreement, to which the consignor on the one hand and the carriers and whomsoever they chose to employ are or are to be deemed to be parties, as a valid contract between the consignor and the carriers and at the same time as a bargain not amounting to a valid contract between the consignor and all those who were at the time employed or who might be employed by the carriers. I do not know of any precedent for construing one agreement in writing in these two different ways.

What was the alleged bargain? If I understood the argument correctly, it was that the consignor would exempt any person employed by the carriers in the carriage and discharge of the drill from all liability if that person performed any services in relation to the carriage and discharge of the drill. The contention was that if such services were performed, that constituted acceptance of the consignor's offer to exempt and consideration for it; and so by performance the bargain was converted into a full contract.

I admire the ingenuity of the argument. It attempts to overcome the difficulty that Clause 1 is expressed to contain an agreement and not an offer and it attempts to overcome the lack of consideration on which in my opinion the appellant's first contention founders; but I do not myself see any material difference between A offering B money if B does work for A and a bargain between A and B that A will pay B money if B does work for A. In each case A is making an offer which B can accept by doing the work.

In my view one really cannot read the agreement set out in Clause 1 as stating any such bargain. Indeed, however it is formulated, one has only to contrast the alleged bargain with the language of the Clause to recognise that the Clause does not express or imply any such bargain containing any such offer. In my opinion this contention fails for these reasons and for the reasons for which the appellants' third contention fails. Both contentions involve reading the agreement as if it was or contained an offer.

To give effect to either the second or third contention of the appellants would not just mean straining the language of the Clause but rewriting it. At the end of his speech in *Midland Silicones Ltd. v. Scruttons Ltd.* [1962] A.C.446 Viscount Simonds referred at p. 472 to the judgment of Fullagar J. in *Wilson v. Darling Island Stevedoring and Lighterage Co.* ((1956–57) 95 C.L.R. 43) with which Dixon C.J. entirely agreed. Viscount Simonds said that he agreed with every line and word of it and he referred

in particular to the passage in Fullagar J.'s judgment in which he protested against a tendency by some artifice to save negligent people from the normal consequence of their fault.

The relevant passage in Fullagar J.'s judgment reads as follows: —

> " What has been supposed to be a principle involved in the Elder Dempster case " ([1924] A.C.522) " . . . has . . . been extended so as to give to a stevedore exemption from liability for negligence by virtue of a provision in a bill of lading to which the stevedore is not a party and which is really no concern whatever of the stevedore. This appears to me to be a ' development ' of the common law which is altogether out of character, and which is exactly the opposite of what one would have expected and felt to be justified. It is all the more remarkable in view of the fact that the modern tendency has been to expand the field of liability in tort. The common law has, I think, from quite early times—consistently with its general policy of freedom of contract—allowed the validity of provisions of a contract which limit or exclude liability for negligence. But it has always frowned on such provisions and insisted on construing them strictly. In *Peek v. North Staffordshire Ry. Co.*" ((1863) 10 H.C.L.473) " the judges advised the Lords, and the Lords held, that a condition relieving a carrier from all liability for the neglect or default of his servants was neither just nor reasonable within the meaning of a statute. The traditional attitude of the common law is perhaps nowhere more clearly illustrated than in a passage in the judgment of Denning L.J. in *Adler v. Dickson*" ([1955] 1 Q.B. at p.180) " at the end of which he refers to *Peek's* case and particularly to the judgment of Blackburn J. And yet we seem to discern in the latter part of that very judgment, in the New South Wales decisions which are challenged on this appeal, and in two or three other recent cases, a curious, and seemingly irresistible, anxiety to save grossly negligent people from the normal consequences of their negligence—an anxiety which refuses to be baulked even by so well established a general doctrine as that of *Tweddle v. Atkinson*" ((1861) 1 B. & S. 393). " This seems to me to be an extraordinary phenomenon and I am sure it would have surprised both Lord Blackburn and Lord Sumner."

