shall have had actual notice at the time of receiving the same that the goods had not in fact been laden on board : as against master, etc.

Provided that the master or other person so signing may exonerate himself, in respect of such misrepresentation, by showing that it was caused without any default on his part, and wholly by the fraud of the shipper or of the holder, or some person under whom the holder claims. Proviso.

THE BURMA CARRIAGE BY AIR ACT.

[INDIA ACT XX, 1934.] (18th February, 1935.)

Whereas a Convention for the unification of certain rules relating to international carriage by air (hereinafter referred to as the Convention) was, on the 12th day of October, 1929, signed at Warsaw ; It is hereby enacted as follows :— Preamble.

1. * * * *

2. (*1*) The rules contained in the First Schedule, being the provisions of the Convention relating to the rights and liabilities of carriers, passengers, consignors, consignees and other persons, shall, subject to the provisions of this Act, have the force of law in the Union of Burma in relation to any carriage by air to which those rules apply, irrespective of the nationality of the aircraft performing the carriage. Application of the Convention to the Union of Burma.

(*2*) The President of the Union may, by notification in the Gazette, certify who are the High Contracting Parties to the Convention, in respect of what territories they are parties, and to what extent they have availed themselves of the Additional Protocol to the Convention, and any such notification shall be conclusive evidence of the matters certified therein.

(*3*) Any reference in the First Schedule to the territory of any High Contracting Party to the Convention shall be construed as a reference to all the territories in respect of which he is a party.

[1](*3*A) Any reference in the First Schedule to the agents of the carrier shall be construed as including a reference to the servants of the carrier.

(*4*) Notwithstanding anything contained in the Fatal Accidents Act, or any other enactment or rule of law in force in any part of the Union of Burma, the rules contained in the First Schedule shall, in all cases to which those rules apply, determine the liability of a carrier in respect of the death of a passenger, and the rules contained in the Second Schedule shall determine the persons by whom and for whose benefit and the manner in which such liability may be enforced.

(*5*) Any sum in francs mentioned in rule 22 of the First Schedule shall, for the purpose of any action against a carrier, be converted into rupees at the rate of exchange prevailing on the date on which the amount of damages to be paid by the carrier is ascertained by the Court.

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[1] Inserted by Act XXVIII, 1951.

Provisions regarding suits against High Contracting Parties who undertake carriage by air.

3. (*1*) Every High Contracting Party to the Convention who has not availed himself of the provisions of the Additional Protocol thereto shall, for the purposes of any suit brought in a Court in the Union of Burma in accordance with the provisions of rule 28 of the First Schedule to enforce a claim in respect of carriage undertaken by him, be deemed to have submitted to the jurisdiction of that Court and to be a person for the purposes of the Code of Civil Procedure.

(*2*) The High Court may make rules of procedure providing for all matters which may be expedient to enable such suits to be instituted and carried on.

(*3*) Nothing in this section shall authorize any Court to attach or sell any property of a High Contracting Party to the Convention.

Application of Act to carriage by air which is not international.

4. The President of the Union may, by notification in the Gazette, apply the rules contained in the First Schedule and any provision of section 2 to such carriage by air, not being international carriage by air as defined in the First Schedule, as may be specified in the notification, subject however to such exceptions, adaptations and modifications, if any, as may be so specified.

FIRST SCHEDULE.

(*See* section 2.)

RULES.

CHAPTER I.

SCOPE—DEFINITIONS.

1. (*1*) These rules apply to all international carriage of persons, luggage or goods performed by aircraft for reward. They apply also to such carriage when performed gratuitously by an air transport undertaking.

(*2*) In these rules " High Contracting Party " means a High Contracting Party to the Convention.

(*3*) For the purposes of these rules the expression " international carriage " means any carriage in which, according to the contract made by the parties, the place of departure and the place of destination, whether or not there be a break in the carriage or a transhipment, are situated either within the territories of two High Contracting Parties, or within the territory of a single High Contracting Party, if there is an agreed stopping place within a territory subject to the sovereignty, suzerainty, mandate or authority of another Power, even though that Power is not a party to the Convention. A carriage without such an agreed stopping place between territories subject to the soveerignty, suzerainty, mandate or authority of the same High Contracting Party is not deemed to be international for the purposes of these rules.

