Reflections on Bills of Lading and Silo Receipts used in the South African Futures Market*

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Abstract. South African law, as a mixed jurisdiction, is based on both common law and civil law principles. The legal rules pertaining to the bill of lading illustrate how divergent legal systems are harmonised in South African law. Although neither the bill of lading nor the Safex silo receipt can be regarded as negotiable instruments, both exhibit the characteristics of a document of title. Bulk cargo and grain stored in a silo, however, provide particular difficulties with regard to effecting symbolical delivery of the goods and thus transferring ownership. It is submitted that, despite reservations about construing an attornment in the case of bills of lading in English law, attornment could be employed as a form of delivery, both in the case of grain in mass storage, and where bills of lading and silo receipts are dematerialised.

1.0 Introduction

South African law, as a mixed legal system (see Zimmermann and Visser, 1996), is founded upon both civil law and common law principles (although there are also many other influences, such as indigenous law and in particular the Constitution, 1996). The legal principles surrounding the bill of lading provide an interesting illustration of how divergent legal systems are harmonised in South Africa. Although the rules regarding the bill of lading (in South Africa) are based on English law, principles relating to the law of property, such as possession and ownership, are based on Roman-Dutch law (also see the Admiralty Jurisdiction Regulation Act, 1983 section 6). Care should therefore be taken to ensure that the rules relating to bills of lading, although based on English law, are fitted into the fabric of existing South African law. It is not suggested, however, that the fact that South African law is a hybrid legal system, as such, causes more confusion than in other jurisdictions, even though there is undoubtedly an added dimension of complexity.

The bill of lading is a well-known instrument with a "long and distinguished history", stretching over many centuries, and has been described as "one of the most remarkable products of mercantile genius" (Lloyd, 1989 p. 48). In comparison, a Safex (abbreviation of "South African Futures Exchange", now part of the JSE Ltd, the South African securities exchange) silo receipt demands further explanation, although, at first glance, it displays obvious similarities to the bill of lading. A farmer delivering grain to a silo for storage will receive a confirmation of delivery receipt from the silo owner after each delivery. The Agricultural Products Division (APD) of the JSE describes the process ("How Silo Receipts are Issued and Traded with Particular Reference to the Agricultural Products Division (APD) of the JSE"):

> "The farmer will keep on delivering grain at the silo and when he has delivered 100 tons (or amounts as per the standardized futures contract) he may request the silo owner to issue a Safex silo receipt in his name. The Safex silo receipts are sequentially numbered and forwarded to each registered silo owner by the JSE. The silo owner issues the receipt in triplicate and hands the original to the owner of the grain in question. The silo owner keeps a copy for his own records and the other copy is forwarded to the APD by courier. The Safex silo receipt has unique security features, being a hologram and distinct watermark. The receipts are individually numbered with [the] APD keeping records of the receipts issued. These security features coupled with the retention of the two copies by the silo owner and the APD make it virtually impossible to forge a receipt or to obtain grain by producing a forged silo receipt. There [have] not been any forgeries of any Safex silo receipt to date."

The commodities traded on the APD are white and yellow maize, wheat, soybeans and sunflower seeds (reference will be made to "grain" in this paper as a generic term). In the case of an "agricultural commodity futures contract", which is a "physically settled futures contract" the underlying instrument is an agricultural commodity (Derivative Rules, 2005 section 2.10). The Safex silo receipt can be used to effect delivery in compliance with the futures contract, although the receipts can be used to trade commodities on the spot market as well.

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2. Legal Nature of Bills of Lading and Silo Receipts

Both the bill of lading and the Safex silo receipt can be regarded as Wertpapiere (see e.g. Hueck and Canaris, 1986 p. 1; Malan, 1976 imported the concept into South African law), as the documents embody a right to delivery of the goods and a right to delivery of the grain, respectively. The Safex silo receipt provides:

> "Upon return of this receipt properly endorsed … physical delivery of said product will be made free on truck (rail or road) alongside the above-named silo to the above-named depositor or his ORDER described as transferee on the record of transfer overleaf. The silo owner is obliged to deliver the commodity covered by this receipt to the holder thereof, unless prohibited to do so by an order of court."

