

**The Thames**

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**Court :** US Supreme Court

**Decided On :** 1871

**Appeal No. :** 81 U.S. 98

**Appellant :** The Thames

**Judgement :**

The Thames - 81 U.S. 98 (1871)

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**The Thames**

**81 U.S. (14 Wall.) 98**

*APPEAL FROM THE CIRCUIT COURT FOR*

*THE SOUTHERN DISTRICT OF NEW YORK*

## **SYLLABUS**

1. The contract between a ship and the shipper is that which is contained in the bills of lading delivered to the shipper. The bill retained by the ship or "ship's bill," as it is sometimes called, is designed only for its own information and convenience, not for evidence, as between the parties, of what their agreement was. If it differs from the others, they must be considered as the true and only

evidence of the contract.

2. By issuing bills of lading for merchandise stipulating for a delivery to order, the ship becomes bound to deliver it to no one who has not the order of the shipper. It is no excuse for a delivery to the wrong persons that the endorsee of the bills of lading was unknown and that notice of the arrival of the merchandise could not be given to him. Diligent inquiry for the consignee, at least, is a duty. And if, after inquiry, the consignee or the endorsee of a bill of lading for delivery to order cannot be found, the duty of the carrier is to retain the goods until they are claimed or to store them prudently for and on account of their owner. He has no right under any circumstances to deliver them to a stranger.

3. The endorsee of a bill of lading may libel the vessel on which the goods are shipped for failure to deliver them, though he may be but an agent or trustee of the goods for others, as *ex gr.*, the cashier of a bank.

In January, 1868, Alfred Bennett, James Van Pelt, and Gilbert Van Pelt were merchants doing a commission business in New York under the name of Bennett, Van Pelt & Co. The partner, Gilbert, resided in Savannah, where he was in the habit of purchasing cotton and consigning it to

Page 81 U. S. 99

his firm in New York. In the course of this dealing, he bought, on the 28th of January, 1868, one hundred and eleven bales of Brady & Moses, commission merchants in Savannah, for this firm in New York, and on the same day shipped the cotton to New York by the steamship *Thames*, one of the vessels of a line known as the Black Star Line. Three bills of lading of the same tenor and date were issued, each stating that the cotton was shipped by Gilbert Van Pelt, and that it was to be delivered "unto order or to his or their assigns." "And it is expressly understood," the bill of lading went on to say,

"that the articles named in this bill of lading shall be at the risk of the owner, shipper, or consignee thereof, as soon as delivered from the tackles of the steamer at her port of destination, and they shall be received by the consignee

thereof, package by package, as so delivered; and if not taken away the same day by him, they may (at the option of the steamer's agents) be sent to store or permitted to lay where landed, at the expense and risk of the aforesaid owner, shipper, or consignee."

Two of the bills were delivered to said Gilbert Van Pelt, the other being retained as the ship's bill of lading. On the same day, in order to procure money wherewith to pay for the cotton and in compliance with the terms and conditions of the purchase, he drew his draft on his firm in New York for \$8,300, payable fifteen days after sight, to the order of "Billopp Seaman, cashier," and delivered the draft and the two bills of lading which he had to the said Brady & Moses, who held moneys of the Atlanta National Bank of Atlanta, Georgia, for the purpose of investment in bills drawn on New York, and the draft was discounted for the account of that bank, and the proceeds were applied toward the payment of the cotton. The bill or invoice for the cotton was receipted as if it had been paid for in cash, and the Atlanta Bank was charged with the advances. The two bills of lading were endorsed,

"Deliver B. Seaman, Cashier, or order."

"G. S. VAN PELT"

Page 81 U. S. 100

The point of contest in the case was for what exact purpose the two bills of lading had been delivered to Brady & Moses -- that is to say, whether to stand as security until the draft of Gilbert Van Pelt should be accepted or whether to stand until it should be paid. Gilbert Van Pelt himself swore it was given but for the former purpose, and that this was perfectly understood on both sides. Brady & Moses, on the other hand, each swore that it was given no stand as security until the draft should be paid, and in this they were confirmed by the clerk of their house, one Bruen. The draft and the bills of lading were forwarded to Billopp Seaman under general instructions from the Atlanta National Bank to hold and collect for the

credit of the account of the said Atlanta National Bank.