(*4*) A carriage to be performed by several successive air carriers is deemed, for the purposes of these rules, to be one undivided carriage, if it has been regarded by the parties as a single operation, whether it has been agreed

upon under the form of a single contract or of a series of contracts, and it does not lose its international character merely because one contract or a series of contracts is to be performed entirely within a territory subject to the sovereignty, suzerainty, mandate or authority of the same High Contracting Party.

2. (*1*) These rules apply to carriage performed by the State or by legally constituted public bodies provided it falls within the conditions laid down in rule 1.

(*2*) These rules do not apply to carriage per formed under the terms of any international postal Convention.

CHAPTER II.

DOCUMENTS OF CARRIAGE.

Part I.—Passenger ticket.

3. (*1*) For the carriage of passengers the carrier must deliver a passenger ticket which shall contain the following particulars :—

(*a*) the place and date of issue ;

(*b*) the place of departure, and of destination ;

(*c*) the agreed stopping places provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;

(*d*) the name and address of the carrier or carriers ;

(*e*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(*2*) The absence, irregularity or loss of the passenger ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to these rules. Nevertheless, if the carrier accepts a passenger without a passenger ticket having been delivered he shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part II.—Luggage ticket.

4. (*1*) For the carriage of luggage, other than small personal objects of which the passenger takes charge himself, the carrier must deliver a luggage ticket.

(*2*) The luggage ticket shall be made out in duplicate one part for the passenger and the other part for the carrier.

(*3*) The luggage ticket shall contain the following particulars :—

(*a*) the place and date of issue ;

(*b*) the place of departure and of destination ;

(*c*) the name and address of the carrier or carriers ;

(*d*) the number of the passenger ticket ;

(*e*) a statement that delivery of the luggage will be made to the bearer of the luggage ticket ;

(*f*) the number and weight of the packages ;

(*g*) the amount of the value declared in accordance with rule 22 (*2*) ;

(*h*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

(*4*) The absence, irregularity or loss of the luggage ticket does not affect the existence or the validity of the contract of carriage, which shall none the less be subject to these rules. Nevertheless, if the carrier accepts luggage without a luggage ticket having been delivered, or if the luggage ticket does not contain the particulars set out at (*d*), (*f*) and (*h*) of sub-rule (*3*), the carrier shall not be entitled to avail himself of those provisions of this Schedule which exclude or limit his liability.

Part III.—Air consignment note.

5. (*1*) Every carrier of goods has the right to require the consignor to make out and hand over to him a document called an " air consignment note "; every consignor has the right to require the carrier to accept this document.

(*2*) The absence, irregularity or loss of this document does not affect the existence or the validity of the contract of carriage, which shall, subject to the provisions of rule 9, be none the less governed by these rules.

6. (*1*) The air consignment note shall be made out by the consignor in three original parts and be handed over with the goods.

(*2*) The first part shall be marked " for the carrier, " and shall be signed by the consignor. The second part shall be marked " for the consignee "; it shall be signed by the consignor and by the carrier and shall accompany the goods. The third part shall be signed by the carrier and handed by him to the consignor after the goods have been accepted.

(*3*) The carrier shall sign an acceptance of the goods.

(*4*) The signature of the carrier may be stamped ; that of the consignor may be printed or stamped.

(*5*) If, at the request of the consignor, the carrier makes out the air consignment note, he shall be deemed, subject to proof to the contrary, to have done so on behalf of the consignor.

7. The carrier of goods has the right to require the consignor to make out separate consignment notes when there is more than one package.