Clause 1 of the Bill of Lading in this case, construed strictly, cannot be read in my opinion as the appellants desire. Anxiety to save negligent people from the consequences of their negligence does not lead me to give an unnatural and artificial meaning to the Clause and a meaning which the words it contains do not bear. To give effect to the appellants' contentions appears to me to surrender to the anxiety to which Fullagar J. referred, a surrender which cannot be justified simply by labelling the Bill of Lading a commercial document. It is no more a commercial document than a consignment note for the carriage of goods by rail or road and it should not be forgotten that ordinary members of the public as well as those engaged in commerce send goods by sea as well as overland.

The appellants' fourth contention does not depend on the terms of the Bill of Lading. I have had the advantage of seeing my noble and learned friend Lord Simon of Glaisdale's opinion and I agree with what he has said with regard to this contention.

As in my opinion the terms of the Bill of Lading do not suffice to exempt the appellants from liability for negligence if sued by the consignor, it follows that they do not operate to exempt them from liability at the suit of the respondents.

For these reasons in my opinion this appeal should be dismissed.

I would dismiss the appeal, broadly on the grounds set out in the judgments of the Court of Appeal, even though the arguments presented to the Board on behalf of the Stevedore differed significantly from the way that the case was put in the New Zealand courts.

The case before Beattie J.

The Stevedore's main contention in the New Zealand courts involved that a legally enforceable contract between at least the Consignor and the Stevedore came into existence when the Bill of Lading was issued. The possibility that such a contract could exist, and could bind a consignee, was envisaged by Lord Reid in *Midland Silicones Limited v. Scruttons Limited* [1962] A.C. 446 at p.474.

> "I can see a possibility of success of the agency argument if (first) the bill of lading makes it clear that the stevedore is intended to be protected by the provisions in it which limit liability, (secondly) the bill of lading makes it clear that the carrier, in addition to contracting for these provisions on his own behalf, is also contracting as agent for the stevedore that these provisions should apply to the stevedore, (thirdly) the carrier has authority from the stevedore to do that, or perhaps later ratification by the stevedore would suffice, and (fourthly) that any difficulties about consideration moving from the stevedore were overcome. And then to affect the consignee it would be necessary to show that the provisions of the Bills of Lading Act, 1855, apply."

The case has throughout proceeded on the basis that if Lord Reid's five conditions were satisfied, *Midland Silicones* would not apply so as to exclude the Stevedore from exoneration.

It does not appear to have been disputed that Lord Reid's first two conditions were satisfied (though it will be necessary later to advert to certain difficulties which arise from the wording of Clause 1). Beattie J. also held that Lord Reid's third condition had been met, the Bill of Lading being in a form with which the Stevedore were familiar and it having passed through their hands prior to the commencement of the unloading. The main argument before Beattie J. turned on whether Lord Reid's fourth condition had been met—namely, whether any difficulties about consideration moving from the Stevedore had been overcome. It was argued for the Stevedore that there was an implied obligation upon them under the Bill of Lading to discharge the goods consigned, such an obligation providing sufficient consideration. Beattie J. did not accept that any such implication arose, and concluded that because the Stevedore had not given consideration for any promise on the part of the Consignor to release the Stevedore from liability or to exempt them from liability in certain respects (as set out in the Bill of Lading) the Stevedore could not claim to be a party to the contract made or evidenced by the Bill of Lading at the time of its issue.

Beattie J., however, went on to consider the case on the basis of whether the Bill of Lading was or was evidence of the type of contract recognised as efficacious in *Carlill v. Carbolic Smoke Ball Co.* [1892] 2 Q.B. 484, [1893] 1 Q.B. 256. He held that the exemption clause in the Bill of Lading was an offer of indemnity by the Consignor made through the Carrier as agent for the Carrier's servants or agents; that this offer was an offer to those persons who might be or turn out to be servants or agents of the Carrier, to the effect that if they performed their various functions in respect of the goods carried, the Consignor would exempt such servants or agents from all liability; that such an offer was accepted and the contract completed when the servants or agents of the Carrier performed their required functions in respect of the goods being carried;

that the Stevedore accepted the offer made to them by performing their required function to discharge the drill; that the Consignor's promise bound the Consignee; and that the Stevedore could accordingly rely on the promise of exemption as against the Consignee. Beattie J. therefore gave judgment for the Stevedore on this basis.