The *Thames* arrived in New York late on Sunday afternoon, February 2, 1868. Before arrival, the purser had made out bills for freight, and made out those for freight on this cotton to Bennett, Van Pelt & Co. There was a memorandum in writing at the foot of the ship's bill of lading, "for Bennett, Van Pelt & Co.," by whom put there was not at all explained further than that it was not in the handwriting of any of the ship's agents at Savannah who signed the bill of lading and made the contract for carriage. The ships of the Black Star Line, of which, as already mentioned, the *Thames* was one, had brought cotton regularly for Bennett, Van Pelt & Co. On Monday morning, February 3, the steamer commenced delivering cargo. The one hundred and eleven bales were delivered on the pier. Bennett, Van Pelt & Co. sent their carts and took the cotton, paid freight for it, receipted for it on the ship's bill of lading, and sold the bulk of it for cash on delivery the day that they got it.

As appeared on the one hand, nothing was done by the Fourth National Bank in reference to the cotton or its delivery from the time of the acceptance of the draft, February 1, 1868, until after its maturity, February 19, 1868. On that day and on that draft, Bennett, Van Pelt & Co. failed, and the draft was protested for nonpayment. On the other hand it did not appear, except by the testimony of

Page 81 U. S. 101

James Van Pelt, which was contradicted by Billopp Seaman, that he, Seaman, knew of the arrival of the vessel before the cotton was delivered and sold. On the 19th, after the draft was dishonored, Seaman, by direction of the President of the Fourth National Bank, sent a clerk to the office of the agents of the ship, where he saw the ship's bill of lading and heard that the cotton had been delivered some days before to Bennett, Van Pelt & Co. He made no demand. Afterwards, on March 16, 1868, the bank made a formal demand for it.

Until the inquiries made on February 19, 1868, the agents of the *Thames* had no notice beyond that which the bill of lading itself gave of any claim to or interest in

the cotton in question by any other parties than Bennett, Van Pelt & Co.

It was undisputed that Seaman had no real interest in the cotton, and that it belonged to the Atlanta National Bank, whose sole agent in New York was the Fourth National Bank.

In this state of things, Seaman filed his libel in the District Court of New York against the *Thames*, March 19, 1868, claiming damages in the sum of \$8,300 for nondelivery to him, at New York, of the cotton, the bill of lading for which had, as he set forth, and as was not denied, been assigned to him for a valuable consideration. The owners of the *Thames* answered the libel and put in issue its material allegations, averring that the cotton was shipped by the *Thames* for and to be delivered to Bennett, Van Pelt & Co., of New York, and was so delivered in due course and without notice of the claim of the libellant, and that no claim for it was ever made by the libellant until long after such delivery; that the alleged assignment of the bill of lading to the libellant was by way of security for personal obligations of Bennett, Van Pelt & Co., who were solvent merchants, and to whom the libellant looked for payment of such obligations, and that he gave no notice and did no act as assignee of the bill of lading on the arrival of the

Page 81 U. S. 102

vessel or upon the delivery of the cotton, nor until after Bennett, Van Pelt & Co. had become insolvent, and that by his delay and laches he waived and lost all claim against the vessel and her owners.

The district court, considering that Seaman had a sufficient interest to sue and holding, upon the evidence, that the delivery of the bills of lading for the cotton was intended to and did transfer it to the libellant as a security for the payment of the draft for \$8,300, decreed in favor of the libellant, and the circuit court affirming that decree, the owners of the vessel brought the case here.

Page 81 U. S. 104

MR. JUSTICE STRONG delivered the opinion of the Court.