Neither document is, however, regarded as a negotiable instrument. The traditional test to determine whether a document is a negotiable instrument is whether the instrument, by the custom of trade, is transferable like cash by delivery and capable of being sued upon by the person holding it pro tempore (Blackburn J in Crouch v The Credit Foncier of England Ltd, 1873 p. 381). A further requirement is that, "Probably the instrument must be a contract to pay money or to deliver another negotiable security representing money" (Holden, 1955 p. 269). Referring to this requirement, Holden (1955 pp. 260-261) wrote, "If this is so, documents of title to goods are for ever excluded from the category of negotiability — apart, of course, from express statutory provision." The reason Holden used the words "probably" and "if", is that the case cited as authority for this requirement, Dixon v Bovill (1886), where the House of Lords held that a written promise to deliver 1000 tons of iron to bearer was not a negotiable instrument, was not based on this further requirement, but on the fact that no evidence had been given to show a general commercial usage regarding these instruments (Holden, 1955 p. 260; Chorley, 1932 p. 56). However, the validity of the Dixon decision as authority for this proposition is not of much practical importance regarding bills of lading. Although there are no numerus clauses of negotiable instruments, it may be safely assumed that there is no usage or custom in existence today by which the bill of lading will acquire the attributes of negotiability.

The bill of lading is therefore not a negotiable instrument in the technical or traditional sense. Although it may be transferred freely (unless it is non-transferable or straight), the bona fide transferee for value of a bill of lading, does not necessarily acquire good and complete title to the instrument. A bill of lading is therefore only negotiable in the sense that it is transferable (Gurney v Behrend, 1854 pp. 633-634; Kum v Wah Tat Bank Ltd, 1971 p. 446; Lendalease Finance (Pty) Ltd v Corporacion de Mercadeo Agricola, 1976 p. 492). It is suggested that a Safex silo receipt is also not regarded as a negotiable instrument in the absence of – the unlikely – proof of a mercantile custom to that effect. It is further suggested that the requirement that negotiable instruments should embody a right to the payment of money, although based on doubtful authority, is nevertheless convincing, and that both bills of lading and silo receipts will be excluded from the purview of negotiable instruments.

3. Functions of Bills of Lading and Silo Receipts

The bill of lading has three well-known functions: it serves as evidence of the contract of carriage, it is a receipt for the goods shipped and it is a document of title. The bill of lading evidences the contract of carriage, but it does not contain the contract itself, as the bill of lading is often issued after the shipment of the goods and the conclusion of the contract of carriage. However, when the bill of lading has been transferred to an endorsee, it is the only evidence of the contract of carriage (see e.g. Guest, 2002 pp. 999-1001). A Safex silo receipt also contains references to the contract for the storage of grain. The fact that a bill of lading in the hands of an endorsee is the only evidence of the contract of carriage, is (in South African law) a result of an interpretation of section 1 of the repealed (UK) Bills of Lading Act, 1855 and section 4(1)(a) of the (South African) Sea Transport Documents Act, 2000. Therefore, it cannot be said that in the hands of a transferee the silo receipt will be conclusive evidence of the storage contract. In the case of silo receipts there is furthermore no act such as the Sea Transport Documents Act or the (UK) Carriage of Goods by Sea Act, 1992 providing for the transfer of contractual rights and the imposition of liabilities, although one should in most cases be able to construe a cession when the silo receipt is transferred, and an implied contract similar to a Brandt v Liverpool contract (from the decision Brandt v Liverpool, Brazil and River Plate Steam Navigation Co Ltd, 1924) when the silo receipt is presented for delivery to the silo owner.

The bill of lading is furthermore a receipt for the goods shipped, and would often include statements as to the quantity of goods and the condition of the goods. The Safex silo receipt also provides for a product description (white maize, yellow maize, sunflower seeds, soybeans), including the class and origin, and the quantity in digits and in words. Keeping in mind that an approved silo owner must comply with the Rules of the JSE and the terms of a futures contract insofar as these rules and terms relate to Safex silo receipts issued by the silo owner

("Agricultural Products Contract Specifications" Appendix C Clause 4), among parties to a futures contract, the "Safex silo receipt issued by the silo owner to the holder, shall be irrefutable proof of the net weight and the quality of the commodity stored on behalf of the holder of the receipt in the silo owner's facilities" ("Agricultural Products Contract Specifications" Appendix C Clause 6.3). It is conceivable, though, that the silo receipt may be transferred to parties not involved in the futures market, and without any connection to a futures contract, in which case the common-law principles relating to bills of lading (thus excluding statutes and the Hague-Visby Rules) may be applied, by analogy, to such silo receipts.

