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The Delaware

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Decided On : 1871

Appeal No. : 81 U.S. 579

Appellant : The Delaware

Judgement :

The Delaware - 81 U.S. 579 (1871)
U.S. Supreme Court The Delaware, 81 U.S. 14 Wall. 579 579 (1871)

The Delaware

81 U.S. (14 Wall.) 579

APPEAL FROM THE CIRCUIT COURT

FOR THE DISTRICT OF CALIFORNIA

SYLLABUS

1. A "clean" bill of lading -- that is to say a bill of lading which is silent as to the place of stowage -- imports a contract that the goods are to be stowed under deck.

2. This being so, parol evidence of an agreement that they were to be stowed on deck is inadmissible.

The Oregon Iron Company, on the 8th of May, 1868, shipped on board the bark Delaware, then at Portland, Oregon, 76 tons of pig iron, to be carried to San Francisco, at a freight of $4.50 a ton. The bill of lading was in these words:

"Shipped, in good order and condition, by Oregon Iron Company, on board the good bark *Delaware,* Shillaber, master, now lying in the port of Portland, and bound to San Francisco, to say seventy-five tons pig iron, more or less (contents, quality, and weight unknown), being marked as in the margin, and are to be delivered in like good order and condition at the aforesaid port of San Francisco, at ship's tackles (the dangers of the seas, fire, and collision excepted) unto _____, or assigns, he or they paying freight for the said goods in United States gold coin (before delivery, if required), as per margin, with 5 percent primage and average accustomed."

"In witness whereof the master or agent of said vessel hath affirmed to three bills of lading, all of this tenor and date; one of which being accomplished, the others to stand void. Vessel not accountable for breakage, leakage, or rust."

"C. E. SHILLABER"

"For the captain"

"PORTLAND, May 8, 1868"

The iron was not delivered at San Francisco, and on a libel filed by the Iron Company, the defense set up was that by a verbal agreement made between the Iron Company and the master of the ship before the shipment or the signing of the bill of lading, the iron was stowed on deck, and that the

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whole of it, with the exception of 6 tons and 90 lbs., had been jettisoned in a storm.

On the trial, the owners of the vessel offered proof of this parol agreement. The libellants objected, and the court excluded the evidence on the ground that parol proof was inadmissible to vary the bill of lading; and decreed in favor of the

libellants for the iron that was thrown overboard. On appeal the case was disposed of in the same way in the circuit court. It was now here, the question being, as in the two courts below, whether in a suit upon a bill of lading like the one here, for nondelivery of goods stowed on deck, and jettisoned at sea, it is competent, in the absence of a custom to stow such goods on deck, to prove by parol a verbal agreement for such a stowage.

The district court, in its opinion, among other things, said as follows:

"It is not disputed that the ordinary bill of lading *imports that the goods are to be safely stowed under deck.* It must also be admitted that, if they are stowed on deck with the consent of the shipper, or in accordance with a well established and generally recognized usage, either of the particular trade or in respect of a particular kind of goods, the ship will not be liable. The point presented is, whether the consent of the shipper can be proved by parol."

"The case of *Creery v. Holly,* [Footnote 1] is directly in point. In that case Mr. Justice Nelson says:"

" It is true that in this case nothing is said in the bill of lading as to the manner of stowing the goods, whether on deck or under deck; but the case concedes that the legal import of the contract, as well as the understanding and usage of merchants, impose upon the master the duty of putting them under deck, unless otherwise stipulated; and if such is the judgment of the law upon the face of the instrument, parol evidence is as inadmissible to alter it as if the duty was stated in express terms. It was part of the contract. It seems to me it would be extremely dangerous, and subject to the full force of every objection that excludes the admission of this species of evidence, to permit any stipulation, express or implied, in these instruments, to be thus varied. . . . If the implied obligation of the master in this case,

arising out of the conceded construction of the bill of lading, may be varied by parol evidence, I do not see how any other stipulation included in it could be

sustained upon an offer to impeach it in the same way."