8. The air consignment note shall contain the following particulars :—

(*a*) the place and date of its execution ;

(*b*) the place of departure and of destination ;

(*c*) the agreed stopping places, provided that the carrier may reserve the right to alter the stopping places in case of necessity, and that if he exercises that right the alteration shall not have the effect of depriving the carriage of its international character ;

(*d*) the name and address of the consignor;
(*e*) the name and address of the first carrier;
(*f*) the name and address of the consignee, if the case so requires;
(*g*) the nature of the goods;
(*h*) the number of the packages, the method of packing and the particular marks or numbers upon them;
(*i*) the weight, the quantity and the volume or dimensions of the goods;
(*j*) the apparent condition of the goods and of the packing;
(*k*) the freight, if it has been agreed upon, the date and place of payment and the person who is to pay it;
(*l*) if the goods are sent for payment on delivery, the price of the goods and, if the case so requires, the amount of the expenses incurred;
(*m*) the amount of the value declared in accordance with rule 22 (*2*);
(*n*) the number of parts of the air consignment note;
(*o*) the documents handed to the carrier to accompany the air consignment note;
(*p*) the time fixed for the completion of the carriage and a brief note of the route to be followed, if these matters have been agreed upon;
(*q*) a statement that the carriage is subject to the rules relating to liability contained in this Schedule.

9. If the carrier accepts goods without an air consignment note having been made out, or if the air consignment note does not contain all the particulars set out in rule 8 (*a*) to (*i*) inclusive and (*q*), the carrier shall not be entiled to avail himself of the provisions of this Schedule which exclude or limit his liability.

10. (*1*) The consignor is responsible for the correctness of the particulars and statements relating to the goods which he inserts in the air consignment note.

(*2*) The consignor will be liable for all damage suffered by the carrier or any other person by reason of the irregularity, incorrectness or incompleteness of the said particulars and statements.

11. (*1*) The air consignment note is *primâ facie* evidence of the conclusion of the contract, of the receipt of the goods and of the conditions of carriage.

(*2*) The statements in the air consignment note relating to the weight, dimensions and packing of the goods, as well as those relating to the number of packages, are *primâ facie* evidence of the facts stated; those relating to the quantity, volume and condition of the goods do not constitute evidence against the carrier except so far as they both have been, and are stated in the air consignment note to have been, checked by him in the presence of the consignor, or relate to the apparent condition of the goods.

12. (*1*) Subject to his liability to carry out all his obligations under the contract of carriage, the consignor has the right to dispose of the goods by withdrawing them at the aerodrome of departure or destination, or by stopping them in the course of the journey on any landing, or by calling for them to be delivered at the place of destination or in the course of the journey to a person other than the consignee named in the air consignment note, or by requiring them to be returned to the aerodrome of departure. He must not exercise this right of disposition in such a way as to prejudice the carrier or other consignors and he must repay any expenses occasioned by the exercise of this right.

(*2*) If it is impossible to carry out the orders of the consignor the carrier must so inform him forthwith.

(*3*) If the carrier obeys the orders of the consignor for the disposition of the goods without requiring the production of the part of the air consignment note delivered to the latter, he will be liable, without prejudice to his right of recovery from the consignor, for any damage which may be caused thereby to any person who is lawfully in possession of that part of the air consignment note.

(*4*) The right conferred on the consignor ceases at the moment when that of the consignee begins in accordance with rule 13. Nevertheless, if the consignee declines to accept the consignment note or the goods, or if he cannot be communicated with, the consignor resumes his right of disposition.

13. (*1*) Except in the circumstances set out in rule 12, the consignee is entitled, on arrival of the goods at the place of destination, to require the carrier to hand over to him the air consignment note and to deliver the goods to him, on payment of the charges due and on complying with the conditions of carriage set out in the air consignment note.

(*2*) Unless it is otherwise agreed, it is the duty of the carrier to give notice to the consignee as soon as the goods arrive.

(*3*) If the carrier admits the loss of the goods, or if the goods have not arrived at the expiration of seven days after the date on which they ought to have arrived, the consignee is entitled to put into force against the carrier the rights which flow from the contract of carriage.