As a document of title, the bill of lading is transferable, the holder is usually in possession of the goods, the transfer of the document will usually transfer possession of the goods, the transfer of the document may transfer ownership in the goods (as „part of the mechanism" – see Enichem Anic S.p.A. v Ampelos Shipping Co Ltd (The "Delfini"), 1990 p. 268), and the holder of the document usually has a right to delivery of the goods against the carrier (Du Toit, 2005 pp. 129-131). The symbolical delivery of the goods, and the potential transfer of ownership, will be discussed below. Regarding the bill of lading as evidence of the contract of carriage and as a receipt, it is submitted that one can usefully employ principles relating to the bill of lading as a point of departure when examining a Safex silo receipt.

4. Symbolical delivery

In order to transfer ownership in movables in South African law, delivery of the goods is necessary, which in a sense makes the role of the bill of lading even more vital for trading the goods while at sea than in English law. (The assumption throughout this paper is that the applicable law is South African law.)

The bill of lading was referred to as a "symbol of property" as far back as 1813 (Martini v Coles, 1813) p. 148). As indicated by Bools (1997 p. 177), the word "property" may mean ownership or the goods themselves, and the bill of lading can therefore, according to this phrase, be regarded as the "symbol of ownership" or the "symbol of the goods". At the time of the Lickbarrow v Mason (1794, although not explicitly stated as such in that case) and for at least fifty years hence, the bill of lading was regarded as nothing more than a symbol of ownership. In due course the phrase "symbol of property" began to be interpreted as "symbol of the goods" (see Pease v Gloahec, 1866 pp. 227-228; Barber v Meyerstein, 1870 pp. 329-330; Sanders Brothers v MacLean & Co, 1883 p. 341).

In South Africa, symbolical delivery (also called clavium traditio or traditio symbolica) is employed where delivery of a symbol of the goods (such as the keys of a warehouse or a bill of lading) is regarded as delivery of the goods themselves. It is important that the mere transfer of a symbol is not sufficient, as the symbol must enable the transferee to exercise control over the goods. The requirements for symbolical delivery in South African law are (with reference to keys, although bills of lading may be substituted) (Van der Merwe, 2002 p. 303):

> "(a) the parties must have the intention to resort to this form of delivery; (b) the keys must be delivered with the intention that the contents of the warehouse ... are thereby transferred; and (c) the keys must supply the transferee with exclusive control over the contents of the warehouse".

Intention plays an important role in requirements (a) and (b). If the intention is only to deliver a bill of lading for safekeeping, symbolical delivery of the goods will not take place. When transferring the bill of lading there is a presumption that the intention of the parties is to deliver the goods by way of symbolical delivery. Where there are clear indications that the intention to deliver the goods is lacking from either the transferor or the transferee, delivery of the goods will not take place. The presumption can be rebutted, as happened in The "Future Express" (1992). Regarding requirement (c), a bill of lading will normally provide the transferee with exclusive control over the goods at sea, as the holder of the bill of lading can deal with the goods at will, by being able to deliver the goods to another party and to obtain delivery of the goods at the port of destination. The issuing of a bill of lading manifests the intention of the carrier to deliver the goods to the person presenting the bill of lading; and the carrier itself does not have the required intention to be legally in possession of the goods. The transfer of the bill of lading will thus normally serve as delivery of the goods specified in it. According to Corbett JA (Lendalease Finance (Pty) Ltd v Corporacion de Mercadeo Agricola, 1976 pp. 492-493),

> "The holder of the bill ... is thus in the same commercial position as if he were in physical possession of the goods. The bill of lading is, accordingly, recognized as a symbol of the goods and the transfer of the bill is regarded as a form of symbolic delivery"; and "the transfer of the bill of lading would symbolically represent delivery of possession of the maize to the buyer, the seller simultaneously divesting himself of control and relinquishing his animus possidendi."