"In *Niles v. Culver,* [Footnote 2] the same principle was applied to a memorandum, which imported a contract."

"In *White v. Van Kirk,* [Footnote 3] parol proof offered by a shipper of goods to show that the master agreed to take a particular route was held to be inadmissible."

"In *The Waldo,* [Footnote 4] the language of Mr. Justice Ware is nearly identical with that of Mr. Justice Nelson, above quoted:"

" It is true that the bill of lading does not say in express terms that the goods shall be stowed under deck, but *this is a condition tacitly annexed to the contract by operation of law,* and it is equally binding on the master, and the shipper is equally entitled to its benefit, although it was stated in express terms. The parol evidence, then, is offered to control the legal operation of the bill of lading, and it is as inadmissible as though it were to contradict its words."

"In *Garrison v. Memphis Insurance Company,* [Footnote 5] it was held that, where the bill of lading mentioned that the carrier was not to be responsible for injuries caused by the 'perils of the river,' parol evidence was inadmissible to show that by usage 'fire' was included among those perils."

" * * * *"

"Where a promissory note mentions no time of payment, the law adjudges it to be due immediately, and parol evidence is not admissible to show a different time of payment agreed upon by the parties at the time it was executed. [Footnote 6]"

These and other cases were relied on by the court, and in addition to them *Barber v. Brace,* in the Supreme Court of Connecticut, [Footnote 7] was cited by counsel, to show that "a parol agreement anterior to a written contract is inadmissible."

The question, as the reader familiar with the decisions on the subject will see, is one upon which opinions not consistent with some of those thus above quoted have been

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given in certain courts. In this Court the question had never been specifically passed upon. On that account and for the importance of the question, the argument against the view in the courts below, is presented with more than ordinary fullness.

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MR. JUSTICE CLIFFORD delivered the opinion of the Court.

Shipowners, as carriers of merchandise, contract for the safe custody, due transport and right delivery of the goods; and the shipper, consignee, or owner of the cargo contracts to pay the freight and charges; and by the maritime law, as expounded by the decisions of this Court, the obligations of the shipowner and the shipper are reciprocal, and it is equally well settled that the maritime law creates reciprocal liens for the enforcement of those obligations, unless the lien is waived by some express stipulation, or is displaced by some inconsistent and irreconcilable provision in the charter party or bill of lading. [Footnote 8] Shippers should in all cases require a bill of lading, which is to be signed by the master, whether the contract of affreightment is by charter party or without any such customary written instrument. Where the goods of a consignment are not all sent on board at the same time, it is usual for the master, mate, or other person in charge of the deck, and acting for the carrier, to give a receipt for the parcels as they are received, and when the whole consignment is delivered, the master, upon those receipts being given up, will sign two or three, or, if requested, even four bills of lading in the usual form, one being for the ship and the others for the shipper. More than one is required by the shipper, as he usually sends one by mail to the consignee or vendee, and if four are signed he sends one to his agent or factor, and he should always retain one for his own use. Such an instrument

acknowledges the bailment of the goods, and is evidence of a contract for the safe custody, due transport, and right delivery of the same, upon the terms, as to freight, therein described, the extent of the obligation being specified in the instrument. Where no exceptions are made in the bill of lading, and in the absence of any legislative provisions prescribing a different rule, the carrier is bound to keep and transport the goods safely, and to make right delivery of the same at the port of destination,

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unless he can prove that the loss happened from the act of God or the public enemy, or by the act of the shipper or owner of the goods. Stipulations in the nature of exceptions may be made limiting the extent of the obligation of the carrier, and in that event the bill of lading is evidence of the ordinary contract of affreightment, subject, of course, to the exceptions specified in the instrument; and in view of that fact the better description of the obligation of such a carrier is that, in the absence of any Congressional legislation upon the subject, he is in the nature of an insurer, and liable in all events and for every loss or damage, however occasioned, unless it happened by the act of God or the public enemy, or by some other cause or accident, without any fault or negligence on the part of the carrier, and expressly excepted in the bill of lading. [Footnote 9]

Seventy-five tons of pig iron were shipped by the libellants, on the eighth of May, 1868, on board the bark *Delaware,* then lying in the port of Portland, Oregon, to be transported from that port to the port of San Francisco, for the freight of four dollars and fifty cents per ton, to be delivered to the shippers or their assigns at the port of destination, they paying freight as therein stipulated, before delivery if required, with five percent primage and average accustomed. Dangers of the seas, fire, and collision were excepted in the bill of lading, and the statement at the close of the instrument was, "vessel not accountable for breakage, leakage, or rust."