The case in the Court of Appeal

The Consignee appealed to the Court of Appeal (Turner P., Richmond J. and Perry J.), who unanimously allowed the appeal. They agreed with Beattie J. that it was impossible to regard the Consignor and the Stevedore as bound *inter se* in contract at the time when the Bill of Lading was signed and delivered, because at that stage at least no consideration moved from the Stevedore. As Perry J., in particular, pointed out, nowhere in the Bill of Lading or elsewhere is there any promise by the Stevedore, or anyone else except the Carrier, to unload the drill: no one but the Carrier undertook to perform the obligations of carriage, and the Consignor could not compel the Stevedore to unload or sue them if they refused to do so.

As for the Stevedore's contention based on the *Carlill* case, Turner P. and Richmond J. held that, for such a type of contract to arise, the offer must expressly or impliedly make known to the persons to whom it is addressed some particular method of acceptance as sufficient to make the bargain binding; whereas the language of Clause 1 of the Bill could not, because of its generality, be fitted into the category of an offer to the world at large, being rather intended to confer an absolute and unconditional exemption on every one of the Carrier's employees or agents.

Perry J. added that, having failed as a contemporaneous collateral contract (as held both by Beattie J. and the Court of Appeal), the Clause could not properly be treated as an *offer* made by the Consignor to the servants and agents of the Carrier through the latter's agency, for the following reasons:

(1) if that were the intention, one would expect to find it clearly so expressed in a carefully worded document, and not left to be suggested by inference or implication only;

(2) the clause was silent as to the method of acceptance by performance of the alleged offerees;

(3) if the clause was an offer to the Stevedore it was also an offer to a large indeterminate number of servants and agents of the Carrier, and so contemplated an infinite variety of ways of acceptance—"one offer and a multitude of acceptances by performance of endless varieties and of an unknown and unstated nature"—a situation far removed from the one offer and one method of acceptance contemplated in *Carlill's* case;

(4) such a finding would be inconsistent with the words of the Clause itself, which stated that "all such persons [servants and agents etc.] shall to this extent be or be deemed to be parties to *the contract* in or evidenced by this Bill of Lading", such contract being the contract of carriage between the Consignor and the Carrier, and not some other contract;

(5) even if the Stevedore's participation in *the contract* was limited by the words "to this extent", the purpose nevertheless was to make them a party to the contract in or evidenced by the Bill of Lading, not to any other contract—thus leaving no room for suggesting that the Stevedore was party to some separate and independent (also undefined) consignor-stevedore contract.

The Court of Appeal, having dismissed the Stevedore's two main contentions—namely, first, that they were parties to an immediate contract and thereby entitled to rely on its exemption clauses or, secondly, that they had accepted by performance a *Carlill*-type offer and were thereby entitled to take advantage of the exemption clauses of the contract so constituted—found it unnecessary to come to a conclusion on various issues which would have arisen consequentially if they had decided either of the main issues in favour of the Stevedore—*e.g.* (1) whether a promise by the Stevedore to perform an obligation already incumbent on the Carrier or on the Stevedore themselves by virtue of their alleged contract with the Carrier (*i.e.*, to unload the drill) could be sufficient consideration to support a contract between the Consignor and the Stevedore (cf. *Shadwell v. Shadwell* (1860) 9 C.B. (N.S.) 159; *Scotson v. Pegg* (1861) 6 H. & N. 295; *Chichester v. Cobb* (1866) 14 L.T. 433); (2) whether section 1 of the Bills of Lading Act 1855 (U.K.) (or section 13 of the Mercantile Law Act 1908 (N.Z.)—in materially similar terms) operated to enable the Stevedore to take advantage of the exemption clause as against the Consign*ee*, as to which Richmond J. expressed considerable doubt.

