

**SUPREME COURT OF NIGERIA**  
FRIDAY 8TH FEBRUARY, 2002. SC. 136/1997  
**CORAM:- S. M. A. BELGORE, I. L. KUTIGI, A. I. IGUH,**  
**A. I. KATSINA-ALU, E. O. AYOOLA, JJSC**

1. MR. P. A. AWOLAJA  
2. NIGERIA ALUMINIUM  
DEVELOPMENT CO. LTD. ....APPELLANTS  
3. PRAFT FOODS LTD.  
4. NIGERIAN METAL  
MANUFACTURING CO. LTD.  
AND  
SEATRADE GRONINGEN B.V. ....RESPONDENT

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CARRIAGE OF GOODS BY SEA - Charterparty - Meaning - Charterparty is a document embodying terms of contract of affreightment (H1)

CARRIAGE OF GOODS BY SEA - Charterparty - Validity - Requirement - Signed contract is not essential for charterparty - The vital thing is that parties have agreed to be bound by identifiable terms (H2)

CARRIAGE OF GOODS BY SEA - Charterparty - Binding nature - Determination - Deciding whether parties are bound before the charter is signed - Depend on if they are ad idem or have agreed to be bound (H3)

CARRIAGE OF GOODS BY SEA - Charterparty - Terms in - Mode - Charterparty may be orally made or written - But its express terms are those agreed by parties (H4)

CARRIAGE OF GOODS BY SEA - Bill of lading - Relevance of - Bill of lading is contract between shipowner and endorsee on the bill (H5)

CARRIAGE OF GOODS BY SEA - Charterparty - Terms of - Incorporated in bill of lading - Determining tests - Consideration of the

188 Awolaja v. Seatrade Groningen B.V. (2002) 2 KLR (pt. 133) 187;  
tests do not arise in this instance (H6)

CARRIAGE OF GOODS BY SEA - Affreightment - Binding nature -  
A party cannot impugn existence of such contract - On the ground  
that document is unsigned - Unless if such is a condition precedent  
(H7)

CARRIAGE OF GOODS BY SEA - Charterparties - Incorporated in  
bills of lading - Terms of the charter were incorporated in the bills - By  
the statement "to be used with charterparties" (H8)

CARRIAGE OF GOODS BY SEA - Charterparty - Incorporated in  
bills of lading - Scope - Where the words of incorporation are general  
- They do not cease to be operative by that fact alone (H9)

CONTRACTS - Documents - Incorporation by reference - Evidence  
Act s.132 - Application - The section does not apply to contract -  
That has incorporated terms of another document by reference (H10)

DOCUMENTS - Charterparty - Bills of lading - Words of incorpora-  
tion in - Since the words are contained in the bills - The charterparty  
did not constitute extrinsic evidence of terms - Binding on parties  
thereto (H11)

APPEALS - Issues - Fresh issues - Leave - Attempt to raise without  
leave at Supreme Court - Fresh issue relating to Exchange Control  
Acts - Must fail (H12)

APPEALS - Concurrent findings of fact - Supreme Court does not  
interfere - Except where there are exceptional grounds - And none  
exist in this case (H13)

### **FACTS**

The basis of plaintiff's/respondent's claim was that its two ves-  
sels were chartered to carry cargoes of frozen fish from Holland for  
delivery in Apapa, Lagos to 1<sup>st</sup> defendant/appellant who acted for  
the other appellants. The ships arrived at Lagos on schedule but the  
cargoes of frozen fish were not immediately off-loaded by appellants.

The delay and loss incurred by respondent necessitated the institution of this action at the Federal High Court, Lagos. Respondent claimed against appellants jointly and severally the total sum of US\$229,713.3 and N304,410.64 plus interest being discharging fees, transportation and storage charges and legal expenses in respect of two cargoes of frozen fish. Appellants on their own counterclaimed for a total sum of N750,233.80 being cost of 6,464 cartons of unsound fish, transportation, additional storage charges, short delivery and cost of disposing the unsound fish.