Process was served and the claimant appeared and filed an answer, in which he admits the shipment of the iron and the execution of the bill of lading exhibited in

the record. Sufficient also appears in the record to show that the voyage was performed and that but a small portion of the iron shipped, to-wit, some thirteen or fourteen thousand pounds, was ever delivered to the consignees, and that all the residue of the shipment was thrown overboard as a jettison

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during the voyage, which became necessary by a peril of the sea, for the safety of the other associated interests and for the preservation of the lives of those on board. Sacrificed as all that portion of the shipment was as a jettison in consequence of a peril of the sea, excepted in the bill of lading, the claimant insists that the libellants have no claim against the ship, and that the libellants as the shippers of the iron must bear their own loss.

Evidence was exhibited by the claimant sufficient to show that the allegations of the answer that the iron, not delivered, was sacrificed during the voyage as a jettison in consequence of a peril of the sea are true, but the libellants allege that the iron was improperly stowed upon the deck of the vessel, and that the necessity of sacrificing it as a jettison arose solely from that fact, and that no such necessity would have arisen if it had been properly stowed under deck, as it should have been by the terms of the contract specified in the bill of lading. That the iron not delivered was stowed on deck is admitted, and it is also conceded that where goods are stowed in that way without the consent of the shipper the carrier is liable in all events if the goods are not delivered, unless he can show that the goods were of that description, which, by the usage of the particular trade, are properly stowed in that way, or that the delivery was prevented by the act of God or the public enemy, or by some other cause or accident, without any fault or negligence on the part of the carrier and expressly excepted in the bill of lading.

Goods, though lost by perils of the sea, if they were stowed on deck without the consent of the shipper, are not regarded as goods lost by the act of God within the meaning of the maritime law, nor are such losses regarded as losses by perils of the sea which will excuse the carrier from delivering the goods shipped to the consignee unless it appears that the manner in which the goods were stowed is

sanctioned by commercial usage, or unless it affirmatively appears that the manner of stowage did not, in any degree, contribute to the disaster; that the loss happened without

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any fault or negligence on the part of the carrier, and that it could not have been prevented by human skill and prudence, even if the goods had been stowed under deck, as required by the general rules of the maritime law. [Footnote 10]

Enough appears in the record to show that all the iron not delivered to the consignees was stowed on deck, and there is no proof in the case to show that the usage of the trade sanctioned such a stowage in this case, or that the manner in which it was stowed did not contribute both to the disaster and to the loss of the goods. [Footnote 11]

None of these principles are controverted by the claimant, but he insists that the iron not delivered was stowed on deck by the consent of the shippers and in pursuance of an oral agreement between the carrier and the shippers consummated before the iron was sent on board, and before the bill of lading was executed by the master. Pursuant to that theory testimony was offered in the district court showing that certain conversations took place between the consignee of the bark and the agent of the shippers tending to prove that the shippers consented that the iron in question should be stowed on the deck of the vessel. Whether any express exception to the admissibility of the evidence was taken or not does not distinctly appear, but it does appear that the question whether the evidence was or not admissible was the principal question examined by the district court, and the one upon which the decision in the case chiefly turned. Apparently it was also the main point examined in the circuit court, and it is certain that it has been treated by both sides in this Court as the principal issue involved in the record, and in view of all the circumstances the Court here decides that it must be considered that the question as to the admissibility of the evidence is now open for revision, as the decree for the libellant was equivalent to a ruling rejecting the evidence offered in defense or to a ruling granting a motion to strike it out after it

had been admitted, which is a course

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often pursued by courts in cases where the question deserves examination. What the claimant offered to prove was that the iron was stowed on deck with the consent of the shippers, but the libellants objected to the evidence as repugnant to the contract set forth in the bill of lading, and the decree was for the libellants, which was equivalent to a decision that the evidence offered was incompetent. Dissatisfied with that decree the respondent appealed to the circuit court, where the decree of the district court was affirmed, and the same party appealed from that decree and removed the cause into this Court for reexamination.