The Stevedore's propositions to the Board

Since the argument before us proceeded in some respects on significantly different lines than that before the New Zealand courts, it is desirable to set out in counsel's own words the propositions advanced on behalf of the Stevedore:—

1. The Bill of Lading constituted or was evidence of an immediately binding contract between the [Consignor] and the [Stevedore], made through the medium of the [Carrier] as agents for the Stevedore and supported by consideration. It was a term of that contract that the [Stevedore] should have the benefit of every exemption from, and limitation of, liability contained in the Bill of Lading.

2. The Bill of Lading constituted or was evidence of an immediate bargain between the [Consignor] and the [Stevedore], made through the medium of the [Carrier] as agent for the [Stevedore], which matured into a binding unilateral contract when the [Stevedore] made the bargain unconditional and supplied consideration by performing services in relation to the goods. It was a term of the bargain that if the [Stevedore] performed services in relation to the goods they should have the benefit of every exemption from, and limitations of, liability contained in the Bill of Lading.

3. The Bill of Lading contained an offer by the [Consignor] to the [Carrier] as agent for the [Stevedore] to enter into a unilateral contract whereby if the [Stevedore] performed services in relation to the goods the [Consignor] would give them the benefit of every exemption from, and limitation of, liability contained in the Bill of Lading. The offer matured into a binding contract when the [Stevedore] accepted the offer and supplied consideration by performing services in relation to the goods.

4. Whether or not there was any contract between the [Consignor] and the [Stevedore], the Bill of Lading evidenced the consent of the [Consignor] to the performance of services in relation to the goods upon terms that the [Stevedore] should have the benefit of every exemption from, and limitation of, liability contained in the Bill of Lading. This consent nullified the duty of care which the [Stevedore] would otherwise have owed at common law. Alternatively, the consent excluded or qualified the liability of the [Stevedore] for breaches of that duty.

The Stevedore's first proposition (a binding contract from the beginning supported by consideration) was the first contention advanced to, and rejected by, both Beattie J. and the Court of Appeal. The Stevedore's third proposition (a contract of the *Carlill*-type) was that accepted by Beattie J. and rejected by the Court of Appeal. The Stevedore's second proposition is apparently new, being an attempt to frame a slightly different type of contract based on an offer which matures into a contract by later performance supplying the consideration, which would meet some of the objections raised by the Court of Appeal to the Stevedore's third proposition. The Stevedore's fourth proposition seems to be entirely new.

The Stevedore's second and third propositions allege a "unilateral contract". This may seem a quaint expression in the law of contract, but it is well understood. For example, *Chitty on Contracts* (23rd ed., 1968, vol. 1, para. 13), states:

> "By a unilateral contract is meant . . . a contract in which only one party is bound. Bilateral contracts, on the other hand, are those in which both parties are bound. Instances of unilateral contracts are as follows: a covenant by one party in a contract under seal; the making of a promissory note; the acceptance of a bill of exchange; the offer of a reward for the return of lost property; the grant of an option to purchase property. Bilateral contracts comprise the exchange of a promise for a promise."

To this it may be useful to add a quotation from *Williston on Contracts* (3rd ed., 1957, Vol. 1, para. 106, headed "Insufficient Bilateral Agreement May by Performance on One Side Become Valid Unilateral Contract"):

> ". . . each promise in a bilateral contract must be sufficient consideration for the other, or both promises may not be enforced. Accordingly, if either promise is too indefinite for enforcement, or if either promise for any reason is insufficient consideration, both promises fail. But a promise that was originally too indefinite, may by performance become definite. The other party to the bargain must be regarded as continuously assenting to receive such performance in return for his own promise, and a valid unilateral contract arises on receipt of such performance. . . . The promise on one side of a bilateral agreement may be insufficient as consideration. . . . Yet if performance is made of the counter-promise and that performance was something detrimental to the promisor or beneficial to the promisee, the promise which was itself insufficient as consideration, thereupon becomes binding."