At the trial, the issue for determination was the liability or otherwise of appellants under the charterparties which respondent claimed embodied the contract of affreightment. Appellants contended that they were not parties thereto and that the terms of the charterparties were not incorporated in the bills of lading issued on behalf of the master of the vessels and in which 1<sup>st</sup> appellant was named as a party. Appellants further contended that there were no charterparties because the documents relied on by respondent as being the charterparties were unsigned. At the end of trial, the court rejected the contentions of appellants and entered judgment for respondent. Appellants' counterclaim was equally dismissed. Being dissatisfied, appellants appealed to the Court of Appeal, Lagos. The court dismissed the appeal. Aggrieved further, appellants filed appeal at Supreme Court.

**HELD** (Unanimously dismissing the appeal per  
**AYOOLA JSC**)

*Charterparty - Meaning*

**1. A charterparty is a document embodying the terms of a contract of affreightment. Another document in which a contract of affreightment may be expressed is the bill of lading. In Halsbury's Laws of England: vol 43(2) (4th edition) para 1410 it was clearly stated that:**

***"A contract for the carriage of goods in a ship is called a contract of affreightment. In practice these contracts are usually written and most often are expressed in one or other of two types of documents called respectively a charterparty and***

***a bill of lading. In some cases the terms of a contract of affreightment are contained partly in a charterparty and partly in a bill of lading.***” (p. 196 G)

*Charterparty - Validity - Requirement*

- B **2. A signed contract is not always an essential formal requirement for a valid charterparty to come into being although, as put in Halsbury’s (op. cit) para 1423:**

C ***“A charterparty usually consists of a signed contract embodying the terms already negotiated and agreed by the parties or their agents.”***

**What is essential to a valid charterparty, as in any other contract, is that the parties must have agreed to be bound by identifiable terms.** (p. 197 B)

D

*Charterparty - Binding nature - Determination*

- 3. Whether the parties are bound before the charter is signed will depend upon (i) whether they are ad idem and (ii) whether on the true construction of the language used in the negotiations - it was the intention of the parties that they should be bound before signing of the formal document.** (p. 197 D)

*Charterparty - Terms in - Mode*

- F **4. A charterparty may be made by word of mouth although the intention of the parties is to reduce it to writing at a later stage. The express terms of a charterparty are those agreed by the parties, whether orally or in writing.** (p. 197 E)

G *Bill of lading - Relevance of*

- 5. This action is not between the shipowner and the charterer, but between the shipowners and the defendants who have been held to be the receivers of the cargo by reason of their presenting the bills of lading. As between these parties the bills of lading were prima facie the contract on which the goods were carried. The law as put in Halsbury’s (op cit) at para 1540 is that:**

H ***“Even where there is a charterparty, the bill of lading is prima facie, as between the shipowner and an endorsee, the***

***contract on which the goods are carried. This is certainly so when the endorsee is ignorant of the term of the charterparty, and may be so even if he knows of them.***” (p. 197 F)

*Charterparty - Terms of - Incorporated in bill of lading*

**6. However, the terms of a charter-party may be made part of a bill of lading by incorporation. Whether there is such incorporation and the extent thereof will depend on a number of tests which do not now arise for consideration.** (p. 197 H)

*Affreightment - Binding nature*

**7. A signed document though valuable as putting it beyond peradventure what terms the parties have agreed to is not essential to the existence of a contract of affreightment. Where the immediate parties to the agreement do not deny their agreement or the existence of the contract of affreightment and there is no doubt about their intention that they should be bound, barring statutory provision to the contrary, (and none has been cited by the defendants) the existence of the contract cannot be impugned on the ground that the document embodying the terms they have agreed to was unsigned, unless the parties have made such a condition of their being bound.** (p. 198 B)

*Charterparties - Incorporated in bills of lading*

**8. It is clear that as held by the trial judge and the court below the charterparties were incorporated in the respective bills of lading by the statement “to be used with charterparties” contained on each of them.** (p. 199 A)