Even without any further explanation it is obvious that the only question of any importance in the case is whether the evidence offered to show that the iron in question was stowed on deck with the consent of the shippers was or was not properly rejected, as it is clear if it was, that the decree must be affirmed, and it is equally clear, if it should have been admitted, that the decree must be reversed. [Footnote 12]

Different definitions of the commercial instrument, called the bill of lading, have been given by different courts and jurists, but the correct one appears to be that it is a written acknowledgment, signed by the master, that he has received the goods therein described from the shipper, to be transported on the terms therein expressed, to the described place of destination, and there to be delivered to the consignee or parties therein designated. [Footnote 13] Regularly the goods ought to be on board before the bill of lading is signed, but if the bill of lading, through inadvertence or otherwise, is signed before the goods are actually shipped, as if they are received on the wharf or sent to the warehouse of the carrier, or are delivered into the custody of the master or other agent of the owner or charterer of the vessel and are afterwards placed on board, as and for the goods embraced in the bill

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of lading, it is clear that the bill of lading will operate on those goods as between the shipper and the carrier by way of relation and estoppel, and that the rights and obligations of all concerned are the same as if the goods had been actually shipped before the bill of lading had been signed. [Footnote 14] Such an instrument is twofold in its character -- that is, it is a receipt as to the quantity and description of the goods shipped, and a contract to transport and deliver the goods to the consignee or other person therein designated, and upon the terms specified in the same instrument. [Footnote 15] Beyond all doubt, a bill of lading, in the usual form, is a receipt for the quantity of goods shipped and a promise to transport and deliver the same as therein stipulated. [Footnote 16] Receipts may be either a mere acknowledgment of payment or delivery or they may also contain a contract to do something in relation to the thing delivered. In the former case and so far as the receipt goes only to acknowledge payment or delivery, it, the receipt, is merely *prima facie* evidence of the fact, and not conclusive, and therefore the fact which it recites may be contradicted by oral testimony, but insofar as it is evidence of a contract between the parties, it stands on the footing of all other contracts in writing, and cannot be contradicted or varied by parol evidence. [Footnote 17] Text writers mention the bill of lading as an example of an instrument which partakes of a twofold character, and such commentators agree that the instrument may, as between the carrier and the shipper, be contradicted and explained in its recital that the goods were in good order and well conditioned, by showing that their internal state and condition was bad or not such as is represented in the instrument, and in like manner, in respect to any other fact which it erroneously

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recites, but in all other respects it is to be treated like other written contracts. [Footnote 18]

Bills of lading when signed by the master, duly executed in the usual course of business, bind the owners of the vessel if the goods were laden on board or were actually delivered into the custody of the master, but it is well settled law that the owners are not liable, if the party to whom the bill of lading was given had no

goods, or the goods described in the bill of lading were never put on board or delivered into the custody of the carrier or his agent. [Footnote 19] Proof of fraud is certainly a good defense to an action claiming damages for the nondelivery of the goods, but it is settled law in this Court that a clean bill of lading imports that the goods are to be safely and properly stowed under deck, and that it is the duty of the master to see that the cargo is so stowed and arranged that the different goods may not be injured by each other or by the motion or leakage of the vessel, unless by agreement that service is to be performed by the shipper. [Footnote 20] Express contracts may be made in writing which will define the obligations and duties of the parties, but where those obligations and duties are evidenced by a clean bill of lading, that is, if the bill of lading is silent as to the mode of stowing the goods, and it contains no exceptions as to the liability of the master, except the usual one of the dangers of the sea, the law provides that the goods are to be carried under deck, unless it be shown that the usage of the particular trade takes the case out of the general rule applied in such controversies. [Footnote 21] Evidence of usage is admissible in