The engagement of the ship with the shipper was to deliver the cotton in New York to order. In regard to this there is no doubt. Such was the express stipulation of the bills of lading, which were given on the 28th of January, 1868, when the cotton was received on shipboard. On that day, Gilbert Van Pelt purchased the cotton in Savannah from Brady & Moses, and settled for it by giving in payment his draft upon the firm of Bennett, Van Pelt & Co., in New York, of which firm he was a member. The draft was drawn at fifteen days' sight in favor of the libellant, Billopp Seaman, cashier, or order, and it was discounted by Brady & Moses with money of the Atlanta National Bank, which they had in hand for the purpose of purchasing bills on New York on the bank's account. The price of the cotton was

Page 81 U. S. 105

thus, in substance, paid by money which Van Pelt obtained from the bank, as the proceeds of his draft. At the time when he drew the draft, he also endorsed upon the bills of lading which the ship had given for the cotton an order directing its delivery to Billopp Seaman, cashier, in whose favor the draft was drawn, and delivered them with the draft to Brady & Moses. They were made out in triplicate, as is usual, and, by them all, the ship undertook to deliver the cotton shipped to order. Two of them had been delivered to Van Pelt, the shipper, and the third was retained by the ship. That retained by the ship, it is true, when produced at the trial in the court below, was found to have, at its foot, the memorandum, "for Bennett, Van Pelt & Co.," which is not upon those delivered to the shipper. How that memorandum came there is not explained. No witness has testified in whose handwriting it is, but it is proved not to have been in that of any of the ship's agents at Savannah who signed the bills of lading and who made the contract for carriage. This, however, is of little importance. The contract between the ship and the shipper is that which is contained in the bills of lading delivered. The ship's bill was designed only for its information and convenience -- not for evidence, as between the parties, of what their agreement was. If it differs from the others, they must be considered as the true and only evidence of the contract.

The proofs in the case leave no reasonable doubt that the bills of lading were endorsed to the libellant in order to transfer to him the cotton as a security for the

payment of the draft at its maturity. Gilbert Van Pelt alone asserts the contrary. His testimony, it must be admitted, tends to show that they were endorsed and received as security for the acceptance only of the draft. But he is directly contradicted by Moses, by Brady, and by Bruen, neither of whom has any interest in this controversy and all of whom state that the bills of lading were endorsed to secure to Seaman the payment of the draft, and not merely its acceptance. Besides, their testimony is in harmony with all the probabilities of the case. It is absurd to talk of security for the acceptance

Page 81 U. S. 106

of the draft. No such security was needed. It might have been accepted before it was discounted. Gilbert Van Pelt was a member of the firm upon which it was drawn, and he was at hand when it was discounted. He might then have accepted it. In addition to this, it is significant that the invoice of the sale from Brady & Moses to Van Pelt was made out and receipted as if paid in cash, the draft having been turned into cash by a deduction of discount and exchange, and the advances made upon the draft were at once charged to the Atlanta National Bank. In view of all this, it is incredible that the bills of lading were endorsed to Seaman merely to secure what the maker of the draft could have given on the instant. Nor ought the position of Gilbert Van Pelt to be overlooked. If the bills of lading were endorsed as security for payment of this draft, his firm has obtained from the ship delivery of the cotton through a fraudulent representation that they were the consignees or entitled to the delivery of possession, and they sold it for cash on the day when it was thus wrongfully obtained. He is not, therefore, an unbiased witness. His testimony was given while he was under the influence of a temptation, not unnatural, to vindicate his firm from the guilt of fraudulently abstracting a large amount of property from its rightful owner. Standing as he does in such a position, his statements are not to be credited when in conflict with the positive testimony of Brady, of Moses, and of Bruen and when inconsistent with the strong probabilities of the case.

It must be considered, then, that by the endorsement of the bills of lading, the libellant became the owner of the cotton, and that by force of the contract with the

ship it was deliverable at New York only to him or to his order. Reference to authorities to show that the effect of the endorsement was to vest such ownership in Seaman is quite unnecessary. We may, however, refer to a few. [ [Footnote 1](#) ]

Page 81 U. S. 107

The ship arrived with the cotton at the port of New York on Sunday, the 2d day of February, 1868, late in the afternoon, and on the morning of the 3d delivered it to Bennett, Van Pelt & Co. on their demand, without the production of either of the bills of lading which had been given to the shipper and without any order from Billopp Seaman, who was the endorsee of the bills and to whom alone or to whose order it could rightfully be delivered. It does not appear that any notice of the ship's arrival was given to Seaman or that the ship made any inquiry to ascertain to whom the cotton was deliverable. It would seem that, assuming the mysterious memorandum on the bill of lading retained by the ship was equivalent to an order to deliver to Bennett, Van Pelt & Co., no demand was made for the presentation of such an order and no further inquiry for the consignee was set on foot. The consequence was that Bennett, Van Pelt & Co., having obtained the property without any right to it, sold it for cash on the day it was delivered to them, and failed within a few days afterwards.