The Stevedore's first proposition propounds a bilateral contract. The Stevedore's second and third propositions propound different types of unilateral contract. The Stevedore's fourth proposition does not depend on contract. The Stevedore's first, second and third propositions are alternative to one another and mutually exclusive—counsel for the Stevedore was throughout explicit on this point. The Stevedore's fourth proposition is alternative to the first three and stands by itself.

It is only on the Stevedore's first proposition that any question of consideration arises: if the Stevedore's second or third proposition is valid, performance undoubtedly provides consideration; while the Stevedore's fourth proposition does not depend on contract at all.

The Stevedore's Admissions/Submissions to the Board

In addition to reframing their positive case, counsel for the Stevedore made two admissions or assumptions or submissions which also make the case as submitted to the Board significantly different from that argued in the New Zealand courts:—

(1) Whereas in the New Zealand courts it was argued that the Bill of Lading disclosed an implied obligation on the Stevedore to unload the drill, which supplied the consideration for the alleged immediate bilateral contract between the Consignor and the Stevedore, it was accepted before us that the Bill of Lading disclosed no implied obligation on the Stevedore to do anything at all.

(2) The Bill of Lading contained two contracts in one document—by the Consignor with the Carrier on the one hand, and by the Consignor with the Stevedore on the other.

These two admissions are, in my view, of fundamental importance to the decision of this appeal. I shall only note at the moment, as regards the Stevedore's second admission, first, that Clause 1 of the Bill of Lading speaks of " the contract " in the singular (" all such persons shall to this extent be or be deemed to be parties to the contract in or evidenced by this Bill of Lading ") and, secondly, the Stevedore's second admission is in any event an over-simplification—on the Stevedore's argument the Bill of Lading contained not two but a multitude of contracts—by the Consignor with the Carrier on the one hand, and on the other with all those who were then or who might at any relevant future time become employees or agents of or independent contractors for the Carrier all over the world, some of whom might not even be in existence as corporate bodies at the time of the issue of the Bill of Lading (yet all are deemed to be parties " to the contract in or evidenced by the Bill of Lading ", and the Carrier to be contracting as their agent).

Further General Observations on Clause 1

I respectfully agree with Richmond J. that the common law does not tend to favour clauses which limit or exclude liability for negligence (see, *e.g.*, Fullagar J., Dixon C.J. agreeing, in *Wilson v. Darling Island Stevedoring and Lighterage Company Ltd.* [1956] 1 Lloyds Rep. 346; 95 C.L.R. 43, 70–71; referred to with approval by Viscount Simonds in *Midland Silicones* at p. 472). Richmond J. added:

> " I would in any event be reluctant to give efficacy to an exemption clause by reading into it some stipulation which the draftsman had not himself seen fit to formulate."

I agree. Certainly a court should not go out of its way to re-word an exemption clause in order to give it efficacy where, as here, " act, neglect or default " would appear to extend to theft or even malicious damage.

Then there is the provision that " the carrier is or shall be deemed to be acting as agent or trustee [etc.] ". It is difficult to see how the beneficiary of a trust created by Clause 1 can also be a principal contractor in respect of the same subject matter; nor does this make it any easier to read the provision as an offer leading to a unilateral contract. Then again there is the reference to persons who " might be " servants or agents " from time to time ", to which I have already adverted with reference to the Stevedore's second admission: this would seem to raise formidable difficulties on any issue of ratification.

Finally, on the Stevedore's arguments in favour of their first three propositions, the Carrier seems, even allowing for the Stevedore's second admission, to be doing what Viscount Haldane L.C. in *Dunlop v. Selfridge* [1915] A.C. 847 at p. 854 said could not be done—namely, to contract as principal and agent " in the same breath ".