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mercantile contracts to prove that the words in which the contract is expressed, in the particular trade to which the contract refers, are used in a particular sense and different from the sense which they ordinarily import, and it is also admissible in certain cases, for the purpose of annexing incidents to the contract in matters upon which the contract is silent, but it is never admitted to make a contract or to add a new element to the terms of a contract previously made by the parties. Such evidence may be introduced to explain what is ambiguous, but it is never admissible to vary or contradict what is plain. Evidence of the kind may be admitted for the purpose of defining what is uncertain, but it is never properly admitted to alter a general rule of law, nor to make the legal rights or liabilities of the parties other or different from what they are by the common law. [Footnote 22] Cases may arise where such evidence may be admissible and material, but as none such was offered in this case it is not necessary to pursue that inquiry. Exceptions also exist to the rule that parol evidence is not admissible to vary or

contradict the terms of a written instrument where it appears that the instrument was not within the statute of frauds nor under seal, as where the evidence offered tends to prove a subsequent agreement upon a new consideration. Subsequent oral agreements in respect to a prior written agreement, not falling within the statute of frauds, may have the effect to enlarge the time of performance, or may vary any other of its terms, or, if founded upon a new consideration, may waive and discharge it altogether. [Footnote 23] Verbal agreements, however, between the parties to a written contract, made before or at the time of the execution of the contract, are in general inadmissible to contradict or vary its terms

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or to affect its construction, as all such verbal agreements are considered as merged in the written contract. [Footnote 24]

Apply that rule to the case before the Court and it is clear that the ruling of the court below was correct, as all the evidence offered consisted of conversations between the shippers and the master before or at the time the bill of lading was executed. Unless the bill of lading contains a special stipulation to that effect, the master is not authorized to stow the goods sent on board as cargo on deck, as when he signs the bill of lading, if in common form, he contracts to convey the merchandise safely, in the usual mode of conveyance, which, in the absence of proof of a contrary usage in the particular trade, requires that the goods shall be safely stowed under deck, and when the master departs from that rule and stows them on deck, he cannot exempt either himself or the vessel from liability in case of loss by virtue of the exception, of dangers of the seas unless the dangers were such as would have occasioned the loss even if the goods had been stowed as required by the contract of affreightment. [Footnote 25] Contracts of the master, within the scope of his authority as such, bind the vessel and give the creditor a lien upon it for his security, except for repairs and supplies purchased in the home port, and the master is responsible for the safe stowage of the cargo under deck, and if he fails to fulfill that duty, he is responsible for the safety of the goods, and if they are sacrificed for the common safety, the goods stowed under deck do not contribute to the loss. [Footnote 26] Shipowners in a contract by a bill of lading

for the transportation of merchandise take upon themselves the responsibilities of common carriers, and the master, as the agent of such owners, is bound to have the cargo safely secured under deck, unless he is authorized to carry the goods on

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deck by the usage of the particular trade or by the consent of the shipper, and if he would rely upon the latter he must take care to require that the consent shall be expressed in a form to be available as evidence under the general rules of law. [Footnote 27]

Where goods are stowed under deck, the carrier is bound to prove the casualty or *vis major* which occasioned the loss or deterioration of the property which he undertook to transport and deliver in good condition to the consignee, and if he fails to do so, the shipper or consignee, as a general rule, is entitled to his remedy for the nondelivery of the goods. No such consequences, however, follow if the goods were stowed on deck by the consent of the shipper, as in that event neither the master nor the owner is liable for any damage done to the goods by the perils of the sea or from the necessary exposure of the property, but the burden to prove such consent is upon the carrier, and he must take care that he has competent evidence to prove the fact. [Footnote 28] Parol evidence, said Mr. Justice Nelson, in the case of *Creery v. Holly,* [Footnote 29] is inadmissible to vary the terms or legal import of a bill of lading free of ambiguity, and it was accordingly held in that case that a clean bill of lading imports that the goods are stowed under deck, and that parol evidence that the vendor agreed that the goods should be stowed on deck could not legally be received even in an action by the vendor against the purchaser for the price of the goods which were lost in consequence of the stowage of the goods in that manner by the carrier. Even where it appeared that the shipper or his agent who delivered the goods to the carrier repeatedly saw them as they were stowed in that way and made no objection to their being so stowed, the Supreme Court of Maine held that the evidence of those facts was not admissible to vary the legal import of the contract of shipment; that the bill of lading being what is called a clean bill of lading, it bound the owners of the vessel to carry the goods