*Charterparty - Incorporated in bills of lading - Scope*

**9. Although the main issue in *Skips A/S Nordhein & Or v. Syrian Petroleum Co. Ltd. and another* (1983) 3 All ER 645 was whether an arbitration clause in the charter-party was incorporated in the bill of lading. Donaldson, M. R. in that case said (at p. 648):**

***“Operative words of incorporation may be precise or general, narrow or wide. Where they are general and wide***

*they may have the effect of incorporation more than can make any sense in the context of an agreement governing the rights and liability of the shipowner and of the bills of lading holder. In such circumstances, what one might describe as 'surplus', 'insensible' or 'inconsistent' provisions fall to be 'disincorporated' 'rejected' or 'ignored' as 'surplus'."*

That words of incorporation are general and wide and should not lead to a conclusion that they cease to be operative by that fact alone. (p. 199 D)

*Documents - Incorporation by reference - Evidence Act s.132*

10. It is clear that the rule, embodied in section 132, does not apply to a contract that has incorporated by reference, the terms of another document. Such contract, in my judgment, would fall into the category of a contract that "has been reduced to the form of series of document." I venture to think that extrinsic evidence is permitted to identify the series of document containing the terms of the contract. The parol evidence rule does not apply until it is ascertained that the terms of the parties' agreement are wholly contained in the written document or in a series of document, as the case may be. An operative incorporation clause is a clear manifestation of the intention of the parties that the terms of one document be incorporated by reference in the other. I adopt the law as stated succinctly in Treitel. *The Law of Contract* (5th Edition) thus at p. 141:

"A document which is contractual within the test laid down in *Hutton v. Watling* (1948) Ch. 398, 404) may incorporate another document by reference. In such a case evidence of the second document is of course admissible: the parol evidence rule only excludes evidence extrinsic to both documents." (p. 200 A)

*Charterparty - Bills of lading - Words of incorporation in*

11. The words of incorporation must be found in the document into which terms are incorporated by reference. In this case the bills of lading themselves contained the words of incorporation, albeit in wide terms, incorporating the charter-

**parties. There is no foundation, therefore, for the suggestion that the charter-parties constituted extrinsic evidence of the terms binding on the parties bound by the bills of lading.**

(p. 200 E)

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*APPEALS - Issues - Fresh issues - Leave*

**12. The attempt by counsel for the defendants to raise any question relating to the Exchange Control Acts, 1962 for the first time at this stage in proceedings without leave to raise fresh issues not addressed at the court below must fail.**

(p. 200 G)

C

*APPEALS - Concurrent findings of fact*

**13. This aspect of the appeal had been all on facts. There are concurrent findings of fact by the trial court and the court below. Learned counsel for the defendants merely urged that we set aside the judgments of the trial court and the court below because, as he put it, 'no credible evidence was offered by the plaintiff to challenge' certain facts deposed to by the first defendant. The court of Appeal described the trial judge's evaluation of the evidence as painstaking and his conclusions of fact as unassailable. To ask us to reopen the question of credibility flies in the face of well established principles of law as regards the attitude of appellate courts to findings of fact based on the credibility of witnesses. Nothing has been urged to make me depart from those principles nor to persuade me agree that this court should interfere with concurrent findings of fact.**

(p. 201 B)

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## NOTABLE POINTS OF INTEREST

### **BELGORE JSC**

#### ***1. Practice in contracts of affreightment***

Contract of affreightment is a peculiar one. The contracting parties in most cases are thousands of kilometres apart and rely on exchange of documents arising from negotiations via distant communication channels. In recent past, exchange of documents by telex, facsimile

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(fax) and now internet and modern information technology (I.T.) the parties arrive at an agreement to transport by sea goods. All documents so exchanged, in most cases unsigned, are then read together and are binding on the parties once it is clear the parties were ad idem. The charter party and bill of lading resulting from the exchange of documents explained above form a composite agreement between the contracting parties and bound subsequent endorsees. This in the practice of charter party and bill of lading is the contract on which the goods are carried. (p. 201 G)