The Stevedore's First Proposition

The whole basis on which the Stevedore contended for an immediate bilateral contract in the New Zealand courts has disappeared with the Stevedore's first admission. But the two admissions together involve that the alleged contract between the Consignor and the Stevedore does not

go beyond Clause 1 (" for the purpose ": " to this extent "). I confess to difficulty in grasping the very concept of a contract consisting only of an exemption clause: I am not satisfied that Clause 1 establishes a *pactum* between the Consignor and the Stevedore, quite apart from *nudum pactum*. Moreover, exemption from what? There was, admittedly now, no contractual obligation on the Stevedore to do anything at all. Faced with this question, counsel for the Stevedore answered that it meant exemption from tortious liability if any servant or agent of or independent contractor for the Carrier did anything in relation to the goods in connection with their carriage under the Bill of Lading. But this is reading into Clause 1 what is not there expressed—indeed, re-writing it. In any case, counsel's construction, even if correct, would establish, not an immediate bilateral contract, but a unilateral contract (such as is proposed in the Stevedore's second and third propositions)—sometimes, indeed, actually called " an *if* contract ".

Since, in the light of the Stevedore's new admissions before the Board, there was, in my opinion, no immediate *pactum* created between the Consignor and the Stevedore at the time of the issue of the Bill of Lading, it is strictly unnecessary to consider the new ways in which counsel for the Stevedore formulated his case to support consideration moving from the Stevedore at that time, which would be required to support an immediate bilateral contract—to prevent it being *nudum pactum*. Nevertheless, I advert briefly to the arguments, in deference to their interest and ability and in view of the importance of the juridical points raised.

Consideration based on an implied promise by the Stevedore to unload the drill having been abandoned, the Stevedore's case on consideration had perforce to be framed anew. This was done in two alternative ways. First, it was said, consideration moving from an agent of the promisee is sufficient to support a promise to the promisee. For this proposition *Fleming v. Bank of New Zealand* [1900] A.C. 577 was cited. But I do not think that such a reading of *Fleming's* case is consistent with the decision in *Dunlop v. Selfridge*, which proceeded (except for Lord Parmoor's speech) on the assumption that Dews were Dunlop's agents, and where consideration certainly moved from Dews to Selfridge. *Fleming's* case does not purport to be laying down any such general principle of law as contended for by the Stevedore. That case would be, in my opinion, an unsafe foundation for establishing a rider to *Dunlop v. Selfridge*, which was, of course, later in date. In any event, I do not think that any consideration was given by the Carrier as the Stevedore's agent. The Carrier was the Stevedore's agent only " for the purpose of " Clause 1. The consideration given by the Carrier was given, not as the Stevedore's agent, but as principal in respect of the alleged *separate* contract of carriage contained in the Bill of Lading.

The second way in which the Stevedore tried to formulate consideration to support an immediate bilateral contract was based on the proposition that consideration furnished to A by joint promisee B is sufficient to support a promise made to joint promisee C. Though this proposition rests only on dicta (see *McEvoy v. Belfast Banking Co. Ltd.* [1935] A.C. 24, 36, 43, 52; *Coulls v. Bagot's Executor and Trustee Co. Ltd.* [1967] Argus L.R.385, 395, 400, 405), it seems to be an attractive proposition in respect of genuine joint promises. As Windeyer J. said in his dissenting judgment in *Coulls'* case, speaking of " a contract made with two or more persons jointly ",

> " The promise is made to them collectively. It must, of course, be supported by consideration, but that does not mean by consideration furnished by them separately. It means a consideration given on behalf of them all, and therefore moving from all of them."