under deck, but the court admitted that where there is a well known usage in reference to a particular trade to carry the goods as convenience may require, either upon or under deck, the bill of lading may import no more than that the cargo shall be carried in the usual manner. [Footnote 30] Testimony to prove a verbal agreement that the goods might be stowed on deck was offered by the defense in the case of *Barber v. Brace,* [Footnote 31] but the court rejected the testimony, holding that the whole conversation, both before and at the time the writing was given, was merged in the written instrument, which undoubtedly is the correct rule upon the subject. Written instruments cannot be contradicted or varied by evidence of oral conversations between the parties which took place before or at the time the written instrument was executed; but in the case of a bill of lading or a charter party, evidence of usage in a particular trade is admissible to show that certain goods in that trade may be stowed on deck, as was distinctly decided in that case. [Footnote 32] But evidence of usage cannot be admitted to control or vary the positive stipulations of a bill of lading, or to substitute for the express terms of the instrument an implied agreement or usage that the carrier shall not be bound to keep, transport, and deliver the goods in good order and condition. [Footnote 33]

Remarks, it must be admitted, are found in the opinion of the court, in the case of *Vernard v. Hudson,* [Footnote 34] and also in the case of *Sayward v. Stevens,* [Footnote 35] which favor the views of the appellant, but the weight of authority and all the analogies of the rules of evidence support the conclusion of the court below, and the Court here adopts that conclusion as the correct rule of law, subject to the qualifications herein expressed.

Decree affirmed.

[Footnote 1]

14 Wendell 26.

[Footnote 2]

8 Barbour 205.

[Footnote 3]

25 *id.* 17.

[Footnote 4]

Davies 61.

[Footnote 5]

60 U. S. 19 How. 312.

[Footnote 6]

Niles v. Culber, 8 Barbour 209; *Thompson v. Ketchum,* 8 Johnson 109; *Hunt v. Adams,* 7 Mass. 518; *S.C.,* 6 *id.* 519; *Pattison v. Hull,* 9 Cowen 747.

[Footnote 7]

3 Conn. 9.

[Footnote 8]

The Eddy, 5 Wall. 494; *The Bird of Paradise,* 5 Wall. 555; *Bags of Linseed,* 1 Black 112.

[Footnote 9]

The Cordes, 21 How. 23; *Clark v. Branwell,* 12 How. 272; *Elliott v. Rossell,* 10 Johnson 7.

[Footnote 10]

Lawrence v. Minturn, 17 How. 114; *The Peytona,* 2 Curtis 23.

[Footnote 11]

Gould v. Oliver, 4 Bingham's New Cases 142; Story on Bailment 531.

[Footnote 12]

Angell on Carriers 212; Redfield on Carriers 247 to 269; *The St. Cloud,* Brown & Lushington Adm. 4.

[Footnote 13]

Abbott on Shipping, 7th Am. ed. 323; *O'Brien v. Gilchrist,* 34 Me. 558; 1 Parsons on Shipping 186; Machlachlan on Shipping 338; Emerigon on Ins. 251.

[Footnote 14]

Rowley v. Bigelow, 12 Pickering 307; *The Eddy,* 5 Wall. 495.

[Footnote 15]

Machlachlan on Shipping 338-339; Smith's Mercantile Law, 6th ed. 308.

