

PART VIII
DELIVERY OF GOODS
Delivery of Goods and Lien for Freight.

349. Interpretation

In this Part, unless the context otherwise requires -

"goods" include every description of wares and merchandise;

"owner" used in relation to goods means any person who is for the time entitled, either as owner or agent for the owner, to the possession of the goods, subject in the case of a lien, if any, to that lien;

"shipowner" includes the master of the ship and every other person authorised to act as agent for the owner or entitled to receive the freight, demurrage, or other charges payable in respect of the ship;

"warehouse" includes all warehouses, buildings and premises in which goods, when landed from ship, may be lawfully placed;

"warehouseman" means the occupier of a warehouse as hereinbefore defined;

"wharf" includes all wharves, quays, docks and premises in or upon which any goods, when landed from ships, may be lawfully placed;

"wharfinger" means the occupier of a wharf as hereinbefore defined.

350. Powers of shipowner to land goods

(1) In the absence of any arrangement whereby the owner of any goods imported in any ship, British, Malayan or foreign, into any port or place in the Federation is entitled to land or take delivery of such goods, or in case the owner of such goods is not ready or does not offer to land or take delivery under such arrangement as soon as the ship is ready to unload, a shipowner may land or unship the goods imported in any ship into the Federation at any time after the arrival of the ship.

(2) Where a shipowner lands goods in pursuance of this section, he shall place them, or cause them to be placed -

(a) if any wharf or warehouse is named in the charter party, bill of lading, or agreement, as the wharf or warehouse where the goods are to be placed and if they can be conveniently there received, on that wharf or in that warehouse; and

(b) in any other case, on some wharf or in some warehouse on or in which goods of a like nature are usually placed.

351. Lien for freight on landing goods

(1) If at the time when any goods are landed from any ship and placed in the custody of any person as a wharfinger or warehouseman the shipowner gives to the wharfinger or warehouseman notice in writing that the goods are to remain subject to a lien for freight or other

charges payable to the shipowner to an amount mentioned in the notice, the goods so landed shall, in the hands of the wharfinger or warehouseman, continue subject to the same lien, if any, for such charges as they were subject to before the landing thereof.

(2) The wharfinger or warehouseman receiving those goods shall retain them until the lien is discharged as hereinafter mentioned, and shall, if he fails so to do, make good to the shipowner any loss thereby occasioned to him.

352. Discharge of lien .

The said lien for freight and other charges shall be discharged -

(a) upon the production to the wharfinger or warehouseman of a receipt for the amount claimed as due, and delivery to the wharfinger or warehouseman of a copy thereof or of a release of freight from the shipowner; and

(b) upon the deposit by the owner of the goods with the wharfinger or warehouseman of a sum of money equal in amount to the sum claimed as aforesaid by the shipowner;

but in the latter case the lien shall be discharged without prejudice to any other remedy which the shipowner may have for the recovery of the freight.

353. Provisions as to deposits by owners of goods

(1) When a deposit as aforesaid is made with the wharfinger or warehouseman, the person making the same may, within fifteen days after making it, give to the wharfinger or warehouseman notice in writing to retain it, stating in the notice the sums, if any, which he admits to be payable to the shipowner, or, as the case may be, that he does not admit any sum to be so payable, but if no such notice is given the wharfinger or warehouseman may, at the expiration of the fifteen days, pay the sum deposited over to the shipowner.

(2) If a notice is given as aforesaid, the wharfinger or warehouseman shall immediately apprise the shipowner of it, and shall pay or tender to him out of the sum deposited the sum, if any, admitted by the notice to be payable, and shall retain the balance, or if no sum is admitted to be payable the whole of the sum deposited, for thirty days from the date of the notice.

(3) At the expiration of those thirty days, unless legal proceedings have in the meantime been instituted by the shipowner against the owner of the goods to recover the said balance or sum, or otherwise for the settlement of any disputes which have arisen between them concerning the freight or other charges as aforesaid, and notice in writing of those proceedings has been served on the wharfinger or warehouseman, the wharfinger or warehouseman shall pay the balance or sum to the owner of the goods.

(4) A wharfinger or warehouseman shall by any payment under this section be discharged from all liability in respect thereof.

354. Sale of goods

(1) If the lien is not discharged and no deposit is made as aforesaid, the wharfinger or warehouseman may, and, if required by the shipowner, shall, at the expiration of ninety days from the time when the goods were placed in his custody, or, if the goods are of a perishable nature, at such earlier period as in his discretion he thinks fit, sell by public auction the goods or so much thereof as is necessary to satisfy the charges hereinafter mentioned.

(2) Before making the sale the wharfinger or warehouseman shall give notice thereof by advertisement in two local newspapers circulating in the Federation, and shall also, if the address of the owner of the goods has been stated on the manifest of the cargo or on any of the documents which have come into the possession of the wharfinger or warehouseman or is otherwise known to him, send notice of the sale to the owner of the goods by post.

(3) The title of a *bona fide* purchaser of the goods shall not be invalidated by reason of the omission to send the notice required by this section, nor shall any such purchaser be bound to inquire whether the notice has as as been sent.

355. Application of proceeds of sale

The proceeds of sale shall be applied by the wharfinger or warehouseman as follows, and in the following order:

- (a) first, in payment of any duties payable to the Government in respect thereof; then
- (b) in payment of the expenses of the sale; then
- (c) in payment of the charges of the wharfinger or warehouseman and the shipowner according to such priority as is determined by the terms of the agreement, if any, in that behalf between them; or if there is no such agreement -
 - (i) in payment of the rent, rates and other charges due to the wharfinger or warehouseman in respect of the said goods; and then
 - (ii) in payment of the amount claimed by the shipowner due for freight or other charges in respect of the said goods;

and the surplus, if any, shall be paid to the owner of the goods.

356. Warehouseman's rent and expenses

Whenever any goods are placed in the custody of a wharfinger or warehouseman under the authority of this Part, the wharfinger or warehouseman shall be entitled to rent in respect of the same, and may also, at the expense of the owner of the goods, do all such reasonable acts as in the judgement of the wharfinger or warehouseman are necessary for the proper custody and preservation of the goods, and shall have a lien on the goods for the rent and expenses.

357. Warehouseman's protection

Nothing in this Part shall compel any wharfinger or warehouseman to take charge of any goods of which he would not have been liable to take charge if this Ordinance had not been passed, nor shall he be bound to see to the validity of any lien claimed by any shipowner under this Part.