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CARRIERS BY WATER.

THE rights and responsibilities of the owners and carriers of goods transported by water are similar to those established by law in regard to carriers generally. The shipowners who employ their vessels as general ships, the packet and mail companies whose boats are regularly despatched on fixed and certain lines of travel, in a word, all whose regular business it is to carry goods by water for any one who may choose to employ them, are alike, in the absence of express or implied stipulations to the contrary,[1] held liable for all loss of or damage to the goods during the carriage, arising from whatever cause except the act of God (or, as it is sometimes called, inevitable accident), and the doings of the public enemy: 2 Redfield on Railways 4. And the same general principles, of course, regulate alike the rights, duties, and responsibilities of all carriers by land and by water. But as in practice

[1] *McManus* v. *Lancashire Railway Co.*, 2 H. & N. 693; *Austin* v. *Manchester Railway Co.*, 10 C. B. 454; *Carr* v. *Lancashire Railway Co.*, 7 Exch. 707; *Wise* v. *Great Western Railway Co.*, 1 H. & N. 63; *Phillips* v. *Edwards*, 3 Id. 813; *Nicholson* v. *Willan*, 5 East 507; *Riley* v. *Horne*, 5 Bing. 217; *Parsons* v. *Monteath*, 13 Barb. 553; *Moore* v. *Evans*, 14 Id. 524; *Lee* v. *Marsh*, 43 Id. 102; *Fay* v. *Steamer New World*, 1 Cal. 348; *Stale* v. *Townsend*, 37 Ala. 247; *Cooper* v. *Berry*, 21 Ga. 526; *Laing* v. *Colder*, 8 Penn. St. 479; *Sager* v. *P., S., & P. Railroad Co.*, 31 Maine 228.

almost all maritime contracts of carriage are, to a greater or less extent, taken out of the rules of the common law, by the special terms of the bills of lading, charter-parties, or other contracts of affreightment, under which merchandise is almost invariably shipped, it is proposed in this article to consider solely some of the more important questions which have arisen, especially of late, under such contracts.

The office and effect of a common bill of lading have been fixed by numerous judicial decisions.[1] It properly consists of two parts: first, an acknowledgment of the receipt of certain goods in a specified condition; and, secondly, an engagement to transport and deliver the same to the consignee at the place of destination, on fixed terms and subject to certain conditions and limitations.[1] The contract, like all other written contracts, must be construed by its own language, and cannot be varied or explained by parol evidence,[2] although evidence of usage has been admitted to fix the meaning of such phrases as "the dangers of the seas;" *Gordon* v. *Little*, 8 S. & R. 553; *Sampson* v. *Gazzam*, 6 Port. 123; and as a general rule parol evidence may be received to determine the signification of the words used: *Steam Nav. Co.* v. *Silva*, 13 C. B. N. S. 616; *Bradley* v. *Dunipace*, 1 H. & C. 521. See *Chouteau* v. *Leech*, 18 Penn. St. 224; *Butler* v. *The Arrow*, 1 Newb. Adm. 59. The receipt, however, as between the original parties, is subject to such modification, and is to be regarded as *primâ facie* evidence only against the carrier: *Sears* v. *Wingate*, 3 Allen 103; *Gowdy* v. *Lyon*, 9 B. Mon. 112; *Great Western Railroad Co.* v. *McDonald*, 18 Ill. 172; *Illinois Central Railroad Co.* v. *Cowles*, 32 Id. 117; *Blade* v. *Chicago Railroad Co.*, 10 Wisc. 4. But where the bill of lading has been endorsed for value to third parties, or where advances have been made or credit

[1] See *Dickerson* v. *Seelye*, 12 Barb. 99; *Dows* v. *Greene*, 16 Id. 72; s. c., 32 Id. 502; 24 N. Y. 638; *Dows* v. *Rush*, 28 Barb. 157; *Wolfe* v. *Myers*, 3 Sandf. 7; *Ward* v. *Whitney*, Id. 399; s. c., 4 Seld. 442; *Covill* v. *Hill*, 4 Denio 323; *Coosa River Steamboat Co.* v. *Barclay*, 30 Ala. 120; *Wayland* v. *Mosely*, 5 Id. 430; *O'Brien* v. *Gilchrist*, 34 Maine 554; *Knox* v. *The Ninetta*, Crabbe 534; *The Schooner Emma Johnson*, 1 Sprague 527; *Grove* v. *Brien*, 8 How. U. S. 429; *Bryans* v. *Nix*, 4 M. & W. 775.