No argument is needed to show what is most manifest -- that the delivery which was thus made was a breach of the ship's contract. By issuing bills of lading for the cotton stipulating for a delivery to order, the ship became bound to deliver it to no one who had not the order of the shipper, and this obligation was disregarded instantly on the arrival of the ship. And it is no excuse for a delivery to the wrong persons that the endorsee of the bills of lading was unknown, if indeed he was, and that notice of the arrival of the cotton could not be given. Diligent inquiry for the consignee, at least, was a duty, and no inquiry was made. Want of notice is excused when a consignee is unknown, or is absent, or cannot be found after diligent search. [ [Footnote 2](#) ] And if, after inquiry, the consignee or the endorsees of a bill of lading for delivery to order cannot be found, the duty of the carrier is to retain the goods until they are claimed or to store them prudently for

and on account of their owner. He may thus

Page 81 U. S. 108

relieve himself from a carrier's responsibility. [ [Footnote 3](#) ] He has no right under any circumstances to deliver to a stranger.

It is said, however, that the libellant delayed presenting the bills of lading which had been endorsed to him, and delayed making any demand for the cotton until after the 19th of February, when the draft had fallen due and when it had been dishonored. But that delay cannot justify the ship's delivery of the cotton, on the day after its arrival, to persons who had no bill of lading and no authority whatever to receive it. Had the delay been instrumental in causing such a wrongful delivery, had it been active interposition to mislead the ship, a different case might possibly have been presented. But at most the laches of the libellant was mere inaction, and the wrong delivery was in no degree due to it. The delivery was, as we have stated, made on the morning after the ship's arrival in port, and the ship's order for delivery to Bennett, Van Pelt & Co. was issued before the libellant could have known of its arrival. We say this notwithstanding the testimony of James Van Pelt, which is plainly in conflict with the proved and conceded facts of the case. And as the cotton was sold for cash on the 3d of February, the very day of its delivery, the failure of the libellant to claim it until some weeks afterwards, wrought no injury or loss to the carrier, so far as it appears. We are therefore of opinion that the ship is clearly liable for the cotton to the libellant.

And we think that the libel was rightly filed in the name of Billopp Seaman. By the endorsement of the bills of lading the legal ownership of the cotton passed to him, as well as the right to control its delivery. It is a matter of no importance that the beneficial interest may have been in the bank of which he was cashier. [ [Footnote 4](#) ] The holder of a legal right may always assert it by suit, though he may be accountable to another for what he may recover. A judgment in his favor may always be pleaded in bar against a suit by the

Page 81 U. S. 109

beneficial owner. Besides, it is settled that the agent of absent owners may libel in admiralty either in his own name or in that of his principals. [ [Footnote 5](#) ]

*Decree affirmed.*

[ [Footnote 1](#) ]

7 [Conrad v. Atlantic Insurance Company](#), 1 Pet. 445; [Gibson v. Stevens](#), 8 How. 384; *Thompson v. Dominy*, 14 Meeson & Welsby 403; *Caldwell v. Ball*, 1 Term 205; *Wright v. Campbell*, 4 Burrow 2051; 1 Lord Raymond 271; *Walter v. Ross*, 2 Wash.C.C 283.

[ [Footnote 2](#) ]

*Fisk v. Newton*, 1 Denio 45; *Peytona*, 2 Curtis 21.

[ [Footnote 3](#) ]

*Galloway v. Hughes*, 1 Bailey 553; 1 Conklin's Admiralty 196; *Fisk v. Newton*, *supra*.

[ [Footnote 4](#) ]

*Fairfield v. Adams*, 16 Pickering 381.

[ [Footnote 5](#) ]

[Houseman v. Schooner North Carolina](#), 15 Pet. 49; [McKinlay v. Morrish](#), 21 How. 355; [Lawrence v. Minturn](#), 17 How. 100.