Delivery is only one of the requirements for the transfer of ownership in South African law. Regarding the real agreement (an intention to transfer ownership and an intention to accept ownership), the transfer of the bill of

lading can raise a presumption that the requisite real agreement is present. In English law, the transfer of the bill of lading "is often very important evidence as to the intention to transfer the property in the goods" (Negus, 1921 p. 451). This presumption can nevertheless be rebutted, where, for example, there is a reservation of ownership until the buyer has paid the purchase price. One can conclude that when the bill of lading is transferred, and the requirements for symbolical delivery are complied with, the transferee will be in control of the goods. Delivery of the goods from transferor to transferee will therefore take place. Any further effects, such as the passing of ownership, will depend on whether the requirements for the passing of ownership are satisfied. In the words of Corbett JA, the bill of lading would "symbolise possession and control of the cargo" (Lendalease Finance (Pty) Ltd v Corporacion de Mercadeo Agricola, 1976 p. 493 (my emphasis)), but it does not symbolise ownership.

5. Bulk Cargo and Grain in a Silo

One of the characteristics of a thing (chattel) in South African law is individuality. For an entity to be a thing, it must be distinct, existing independently or separately. A portion of an oil cargo in a ship, or a portion of the grain in a silo, cannot be classified as a thing. One person cannot be owner of one part of a thing and another owner of another part of the same thing (see Van der Merwe, 2002 p. 109; co-ownership of a thing as a whole is of course possible). Similarly one cannot be in control of a part of a movable thing. Both for control (in the case of movables) and ownership the object in question must comply with the characteristics of a thing.

Cargoes such as oil or grain usually lie undivided in the ship's hold, but often many bills of lading are issued governing (part of) such a cargo. The parties agree to this practice expressly or implicitly by usage or the way in which past transactions took place (Goode, 1989 p. 70). According to Goode (1989 p. 70), "Failure to segregate the buyer's goods weakens the force of the bill of lading to an extent that is probably not generally realized." (However, for the current position in the UK see the Sale of Goods Act, 1979 section 20A.) No transfer of ownership can take place, and the holder of one of the bills of lading is not in control of a part of the cargo while the goods are at sea. In such a case the holder of a bill of lading can at most have a personal right for the delivery of the indicated part of the bulk cargo against the carrier (Goode, 1989 p. 64).

Van der Merwe (2002 pp. 271-272) sets out the position regarding confusio and commixtio in South African law, both of which must occur without the consent of the owners:

> "In the case of mingling (confusio) the original owners of the fluids or metals become co-owners of the mixture in proportion to the value of the materials used in the final mixture .... In the case of mixing (commixtio) each owner of the original solids acquires not an abstract undivided share but a physical portion of the final mixture in proportion to the value of his solids. This implies that he can immediately institute a rei vindicatio for his portion of the mixture whereas in the case of mingling (confusio) the mixture can only be physically separated after the institution of the actio communi dividundo."

If liquids are mixed with the consent of the parties, the same rule will apply (I 2 1 27 (The Institutes of Justinian)), but if solids are mixed with the consent of the parties, the original owners will also become co-owners as in the case of liquids (I 2 1 28; D 6 1 5 pr (The Digest of Justinian); Voet Commentarius ad Pandectas 41 1 23). However, co-ownership is a result of the will of the parties, (I 2 1 28 (tranl. Thomas): "the individual elements, i.e. the individual grains which had belonged separately to each of you, are made common property by your will"; Voet (transl. Gane): "If it takes place by the wish of the owners, that which has been mixed is rendered common not under the law of nations, but by the wish of the owners"; Van der Merwe, 2002 p. 271: "if the mingling or mixing has taken place with the consent of the parties, ownership in the final product depend on the contractual arrangement between the parties") and one can therefore argue that in the case of solids, the will of the parties may also indicate that even though the mixing has taken place with the consent of the parties, they do not intend to become co-owners, and each party will be able to recover his portion of the grain, for example. There are indeed indications in some texts that in the case of commixtio each owner acquires "a physical portion of the final mixture" (I 2 1 28 (transl. Thomas): "the individual grains continue to exist in their own separate entities") and it is not disputed that an action lies for the recovery of the grain by a person who was the owner prior to the grain being mixed, if commixtio occurred, or, as argued above, if the will of the parties indicates that they did not intend to become co-owners, even though the mixing took place with the consent of the parties. However, it is submitted that the intention of the parties cannot determine that an unidentified portion of grain mixed together complies with the definition of a thing, and that one can be in control of such portion, be the sole owner of such portion, or that such portion can be delivered by way of symbolical delivery to another party.