But that is not the case here. The only joint promise is in respect of Clause 1, to which alone the Stevedore was allegedly a party. The Carrier did not furnish consideration in respect of this joint promise, but in respect of the alleged *separate* contract of carriage, to which the Stevedore was not a party (even though, *ex hypothesi,* Clause 1 was a common term of both alleged contracts). It would be pure fiction to hold that the Carrier was giving consideration on behalf of the Stevedore (and all the other alleged parties to the contract, some not yet ascertained, some possibly not yet in existence).

The Stevedore's Third Proposition

It is convenient next to consider the Stevedore's third proposition, based on *Carlill's* case, before considering the Stevedore's new formulation of a unilateral contract in their second proposition, since the former was the way in which the case on unilateral contract was submitted in the New Zealand courts.

It is sufficient to say that I respectfully concur with the views of the Court of Appeal (summarised above) in this part of the case. In particular, I agree that Clause 1 contains no express offer; that it does not have the essential characteristics of a *Carlill*-type offer, in that it does not contain by reference or implication any particular mode of acceptance by conduct or otherwise; and that its attempted construction as an offer is inconsistent with the words of the Clause itself, which purport to make the Carrier's servants and agents " parties to *the contract* in or evidenced by this Bill of Lading " (namely the contract of carriage made between the Consignor and the Carrier), not mere offerees to some other separate and different (unilateral) contract.

The Stevedore's Second Proposition

This was a new way of putting their case, no doubt to obviate some of the points made by the Court of Appeal in relation to the Stevedore's third proposition. The difference between the two ways of putting the case can be illustrated by two simple types of unilateral contract. In the first, A says to B, " If you will dig over my kitchen garden next Tuesday I will give you £2." B replies, " Agreed! If I dig over your kitchen garden next Tuesday I will get £2 from you." Though there has been what the Stevedore's second proposition calls " a bargain ", neither party is contractually bound at this stage, and A can, at any reasonable period before the time for performance, communicate the withdrawal of his offer without incurring liability. But, if the offer is not so withdrawn, and if B on Tuesday does dig over A's kitchen garden (the mode of performance being clearly indicated), the contract is complete and A is bound to pay B £2. The acceptance is verbal, and performance furnishes the consideration moving from B. In the second type, A may say to B, " If you dig over my kitchen garden next Tuesday, I will pay you £2." B does not verbally communicate his acceptance of the offer, A having impliedly waived such requirement. But if A does not communicate any withdrawal of his offer, and if B on Tuesday does dig over A's kitchen garden, the offer is accepted by the stipulated mode of performance, which also provides the consideration: A is bound to pay B £2. This latter type of unilateral contract—the *Carlill*-type contract—is that propounded in the Stevedore's third proposition; the former type of unilateral contract in the Stevedore's second proposition. As counsel for the Stevedore rightly submitted, they are mutually exclusive. Nevertheless, both require an offer, and one stipulating a mode of performance. Here, for the reasons given in the Court of Appeal and heretofore, there was no offer, and no sufficient stipulation of a mode of performance which would constitute acceptance.

The Stevedore relied for his second proposition on *Great Northern Railway Company v. Witham* (1873) L.R. 9 C.P. 16, a well-known case the soundness of which has never been doubted. But it is far removed from the instant. It was an example of a very usual type of contract by tender. The plaintiffs invited tenders for goods which they might require in the following year; the defendant wrote offering to supply the goods at specified prices " in such quantities as the company's storekeeper might order from time to time "; and the plaintiffs accepted the tender. There was at this stage no completed contract, since no consideration had moved. But the defendant's letter constituted an offer specifying a mode of acceptance—namely, ordering the goods as required—which, if not withdrawn, the plaintiff could accept by placing such order. On their doing so the contract was complete—the defendant had made an express offer; it had been accepted expressly; and consideration had moved from the plaintiffs to the defendant in the shape of their promise to pay for the goods on delivery. The facts have only to be stated for it to be obvious how that case differs from the instant. *Great Northern Railway Company v. Witham* is a classic example of the case postulated by Williston whereby an agreement fails to have initial contractual force by reason of want of consideration but is capable of subsisting as an open offer susceptible of acceptance by a stipulated mode of performance, which also simultaneously supplies the consideration. Here, however, for the reasons given by the Court of Appeal, Clause 1, having failed as an immediate bilateral contract (which is what it purports and is expressed to be), cannot without rewriting subsist as an open offer; and such rewriting is not permissible. As Cardozo J. said, giving the majority judgment of the New York Court of Appeals in *Sun Printing & Publishing Association v. Remington Paper & Power Company Inc.* 139 N.E. 470 (1923) at p.471:

> " There is need, it is true, of no high degree of ingenuity, to show how the parties, with little change of language, could have framed a contract to which obligation would attach. The difficulty is that they framed another. We are not at liberty to revise while professing to construe."

The Stevedore's Fourth Proposition

It is really sufficient to dispose of this proposition in the circumstances of the instant case to say that, were it correct, all five of Lord Reid's conditions, which were common ground between the parties, would be entirely irrelevant: *Midland Silicones* should have been decided the other way.

Furthermore, in my opinion, the Stevedore's fourth proposition is inconsistent with both the reasoning and the actual decision in *Cosgrove v. Horsfall* (1945) 175 L.T. 334. It was argued for the stevedore in *Midland Silicones* that *Cosgrove's* case was wrongly decided (p.465); but the decision in *Midland Silicones* was inconsistent with that contention (cf. Lord Denning, dissenting, at p.489). In *Cosgrove's* case the plaintiff, an employee of a transport company, was travelling in one of their omnibuses on a free pass, when a collision occurred with another of the company's omnibuses, causing the plaintiff injuries. One of the conditions to which the grant of the free pass was subject was that neither the company nor their servants were to be liable to the holder of the pass for personal injury however caused. The plaintiff sued the driver of his omnibus and recovered damages. The defendant's appeal to the Court of Appeal was dismissed, on the ground that the defendant was not a party to the contract between the plaintiff and the company, the condition of exemption from liability not having been imposed by the company as agents for the defendant. On the Stevedore's fourth proposition (unlike the first three)

agency is quite irrelevant; moreover, the Stevedore's fourth proposition, if valid, merely needs rephrasing to fit the facts of *Cosgrove v. Horsfall* so that the defendant should have succeeded.

Counsel relied for the Stevedore's fourth proposition on the cases where a licence is coupled with a disclaimer of liability and on *Hedley Byrne & Co. Ltd. v. Heller & Partners Ltd.* [1964] A.C. 465. In all these cases, however, the right or service extended was gratuitous; and obviously any person making a gift can delimit its extent. The cases give no ground, in my opinion, for any such general principle of law as is implicit in the Stevedore's fourth proposition, which, if valid, would seem to provide a revolutionary short cut to a *jus quaesitum tertio.*

Since I cannot accept the Stevedore's fourth proposition, it is unnecessary to discuss the fine and difficult distinctions which counsel sought to draw between this proposition and the doctrine of *volenti non fit injuria.*

Conclusion

For the foregoing reasons I respectfully agree with the judgment of the Court of Appeal.

In so concluding I must not be taken to be doubting that a suitably drawn instrument could bring a consignor and a stevedore into a relationship of obligation and meet Lord Reid's five conditions in such a way that a stevedore could claim the benefit of an exemption clause even against a consignee. In this connection I note that the clause instantly in question appeared in bills of lading before the *Midland Silicones* case and was not drawn in the light of that case. Alternatively, no doubt, exemption could in practice be secured by a suitably drawn indemnity clause. Finally, there seems no reason to question that, as Turner P. thought, a bill of lading could, if appropriately drafted, contain an offer giving rise to a unilateral contract with a stevedore.

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In the Privy Council

THE NEW ZEALAND SHIPPING COMPANY LIMITED

v.

A. M. SATTERTHWAITE & COMPANY LIMITED

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