C ***2. Once parties are ad idem, endorsee can't claim ignorance***

The absence of signatures on the documents is generally irrelevant once it is clear the parties were ad idem. The endorsee will thus have no place to hide by contending that he was not party to the contract or that he was ignorant of the terms; he is presumed to know and to agree to the terms he is going to benefit from by the endorsement. (p. 202 B)

**REPRESENTATION**

E T. E. Williams with Mrs. F. Gambari Mohammed for the Appellants  
N. I. Quakers for the Respondent

**CASES REFERRED TO**

F Skips A/S Nordhein v. Syrian Petroleum Co. Ltd. (1983) 3 All ER 645  
Hutton v. Watling (1948) Ch. 398

**STATUTES REFERRED TO**

G Evidence Act, s. 132  
Exchange Control Acts 1962, s. 8(1)

**BOOKS REFERRED TO**

Halsbury's Laws of England: Vol. 43(2) 4th Ed. para 1410, 1423  
H Scrutton on Charterparties 18th Ed. p. 3  
Treitel: The Law of Contract 5th Ed. p. 141

**LEAD JUDGMENT BY AYoola JSC**

This is an appeal from the decision of the Court of Appeal

whereby the judgment entered by the Federal High Court for Seatrade Groningen B.V., the respondent in this appeal (which was plaintiff), and dismissing the appellants' counter-claim was confirmed and the appeal of the appellants (defendants in the High Court) was dismissed. This is a second appeal in the case. For convenience the appellants are referred to as "the defendants" and the respondent as "the plaintiff" in this judgment. B

The plaintiff claimed against the defendants jointly and severally the total sum of US \$229,713.3 and N302,410.64 together with interest being discharging fees, transportation and storage charges and legal expenses in respect of two cargoes of frozen fish ordered by the defendants and severally brought to Nigeria in the plaintiff's vessel M.V. "Frost Castor" and MV "Normandic". The defendants counter-claimed for a total sum of N750,233.80 being cost of 6464 cartons of unsound fish, transportation, additional storage charges, short-delivery and the cost of disposing the unsound fish. C D

The basis of the plaintiff's claim was that its two vessels were chartered to carry cargoes of frozen fish from Holland for delivery in Apapa, Lagos to the 1st defendant who apparently was also acting for the other defendants. The ship arrived in Lagos on schedule but the cargoes of frozen fish were not off loaded by the defendants on time. The sums claimed were the total amount of loss that the plaintiff alleged it suffered. E

At the trial and in the appeal to the Court of Appeal the main issue was whether or not the defendants were liable under the charterparties which the plaintiff claimed embodied the contract of affreightment. The defendants contended that they were not parties thereto and that the terms of such charterparties so claimed by the plaintiff were not incorporated in the bills of lading issued on behalf of the Masters of the vessels in which said bills of lading the 1st Defendant was named as Notify Party. They went further to contend that there were no charter parties because the documents relied on by the plaintiff as being the charterparties were unsigned. F G

The trial judge rejected these contentions. Significantly, he H said:

*"Since the 1st defendant was the receiver of the cargo in both vessels M.V. "Frost Castor" and M. V. "Normandic" whereby he presented the Bill of Lading Exhibit L to L5 and P to P5 he and the*

*other defendants are bound by the contents of the Bills of Lading which include the words “to be used with charter-parties” I have no doubt that the 1st defendant is aware of (sic: that) their bills of lading were to be used with charterparties.”*

B Confirming the view of the trial judge, Kalgo, JCA (as he then was) who delivered the leading judgment of the court of Appeal, relying on the custom and practice of charterparty and carriage of goods by sea as narrated by the second witness for the plaintiff held that once the parties agreed on the main terms and conditions of agreement (the charterparty) they were bound by that agreement. C He also held that if the main terms and conditions of the charterparty are cleared and fixed by telex negotiations, the agreement becomes binding on the parties without necessarily signing the charterparty.