It is submitted that a portion of bulk cargo such as oil, cannot be delivered by way of bills of lading, in an attempt to comply with the requirements of symbolical delivery, and thus the transferee can also not become the owner of a portion of the oil, even if all the other requirements for a transfer of ownership are met. Similarly, it is submitted that a portion of the grain in a silo, cannot be delivered by way of silo receipts, and the transferee can

therefore also not become the owner of a portion of the grain. It is further submitted that the transferees of different bills of lading or silo receipts, can also not become co-owners of the bulk cargo or the grain in a silo. No delivery of an independent thing takes place when one of the bills of lading or one of the silo receipts is transferred. Each transfer and each transferee must be considered separately. There cannot be a fiction that the bulk as a whole was delivered to a new transferee together with current holders of bills of lading or silo receipts, every time a specific bill of lading or a specific silo receipt is transferred.

Even though a "Safex silo receipt" is defined in the futures contracts as "a transferable document utilised as symbolic delivery of the underlying product issued by an approved silo owner in either electronic or paper form ... and on the terms set out in this contract" ("Agricultural Products Contract Specifications" Clause 3.1 of the yellow maize futures contract; the same definition is found in the other futures contracts), such a contractual definition cannot have an effect on the question (which is determined objectively), of whether a portion of the grain is a thing.

6. Attornment?

An interesting question is whether delivery of the goods can take place by way of attornment, instead of symbolical delivery. The requirements for attornment in South African law (the concept was taken over from English law, and in the Netherlands reference is made to traditio longa manu) are that the three parties must have consensus that the holder will now hold the thing on behalf of the transferee and not the transferor anymore, and the holder must be in control of the thing at the time of attornment (Van der Merwe, 2002 p. 312). When a bill of lading is transferred, the carrier will indeed hold the goods during the voyage, and the transferor and transferee might both have the intention that the carrier now holds the good on behalf of the transferee instead of the transferor. It is, however, doubtful that in most cases the carrier will even be aware when such a transfer takes place, and who the transferee is (cf. Guest, 2002 p. 1013) — the carrier is not notified of the dealings in the bill of lading. Therefore the carrier cannot form the intention to hold the goods on behalf of the transferee instead of the transferor. One may even derive from the fact that a bill of lading has been issued, that the carrier accepts that delivery of the goods will take place by way of symbolical delivery, and that the carrier only intends to deliver the goods to the party presenting the bill of lading. In English law attornment only becomes relevant when one is not dealing with a document of title (see Guest, 2002 p. 1013-1014).

In Caledon & Suid-Westelike Distrikte Eksekuteurskamer Bpk v Wentzel (1972 p. 274) a South African court extended the traditional requirements of attornment by deciding, inter alia, that the holder of the thing can agree beforehand already that he or she will hold the goods on behalf of a new owner in future, even if there is no certainty yet as to who such new owner will be, and even if the holder is not aware of when the transfer will take place. Thus one might argue that the carrier agrees to hold the goods on behalf of not only the shipper, but also on behalf of any future transferee of the bill of lading, even though the carrier would not be aware of such a transferee's identity. (It is also conceivable that the bill of lading can expressly state that the carrier will hold the goods on behalf of any transferee of the bill of lading.) Thus, according to this argument, when the bill of lading is transferred, the goods are delivered by way of attornment. It is submitted, however, that is unlikely that delivery of the goods will take place by way of attornment. There is no case supporting this proposition in South African law, and as will be indicated below, although the courts considered the notion in English law, such a construction was rejected there as well.

Goode (1989 p. 9-10) advanced the theory of an "attornment in advance":

> "A particular form of attornment is the issue of a document of title giving legal control of the goods. ... Suffice it to mention that to give control it must be issued or accepted by the bailee of the goods, must therefore embody his undertaking to hold the goods for, and release them to, whoever presents the document and must be recognised by statute or mercantile usage as a document which enables control of the goods to pass by delivery of the document with any necessary endorsement. Such a document of title (and it will be seen, not all documents of title do give control in this way) is in effect an attornment in advance. The undertaking to each transferee of the document is embodied in the document itself and does not have to be given separately after the transfer has taken place."