14. The consignor and the consignee can respectively enforce all the rights given them by rules 12 and 13, each in his own name, whether he is acting in his own interest or in the interest of another, provided that he carries out the obligations imposed by the contract.

15. (*1*) Rules 12, 13 and 14 do not affect either the relations of the consignor or the consignee with each other or the mutual relations of third parties whose rights are derived either from the consignor or from the consignee.

(*2*) The provisions of rules 12, 13 and 14 can only be varied by express provision in the air consignment note.

16. (*1*) The consignor must furnish such information and attach to the air consignment note such documents as are necessary to meet the formalities of customs, octroi or police before the goods can be delivered to the consignee. The consignor is liable to the carrier for any damage occasioned by the absence, insufficiency or irregularity of any such information or documents, unless the damage is due to the fault of the carrier or his agents.

(*2*) The carrier is under no obligation to enquire into the correctness of sufficiency of such information or documents.

CHAPTER III.

LIABILITY OF THE CARRIER.

17. The carrier is liable for damage sustained in the event of the death or wounding of a passenger or any other bodily injury suffered by a passenger, if the accident which caused the damage so sustained took place on board the aircraft or in the course of any of the operations of embarking or disembarking.

18. (*1*) The carrier is liable for damage sustained in the event of the destruction or loss of, or of damage to, any registered luggage or any goods, if the occurrence which caused the damage so sustained took place during the carriage by air.

(*2*) The carriage by air within the meaning of the preceding paragraph comprises the period during which the luggage or goods are in charge of the carrier, whether in an aerodrome or on board an aircraft, or, in the case of a landing outside an aerodrome, in any place whatsoever.

(*3*) The period of the carriage by air does not extend to any carriage by land, by sea or by river performed outside an aerodrome. If, however, such a carriage takes place in the performance of a contract for carriage by air, for the purpose of loading, delivery or transhipment, any damage is presumed, subject to proof to the contrary, to have been the result of an event which took place during the carriage by air.

19. The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods.

20. (*1*) The carrier is not liable if he proves that he and his agents have taken all necessary measures to avoid the damage or that it was impossible for him or them to take such measures.

(*2*) In the carriage of goods and luggage the carrier is not liable if he proves that the damage was occasioned by negligent pilotage or negligence in the handling of the aircraft or in navigation and that, in all other respects, he and his agents have taken all necessary measures to avoid the damage.

21. If the carrier proves that the damage was caused by or contributed to by the negligence of the injured person the Court may exonerate the carrier wholly or partly from his liability.

22. (*1*) In the carriage of passengers the liability of the carrier for each passenger is limited to the sum of 125,000 francs. Where damages may be awarded in the form of periodical payments, the equivalent capital value of the said payments shall not exceed 125,000 francs. Nevertheless, by special contract the carrier and the passenger may agree to a higher limit of liability.

(*2*) In the carriage of registered luggage and of goods, the liability of the carrier is limited to a sum of 250 francs per kilogram, unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of the value at delivery and has paid a supplementary sum if the case so requires. In that case the carrier will be liable to pay a sum not exceeding the declared sum, unless he proves that that sum is greater than the actual value to the consignor at delivery.

(*3*) As regards objects of which the passenger takes charge himself the liability of the carrier is limited to 5,000 francs per passenger.

(*4*) The sums mentioned in this rule shall be deemed to refer to the French franc consisting of 65½ milligrams gold of millesimal fineness 900.

23. Any provision tending to relieve the carrier of liability or to fix a lower limit than that which is laid down in these rules shall be null and void but nullity of any such provision does not involve the nullity of the whole contract, which shall remain subject to the provisions of this Schedule.

24. (*1*) In the cases covered by rules 18 and 19 any action for damages however founded, can only be brought subject to the conditions and limits set out in this Schedule.

(*2*) In the cases covered by rule 17 the provisions of sub-rule (*1*) also apply, without prejudice to the questions as to who are the persons who have the right to bring suit and what are their respective rights.