D By their brief of argument the defendants contested these conclusions. Counsel on their behalf argued that by virtue of section 132 of the Evidence Act the charterparties described as “*Gencon*” contracts which were unsigned and undated could not be incorporated in the bills of lading and could not be binding on the defendants. It was argued that there was nothing contained in the telexes E Exhibits DD-DD4 to show that they embodied the “*Gencon*” terms and conditions and that in the premises the court would be invited to hold that the documents exhibits EE-EF could not be proof of the charterparties pleaded in the statement of claim.

F Counsel for the plaintiff argued in this court, as in the court below, and both courts accepted, that by the use of words “*to be used with Charterparties*” in the bills of lading (exhibits L - L5 and P-P5) the charter parties have been incorporated in the bills of lading. On the question whether the absence of signatures on the documents rendered them inoperative, it was submitted that the faxes G and telexes (exhibits DD to DD4) constituted the charterparties. However, more importantly, it was submitted that once negotiations were settled by the parties, the charterparty was binding notwithstanding that the documents were unsigned.

H It is expedient to set out some of the guiding principles about which there is no controversy. **A charter-party is a document embodying the terms of a contract of affreightment. Another document in which a contract of affreightment may be expressed is the bill of lading. In Halsbury’s Laws of England: vol**

43(2) (4th edition) para 1410 it was clearly stated that:

*“A contract for the carriage of goods in a ship is called a contract of affreightment. In practice these contracts are usually written and most often are expressed in one or other of two types of documents called respectively a charterparty and a bill of lading - - . In some cases the terms of a contract of affreightment are contained partly in a charter-party and partly in a bill of lading.”* B

A signed contract is not always an essential formal requirement for a valid charterparty to come into being although, as put in Halsbury’s (op cit) para 1423: C

*“A charterparty usually consists of a signed contract embodying the terms already negotiated and agreed by the parties or their agents.”*

What is essential to a valid charterparty, as in any other contract, is that the parties must have agreed to be bound by identifiable terms. See Halsbury’s (op cit) para 1423. Whether the parties are bound before the charter is signed will depend upon (i) whether they are ad idem and (ii) whether on the true construction of the language used in the negotiations - it was the intention of the parties that they should be bound before signature of the formal document. (See Scrutton on Charterparties (18th edition) p. 3). A charter-party may be made by word of mouth although the intention of the parties is to reduce it to writing at a later stage. The express terms of a charterparty are those agreed by the parties, whether orally or in writing. (See Halsbury’s (op cit) para 1425). D E F

This action is not between the shipowner and the charterer, but between the shipowners and the defendants who have been held to be the receivers of the cargo by reason of their presenting the bills of lading. As between these parties the bills of lading were prima facie the contract on which the goods were carried. The law as put in Halsbury’s (op cit) at para 1540 is that: G H

*“Even where there is a charterparty, the bill of lading is prima facie, as between the shipowner and an endorsee, the contract on which the goods are carried. This is certainly so when the endorsee is ignorant of the term of the charterparty,*

*and may be so even if he knows of them.”*

***However, the terms of a charter-party may be made part of a bill of lading by incorporation. Whether there is such incorporation and the extent thereof will depend on a number of tests which do not now arise for consideration.***

B In regard to the decisive issues, the defendants relied mainly on an absence of signatures on the charterparties. It was argued that there was no charterparty and nothing to incorporate in the bills of lading. From the law as set out above it is manifest in my opinion that the defendants’ case so put is misconceived. ***A signed document though valuable as putting it beyond peradventure what terms the parties have agreed to is not essential to the existence of a contract of affreightment. Where the immediate parties to the agreement do not deny their agreement or the existence of the contract of affreightment and there is no doubt about their intention that they should be bound, barring statutory provision to the contrary, (and none has been cited by the defendants) the existence of the contract cannot be impugned on the ground that the document embodying the terms they have agreed to was unsigned, unless the parties have made such a condition of their being bound.*** In this case the evidence of the 2nd witness for the plaintiff relating to the practice in chartering of fridge vessels was not challenged by cross-examination nor was it controverted by contrary evidence. He said:

F *“It is the general practice in chartering of fridge vessels that when both parties have agreed on the terms and conditions agreed in the telexes, the agreement by telexes is considered binding. The need to draw up a formal charterparty agreement is for reference purposes as we now have.”* Then he added:-

G *“These are the two original formal charter-party agreements for M.V. Frost Castor and M.V. Normandic which was not signed. The broker was paid and the amount paid to the broker was shown in the two original charter-party agreements.”*

H The 1st defendant in his evidence said that the shipper told him orally that there was no charterparty. The shipper was not called to testify in denial of the existence of a charterparty or to deny that the documents in which the terms agreed to were embodied did not contain such terms as the parties agreed to. In these circumstances,

the decision of the trial judge that failure to sign the charterparties was not fatal to the main issue because they have been incorporated in the bills of lading cannot be faulted.

***It is clear that as held by the trial judge and the court below the charterparties were incorporated in the respective bills of lading by the statement “to be used with charterparties” contained on each of them.*** There was really no argument placed before us on this appeal as to the sufficiency of such general incorporation clause; nor was there any controversy as to the extent to which the terms of the charterparties could be incorporated in the bills of lading by such general statement. To discuss cases in which the issues concern identification of the terms of the charterparty incorporated by reference in the bill of lading can only obfuscate an otherwise straight forward matter. The main issue in the case does not call for an inquiry as to which of the terms are or could be incorporated. The question whether the words used in the bills of lading were operative words of incorporation must be distinguished from and must precede the question what terms were incorporated. ***Although the main issue in Skips A/S Nordhein & Ors v. Syrian Petroleum Co. Ltd. and another (1983) 3 All ER 645 was whether an arbitration clause in the charter-party was incorporated in the bill of lading Donaldson, M. R. in that case said (at p. 648):***

***“Operative words of incorporation may be precise or general, narrow or wide. Where they are general and wide they may have the effect of incorporation more than can make any sense in the context of an agreement governing the rights and liability of the shipowner and of the bills of lading holder. In such circumstances, what one might describe as ‘surplus’, ‘insensible’ or ‘inconsistent’ provisions fall to be ‘disincorporated’ ‘rejected’ or ‘ignored’ as ‘surplus’.”***

***That words of incorporation are general and wide and should not lead to a conclusion that they cease to be operative by that fact alone.***

Before I part with this aspect of the appeal it must be added that reliance on section 132 of the Evidence Act by learned counsel for the defendants do not advance their case one title. Section 132 provides that:

*“Where any contract has been reduced to the form of a docu-*

*ment or series of document, no evidence may be given of the terms of such contract except the document itself or secondary evidence of its contents in cases in which secondary evidence is admissible.”*

This is an enactment of the parol evidence rule. **It is clear that the rule, embodied in section 132, does not apply to a contract that has incorporated by reference the terms of another document. Such contract, in my judgment, would fall into the category of a contract that “has been reduced to the form of series of document.” I venture to think that extrinsic evidence is permitted to identify the series of document containing the terms of the contract. The parol evidence rule does not apply until it is ascertained that the terms of the parties’ agreement are wholly contained in the written document or in a series of document, as the case may be. An operative incorporation clause is a clear manifestation of the intention of the parties that the terms of one document be incorporated by reference in the other. I adopt the law as stated succinctly in Treitel: The Law of Contract (5th Edition) thus at p. 141:**

**“A document which is contractual within the test laid down in *Hutton v. Watling* (1948) Ch. 398, 404) may incorporate another document by reference. In such a case evidence of the second document is of course admissible: parol evidence rule only excludes evidence extrinsic to both documents.”**

