History and Development of the Bill of Lading

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Below is an excerpt on the originations of bills of lading courtesy of the University of Miami Law School Institutional Repository: If you care to know the earliest forms of bills of lading appear to have originated in Spain in 1544 .

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History and Development of the Bill of Lading

By Daniel E. Murray

distance commercial transactions. In a typical transaction, a shipper delivers goods to a carrier ship. The carrier, the ship's captain, or a clerk then issues a bill of lading.

The bill of lading is an acknowledgment by the carrier that it has received goods for shipment; it includes an agreement to transport these goods to the consignee or his assignees at a specified destination. A bill normally contains statements concerning the nature, quality: and quantity of the goods. These statements reflect either the shipper's representations to the carrier or the carrier's notations from its own inspection of the goods. If the bill of lading specifically notes the defective condition of the goods or their packaging, it is "claused" or "fouled." If no defects are noted, it is called a "clean" bill of lading.

The duty of an ocean carrier to transport goods safely is beyond cavil. But what has been disputed historically is the extent of the carrier's liability to the consignee of the goods or to the buyer of the bill of lading based upon the carrier's issuance of the bill.

The issue of the carrier's liability for misrepresentations in the bill of lading arises in two factual situations: 1) when language in the bill purports to limit the carrier's liability for misrepresentation of the nature, quality, or quantity of the goods, and 2) when the carrier has entered into an indemnity contract with the shipper by which the latter agrees to hold the carrier harmless against claims based on an inaccurate bill of lading.

This article examines the judicial and legislative treatment of these issues, discusses the rights of the consignee or holder of a bill of lading who is damaged by misrepresentations in the bill, and describes several European approaches to the issue of the respective liabilities of shippers and carriers.

Finally, the article considers the impact of several international conventions on uniform bill of lading requirements.

HISTORY AND DEVELOPMENT OF THE CLEAN BILL OF LADING

Common Law Before 1851

Bills of lading came into common use in the sixteenth century. Most of these merely recited the quantity of packages or bales shipped. A few of these early bills, however,

For example, in 1544 a bill of lading was issued in Cadiz, Spain, which contained a statement that the master of a ship had received "112 bags of allam whiche goyth for tonne pype markyd with the marke in the margent to be delyveryd well condyshioned in the ryver of Themys." s

Two years later, a bill was issued in Flanders to a Spaniard residing in Bruges in which the master stated, "The wiche fardells and bailes I knowledge to have receyved of yow John de Fica Spaynyard drye and wel condicioned whiche I shall delyver God preservinge me and my shipp."

By 1549, statements of the condition of shipped goods were becoming even more specific, as illustrated by a bill issued in Bordeaux in which the master acknowledged receipt of the "nombre and quantetie of one hundreth and fyftie tonnes of wyne full and ullagid, which wynes the sayede maister confessyth to have receyved for the sayede Naudyn Revell."

This trend toward more sophisticated bills of lading continued. A 1554 bill limited the carrier's liability for damages caused by dangerous seas: "[X]v tonne ij ponchions of wyne and a barrell of apples all marked with this marke for to be consigned and well condicioned from this aforesaid toune of Roan unto the citie of London exceptid the casalties and dangers of the sea.""

By 1802, merchants had established several principles governing bills of lading. The Marine Ordinances of Louis XIV made the master "answerable for all the goods laded aboard his ship, which he shall be obliged to deliver according to the bills of lading." Clauses certifying the condition of the goods were no longer discretionary; all bills were required to "contain the quality, quantity, and mark of the goods."

The ordinances also recognized the need to limit the liability of a master who signed a bill indicating the condition of goods shipped in containers or packages. Because the master could not know their actual condition, it became customary that "by the quality the exterior and apparent quality only is meant."

It became the usual practice for a master to insert in the clean bill of lading a clause indicating that his statements of quality and quantity were based on the shipper's

Prior to the 1851 English case of Grant v. Norway," American decisions favored the third-party consignee, who relied on the representations in the bill of lading, over the carrier. In fact, the courts generally considered representations in a bill of lading to be conclusive evidence against the carrier in an action brought by a consignee. In 1810, the Supreme Court of Massachusetts held that a carrier was estopped from contradicting a recital in a bill of lading that it had issued.

Similarly, the Supreme Court of New York held that when the bill of lading recited that seventy tons of coal had been received by the carrier, the carrier was estopped from proving that it had received only sixty tons from the shipper.

The legal ramifications of the bill of lading continued to evolve in the nineteenth century. During this time, English and American courts applied similar rules regarding

Common Law After 1851

The scope of a master's authority to bind the owner of the carrier by a false recital in a bill of lading became a crucial issue at common law. As an agent of the ship owner, the master undisputedly had some authority to bind the owner by recitals in a bill. The master's authority was not, however, unlimited. English and American courts during this period defined the master's authority by looking to the type of recital at issue.

In the landmark case of Grant v. Norway,"' an English court addressed the scope of a master's authority and established a doctrine that profoundly influenced the common law of both the United States and England. In Grant the ship's master fraudulently signed a bill of lading stating that twelve bales of silk had been loaded on board. In fact, the master had loaded no silk. A third-party pledgee, who had relied on the false representation, brought suit against the ship-owner based on the bill. The court held that the owner of the ship was not liable for the master's misrepresentations because "the general usage gives notice to all people that the authority of the captain to give bills of lading, is limited to such goods as have been put on board. '

Relying solely on established custom, the court defined the scope of the master's agency: The master had the authority to sign bills of lading reciting the quality or condition of goods actually received, but lacked the authority to sign for goods not

to liability.

The distinction' between statements on a bill of lading referring to quantity and those referring to quality of goods presented English and American courts with difficulty as they attempted to define further the scope of the master's authority to bind the carrier."'

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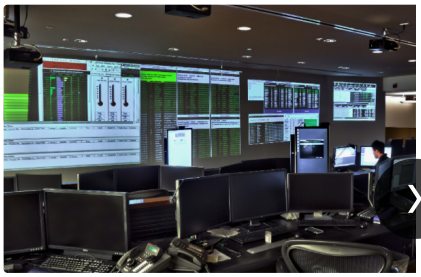

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