25. (*1*) The carrier shall not be entitled to avail himself of the provisions, of this Schedule which exclude or limit his liability, if the damage is caused by his wilful misconduct or by such default on his part as is in the opinion of the Court equivalent to wilful misconduct.

(*2*) Similarly the carrier shall not be entitled to avail himself of the said provisions, if the damage is caused as aforesaid by any agent of the carrier acting within the scope of his employment.

26. (*1*) Receipt by the person entitled to delivery of luggage or goods without complaint is *primâ facie* evidence that the same have been delivered in good condition and in accordance with the document of carriage.

(*2*) In the case of damage, the person entitled to delivery must complain to the carrier forthwith after the discovery of the damage, and, at the latest, within three days from the date of receipt in the case of luggage and seven days from the date of receipt in the case of goods. In the case of delay the complaint must be made at the latest within fourteen days from the date on which the luggage or goods have been placed at his disposal.

(*3*) Every complaint must be made in writing upon the document of carriage or by separate notice in writing despatched within the times aforesaid.

(*4*) Failing complaint within the times aforesaid, no action shall lie against the carrier, save in the case of fraud on his part.

27. In the case of the death of the person liable, an action for damages lies in accordance with these rules against those legally representing his estate.

28. An action for damages must be brought, at the option of the plaintiff, either before the Court having jurisdiction where the carrier is ordinarily resident or has his principal place of business, or has an establishment by which the contract has been made, or before the Court having jurisdiction at the place of destination.

29. The right of damages shall be extinguished if an action is not brought within two years, reckoned from the date of arrival at the destination, or from the date on which the aircraft ought to have arrived, or from the date on which the carriage stopped.

30. (*1*) In the case of carriage to be performed by various successive carriers and falling within the definition set out in sub-rule (*4*) of rule 1, each carrier who accepts passengers, luggage or goods is subjected to the rules set out in this Schedule, and is deemed to be one of the contracting parties to the contract of carriage in so far as the contract deals with that part of the carriage which is performed under his supervision.

(*2*) In the case of carriage of this nature, the passenger or his representative can take action only against the carrier who performed the carriage during which the accident or the delay occurred, save in the case where, by express agreement, the first carrier has assumed liability for the whole journey.

(*3*) As regards luggage or goods, the passenger or consignor will have a right of action against the first carrier, and the passenger or consignee who is entitled to delivery will have a right of action against the last carrier, and further, each may take action against the carrier who performed the carriage during which the destruction, loss, damage or delay took place. These carriers will be jointly and severally liable to the passenger or to the consignor or consignee.

CHAPTER IV.

PROVISIONS RELATING TO COMBINED CARRIAGE.

31. (*1*) In the case of combined carriage performed partly by air and partly by any other mode of carriage, the provisions of this Schedule apply only to the carriage by air, provided that the carriage by air falls within the terms of rule 1.

(*2*) Nothing in this Schedule shall prevent the parties in the case of combined carriage from inserting in the document of air carriage conditions relating to other modes of carriage, provided that the provisions of this Schedule are observed as regards the carriage by air.

CHAPTER V.

GENERAL AND FINAL PROVISIONS.

32. Any clause contained in the contract and all special agreements entered into before the damage occurred by which the parties purport to infringe the rules laid down by this Schedule, whether by deciding the law to be applied or by altering the rules as to jurisdiction, shall be null and void. Nevertheless for the carriage of goods arbitration clauses are allowed, subject to these rules, if the arbitration is to take place in the territory of one of the High Contracting Parties within one of the jurisdictions referred to in rule 28.

33. Nothing contained in this Schedule shall prevent the carrier either from refusing to enter into any contract of carriage, or from making regulations which do not conflict with the provisions of this Schedule.

34. This Schedule does not apply to international carriage by air performed by way of experimental trial by air navigation undertakings with the view to the establishment of a regular line of air navigation, nor does it apply to carriage performed in extraordinary circumstances outside the normal scope of an air carrier's business.