In The "Future Express" (1992 pp. 93-94), the "submission advanced by the [plaintiff] bank was that the bills of lading constituted an attornment by the owners [of the ship / carrier] to the bank as the consignee named in the bill of lading which attornment was completed when the bank obtained possession of the bills of lading. It was contended that the attornment was completed without any direct communication having to pass between the owners and the bank." The court first pointed out that the "concept of attornment plays no part in the discussion to be found in the classic authorities on the status in English law of a bill of lading as a document of title to the goods" (p. 94). Although the court found that on the facts there could not have been an attornment, it went on to say (p. 96; also see Compania Portorafti Commerciale SA v Ultramar Panama Inc (The "Captain Gregos") (No 2),

1990 p. 406 and the comprehensive criticism by Guest, 2002 pp. 1011-1014 of Borealis AB (formerly Borealis Petrokemi AB) v Stargas Ltd (The Berge Sisar), 2001):

> "I should add that while I have assumed for the purpose of this analysis that, if an attornment can be established, the transferee may sue the carrier for breach of the relationship of bailment, I see difficulties in the way of adopting this proposition. The twin concepts of bailment and attornment cannot sensibly be employed to bypass the conditions upon which, according to the Bills of Lading Act, 1855 or other relevant legislation, a consignee or endorsee is entitled to sue on the contract contained in or evidenced by the bill. If the 'attornment in advance' theory were to be adopted, at any rate in its broad form, then any consignee or endorsee of the bill could, merely by proving he was the lawful holder of the bill, make a demand on the carrier for delivery up of the goods and, if the demand was not complied with at all or if there was then a short delivery or a delivery of damaged goods, sue the carrier for breach of his duty as bailee to deliver the goods at the port of discharge in the same good order as when shipped. If this were held to be the law then ... there would have been no need for the 1855 Act."

In the Court of Appeal (The "Future Express", 1993 p. 550) Lloyd LJ agreed and held:

> "As I understand it, Professor Goode is drawing an analogy between the rights and obligations created by the issue and transfer of a bill of lading, and the rights and obligations created by attornment. It is not suggested that the concept of attornment adds anything by way of substance to the rights of the consignee or endorsee."

Bools (1997 p. 156) is correct in saying that Goode probably did not have a mere "analogy" in mind when devising his concept of " attornment in advance", but Lloyd LJ nevertheless clearly indicated that the concept has no practical significance. In the earlier case Leigh and Sillavan Ltd v Aliakmon Shipping Co Ltd (1986 p. 818) the House of Lords came to the same conclusion, also mentioning that if there was a relationship of bailment between the buyers of the goods as bailors (in the place of the original sellers) and the shipowners as bailees, there would have been no need for the Bills of Lading Act 1855.

That said, delivery by way of attornment can be usefully employed when making use of so-called electronic bills of lading, and it is submitted that the delivery of grain held in bulk in silos, could be construed in the following way: The depositors of grain agree to be co-owners of the grain when the grain is deposited, and the silo owner agrees to hold the grain on behalf of the co-owners. Whenever additional grain is deposited into the silo, or when grain is offloaded from the silo (when the silo owner is presented with a silo receipt), and whenever a silo receipt covering a portion of the grain is transferred, the parties need to agree that the silo owner now holds the grain on behalf of the new co-owners, with the shares of each co-owner adjusted accordingly. These statements should be made expressly, and the statements must be conveyed to all parties, which should not be difficult in a relatively closed market. The effect of this is that whenever there is a change in the composition of the grain in the silo (additional grain is deposited, or grain is offloaded) or when a silo receipt is transferred, the silo owner agrees to hold the grain on behalf of the new co-owners and delivery by way of attornment has taken place from the original co-owners to the new co-owners. Such a system is not necessarily dependent upon the piece of paper, and can also be employed when the Safex silo receipt is dematerialised. To merely state ("Agricultural Products Contract Specifications" Appendix E) that "an electronic Safex silo receipt must have been issued by a silo owner with transfer of ownership of the underlying commodity facilitated electronically via the preferred service provider" cannot lead to a delivery of grain or to a transfer of ownership.

7. Conclusion

It is submitted that both bills of lading and Safex silo receipts can function as documents of title. In the case of bills of lading, all of the functions may not be performed in the case of bulk cargo and where grain of different owners is mixed in a silo, the silo receipt will similarly not be able to perform all of the functions of a document of title. It is submitted, however, that this in itself does not detract from the nature of these documents as documents of title. The attempted delivery of portions of bulk cargoes and grain stored in silos will, however, very often lead to unforeseen consequences. It is submitted, therefore, that the Agricultural Products Division of the JSE should investigate the delivery of the grain in silos by way of attornment. The dematerialisation of Safex silo receipts will, in any event, necessitate such a development. Regarding goods or grain in bulk, the law of banking and finance should have been more aware of private law principles, specifically principles pertaining to the law of property.

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