[Footnote 16]

Bates v. Todd, 1 Moody & Robinson 106; *Barkley v. Watling,* 7 Adolphus & Ellis 29; *Wayland v. Mosely,* 5 Ala. 430; *Brown v. Byrne,* 3 Ellis & Blackburne 714; *Blaikie v. Stembridge,* 6 C.B.N.S. 907.

[Footnote 17]

1 Greenleaf on Evidence, 12th ed., 305; *Bradley v. Dunipace,* 1 Hurlstone & Colt 525.

[Footnote 18]

Hastings v. Pepper, 11 Pickering 42; *Clark v. Barnwell,* 12 How. 272; *Ellis v. Willard,* 5 Selden 529; *May v. Babcock,* 4 Ohio 346; *Adams v. Packet Co.,* 5 C.B.N.S. 492; *Sack v. Ford,* 13 C.B.N.S. 100.

[Footnote 19]

The Schooner Freeman, 18 How. 187; Maude & Pollock on Shipping 233; *Grant v. Norway,* 10 C.B. 665; *Zipsy v. Hill Foster & Finelly,* 573; *Meyer v. Dresser,* 16 C.B.N.S. 657.

[Footnote 20]

The Cordes, 21 How. 23; *Sandeman v. Scurr,* Law Reports 2 Q.B. 98; *Swainston v. Garrick,* 2 Law Journal, N.S. Exchequer 355; *African Co. v. Lamzed,* Law Reports 1 C.P. 229; *Alston v. Hering,* 11 Exchequer 822.

[Footnote 21]

Abbott on Shipping (7th Am. ed.) 345; *Smith v. Wright,* 1 Cain 43; *Gould v. Oliver,* 2 Manning & Granger 208; *Waring v. Morse,* 7 Ala. 343; *Falkner v. Earle,* 3 Best & Smith 363.

[Footnote 22]

Oelricks v. Ford, 23 How. 63; *Barnard v. Kellogg,* 10 Wall. 383; *Simmons v. Law,* 3 Keyes 219; *Spartali v. Benecke,* 10 C.B. 222.

[Footnote 23]

Emerson v. Slater, 22 How. 41; *Gross v. Nugent,* 5 Barnewall & Adolphus 65; *Nelson v. Boynton,* 3 Metcalf 402; 1 Greenleaf on Evidence 303; *Harvey v. Grabham,* 5 Adolphus & Ellis 61.

[Footnote 24]

Ruse v. Ins. Co., 23 N.Y. 519; *Wheelton v. Hardisty,* 8 Ellis & Blackburn 296; 2 Smith's Leading Cases 758; Angell on Carriers, 4th ed., 229.

[Footnote 25]

The Rebecca, Ware 210; *Dodge v. Bartol,* 5 Greenleaf 286; *Walcott v. Ins. Co.,* 4 Pickering 429; *Copper Co. v. Ins. Co.,* 22 *id.* 108; *Adams v. Ins. Co., ib.,* 163.

[Footnote 26]

The Paragon, Ware 329, 331; 2 Phillips on Insurance, 704; *Brooks v. Insurance Co.,* 7 Pickering 259.

[Footnote 27]

The Waldo, Davies, 162; *Blackett v. Exchange Co.,* 2 Crompton & Jervis 250; 1 Arnould on Insurance 69; *Lenox v. Insurance Co.,* 3 Johnson's Cases 178.

[Footnote 28]

Shackleford v. Wilcox, 9 La. 38.

[Footnote 29]

14 Wendell 28.

[Footnote 30]

Sproat v. Donnell, 26 Me. 187; 2 Taylor on Evidence 1062, 1067; *Hope v. State Bank,* 4 La. 212; 1 Arnould on Insurance 70; *Lapham v. Insurance Co.,* 24 Pickering 1.

[Footnote 31]

3 Conn. 14.

[Footnote 32]

Barber v. Brace, 3 Pickering 13; 1 Smith's Leading Cases, 6th American edition, 837.

[Footnote 33]

The Reeside, 2 Sumner 570; 1 Duer on Insurance 17.

[Footnote 34]

3 Sumner 406.

[Footnote 35]

3 Gray 101.

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