35. The expression " days " when used in these rules means current days, not working days.

36. When a High Contracting Party has declared at the time of ratification of or of accession to the Convention that the first paragraph of Article 2 of the Convention shall not apply to international carriage by air performed directly by the State, its colonies, protectorates or mandated territories or by any other territory under its sovereignty, suzerainty or authority, these rules shall not apply to international carriage by air so performed.

SECOND SCHEDULE.

(*See* section 2.)

PROVISIONS AS TO LIABILITY OF CARRIERS IN THE EVENT OF THE DEATH OF A PASSENGER.

1. The liability shall be enforceable for the benefit of such of the members of the passenger's family as sustained damage by reason of his death.

In this rule the expression " member of a family" means wife or husband, parent, step-parent, grandparent, brother, sister, half-brother, half-sister, child, step-child, grandchild :

Provided that, in deducing any such relationship as aforesaid any illegitimate person and any adopted person shall be treated as being, or as having been, the legitimate child of his mother and reputed father or, as the case may be, of his adopters.

2. An action to enforce the liability may be brought by the personal representative of the passenger or by any person for whose benefit the liability is under the last preceding rule enforceable, but only one action shall be brought in the Union of Burma in respect of the death of any one passenger, and every such action by whomsoever brought shall be for the benefit of all such persons so entitled as aforesaid, [as either are citizens of the Union or, not being citizens][1], express a desire to take the benefit of the action.

3. Subject to the provisions of the next succeeding rule the amount recovered in any such action, after deducting any costs not recovered from the defendant, shall be divided between the persons entitled in such proportions as the Court may direct.

4. The Court before which any such action is brought may at any stage of the proceedings make any such order as appears to the Court to be just and equitable in view of the provisions of the First Schedule to this Act limiting the liability of a carrier and of any proceedings which have been, or are likely to be, commenced outside the Union of Burma in respect of the death of the passenger in question.

ပြည်ထောင်စု မြန်မာနိုင်ငံ လေကြောင်း သယ်ယူဆိုင်ရာ အခွင့် အက်ဥပဒေ။

[၁၉၅၂ ခုနှစ်၊ အက်ဥပဒေအမှတ် ၃၉။] (၁၉၅၃ ခု၊ အောက်တိုဘာလ ၁ ရက်။)

အောက်ပါအတိုင်း၊ အက်ဥပဒေအဖြစ် ပြဋ္ဌာန်းလိုက်သည်။

အခန်း ၁။

စကားချီး။

၁။ ။(၁) ဤအက်ဥပဒေကို ၁၉၅၂ ခုနှစ်၊ ပြည်ထောင်စု မြန်မာနိုင်ငံလေကြောင်း သယ်ယူဆိုင်ရာအခွင့် အက်ဥပဒေဟုခေါ်ရမည်။

(၂) ဤအက်ဥပဒေသည်၊ နိုင်ငံတော်သမတက၊ အမိန့်ကြော်ငြာစာထုတ်ပြန်သတ်မှတ်သည့်နေ့ တွင်၊ စတင်အာဏာတည်ရမည်။

၂။ ။ဤ အက်ဥပဒေ တွင်၊ ရှေ့နောက် စကား တို့၏ အဓိပ္ပါယ်ကို ထောက်ထားရန် မလိုလျှင်—

(က) "အခွင့်" ဆိုသည်မှာ၊ ပုဒ်မ ၃ အရ၊ ခွဲစည်းသည့် ပြည်ထောင်စု မြန်မာ နိုင်ငံ လေကြောင်းသယ်ယူဆိုင်ရာ အခွင့်ကိုဆိုလိုသည်။

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[1] Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

[2] ၁၉၅၃ ခု၊ အောက်တိုဘာလ ၁ ရက်။ ။မြန်မာနိုင်ငံပြန်တမ်း၊ ၁၉၅၃ ခု၊ အတိုင်း ၁၊ စာမျက်နှာ ၁၄၅၃ တွင်ကြည့်။