**The words of incorporation must be found in the document into which terms are incorporated by reference. In this case the bills of lading themselves contained the words of incorporation, albeit in wide terms, incorporating the charter-parties. There is no foundation, therefore, for the suggestion that the charter-parties constituted extrinsic evidence of the terms binding on the parties bound by the bills of lading.**

Enough I believe, has been said to dispose of this appeal in regard to the plaintiff’s claim. **The attempt by counsel for the defendants to raise any question relating to the Exchange Control Acts, 1962 for the first time at this stage in proceedings without leave to raise fresh issues not addressed at the court below must fail.** Besides, it is difficult to see how section 8(1) of that Act could be of any relevance to the issue in this case. That subsec-

tion provides that:

*“Subject to the provisions of this section, no person resident in Nigeria shall, without the permission of the Minister, make any payment outside Nigeria to or for the credit of a person resident outside Nigeria or take or accept any loan, bank overdraft or other credit facilities.”* B

For the reasons that I have stated, I find no substance in the appeal from the decision of the court below affirming the decision of the trial court by which judgment was entered for plaintiff on its claim.

There is no reason to dwell at any length on the dismissal of the appeal from the confirmation of the judgment of the trial court dismissing the defendants’ counterclaim. ***This aspect of the appeal had been all on facts. There are concurrent findings of fact by the trial court and the court below. Learned counsel for the defendants merely urged that we set aside the judgments of the trial court and the court below because, as he put it, ‘no credible evidence was offered by the plaintiff to challenge’ certain facts deposed to by the first defendant. The court of Appeal described the trial judge’s evaluation of the evidence as painstaking and his conclusions of fact as unassailable. To ask us to reopen the question of credibility flies in the face of well established principles of law as regards the attitude of appellate courts to findings of fact based on the credibility of witnesses. Nothing has been urged to make me depart from those principles nor to persuade me agree that this court should interfere with concurrent findings of fact.*** C D E F  
In the result the defendants’ appeal must also fail in regard to the decision on the counterclaim.

In the result, this appeal fails in its entirety. It is therefore dismissed with 10,000.00 costs to the plaintiff which is the respondent in this appeal. G

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### BELGORE JSC

Contract of affreightment is a peculiar one. The contracting parties in most cases are thousands of kilometres apart and rely on exchange of documents arising from negotiations via distant communication channels. In recent past exchange of documents by telex, H

fascimile (fax) and now internet and modern information technology (I.T.) the parties arrive at an agreement to transport by sea goods. All documents so exchanged, in most cases unsigned, are then read together and are binding on the parties once it is clear the parties were ad idem. The charter party and bill of lading resulting from the exchange of documents explained above form a composite agreement between the contracting parties and bound subsequent endorsees. This in the practice of charter party and bill of lading is the contract on which the goods are carried. The absence of signatures on the documents is generally irrelevant once it is clear the parties were ad idem. The endorsee will thus have no place to hide by contending that he was not party to the contract or that he was ignorant of the terms; he is presumed to know and to agree to the terms he is going to benefit from by the endorsement. I therefore agree with my learned brother Ayoola JSC that this appeal totally lacks in merit and I also dismiss it with the same consequential order as to costs.

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**KUTIGI JSC**

I read in advance the judgment just delivered by my learned brother Ayoola JSC. I agree with his reasoning and conclusions. I will therefore dismiss the appeal and affirm the decisions of both the trial Court and that of the Court of Appeal. I endorse the order for costs.

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**IGUH JSC**

I have had the privilege of reading in draft the judgment just delivered by my learned brother, Ayoola, JSC and I agree that this appeal is without substance and ought to be dismissed. I have nothing more to add. I, too, dismiss it in its entirety with costs as assessed in the leading judgment.

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**KATSINA-ALU JSC**

I have had the privilege of reading in draft the judgment of my learned brother AYOOLA, JSC, in this appeal. I agree with it and for the reasons he has given I too, dismiss this appeal with N10,000.00 costs to the respondent.