[2] *Shaw* v. *Gardner*, 12 Gray 488; *Sayward* v. *Stevens*, 3 Id. 97; *Wolfe* v. *Myers*, 3 Sandf. 7; *Simmons* v. *Law*, 8 Bosw. 213; *White* v. *Van Kirk*, 25 Barb. 16; *May* v. *Babcock*, 4 Ohio 334; *Ind. Railroad Co.* v. *Remmy*, 13 Ind. 518; *Cox* v. *Peterson*, 30 Ala. 608; *The Schooner Reeside*, 2 Sumner 567.

given by third parties, acting *bonâ fide*, on the faith of the statements contained in this receipt, it becomes, to that extent at any rate, conclusive upon the carrier in favor of such third parties: *Sears* v. *Wingate*, 3 Allen 103; *Cox* v. *Peterson*, 30 Ala. 608; *Howard* v. *Tucker*, 1 B. & Ad. 512. The bill of lading is also *primâ facie* evidence that the goods were, at the time of shipment, in the condition in which it describes them as being: *Nelson* v. *Woodruff*, 1 Black U. S. 156; *Ellis* v. *Willard*, 5 Seld. 529. See *Benjamin* v. *Sinclair*, 1 Bailey 174; *Hastings* v. *Pepper*, 11 Pick. 41; *Hill* v. *Sturgeon*, 35 Mo. 212; *Bradstreet* v. *Heran*, 2 Blatchf. C. C. 116. Of course, however, any such statements in the receipt as "contents unknown," or the like, would prevent such questions from arising against the carrier, even under ordinary circumstances, in favor of third parties; *The Columbo*, 19 Law Rep. 376; *Shepherd* v. *Naylor*, Id. 43; *Bissell* v. *Price*, 16 Ill. 104; *Ohrloff* v. *Briscall*, Law Rep. 1 P. C. 231; but in one case, where the bill of lading contained the clause, "weight, contents, and value unknown," and on delivery goods packed in cases were found to be injured, it was held that they would be presumed to have been properly packed and fit for transportation, unless there was something from which the contrary could be inferred: *English* v. *Ocean Steam Nav. Co.*, 2 Blatchf. C. C. 425. If the master signs a bill of lading for goods not delivered to the ship, the owners are not bound by this, even to *bonâ fide* endorsees of the bill, as it is not within the scope of the master's authority to subject the owners to responsibility for goods not received: *Grant* v. *Norway*, 10 C. B. 665; *Hubbersty* v. *Ward*, 8 Exch. 330; *Rowley* v. *Bigelow*, 12 Pick. 307. See *The Bark Edwin*, 1 Sprague 477; *Coleman* v. *Riches*, 16 C. B. 104. Nor is the vessel liable *in rem* by reason of such an acknowledgment: *The Bark Edwin*, 1 Sprague 477; *Schooner Freeman* v. *Buckingham*, 18 How. U. S. 182. But where, merely through inadvertence, the bill of lading is signed before the goods are on board, but upon the faith and assurance that they are at hand and ready to be shipped, and afterwards they actually are shipped, then, as against the shipper and master, the bill of lading may operate upon these goods by way of relation and estoppel: SHAW, C. J., in *Rowley* v. *Bigelow*, 12 Pick. 307.

The contract of a bill of lading usually is, to deliver the goods at the port of destination, to the consignee or his assigns, he or

they first paying the freight or other customary charges thereon, and with an exemption from liability for certain perils. In this, the only points calling for special attention are, the exception of responsibility for certain risks; the provision for delivery to the assigns of the consignee or endorsees of the bill of lading; and the stipulation for prior payment of the charges for transportation.

The carrier is not to be charged for any loss or injury arising solely from the excepted risks. And the exceptions specially contracted for are in addition to those made by law to the responsibility of all carriers; thus, under a bill of lading which excepts the dangers of the seas only, the carriers are not responsible for a loss by the public enemy.[1] Under an exception of liability for detention of a ship by ice, where lighterage was necessary to load the ship, a detention of the ship from the lighterage being delayed by ice, was held to be excused: *Hudson* v. *Edes*, Law Rep. 2 Q. B. 566; s. c., 3 Id. 412. But an agreement to load a full cargo upon a ship, "fire excepted," is not discharged by the ship catching fire when part of the cargo is on board and the rest at the ship's side, though the ship was scuttled to put out the fire, and the master afterwards sold the part of the goods thus damaged, and forwarded the remainder by another vessel: *Jones* v. *Holm*, Law Rep. 2 Exch. 335. And a snow storm is not included in an exception of riots, strikes, or any other accident beyond the contractor's control: *Fenwick* v. *Schmalz*, Law Rep. 3 C. P. 313. Fire is not, and cannot be made by usage, a peril of the seas: *Garrison* v. *Memphis Ins. Co.*, 19 How. U. S. 312. But see *Gordon* v. *Little*, 8 S. & R. 553; *Sampson* v. *Gazzam*, 6 Port. 123; *Steam Nav. Co.* v. *Silva*, 13 C. B. N. S. 616; *Bradley* v. *Dunipace*, 1 H. & C. 521. So, where the cargo of a steam-vessel was damaged by water escaping from the pipe of a boiler which had been cracked by frost, this was held not to be the act of God, but the result of negligence on the part of the captain in filling his boiler over night; and a custom to fill the boiler over night was

[1] *Gage* v. *Turell*, 9 Allen 299. But in this case it appeared that there was a previous written contract for the carriage of the goods, containing no clause affecting the carrier's responsibility; and the bill of lading sued on was given merely to furnish the usual shipping documents for transmission; and the court lay some stress on this fact: BIGELOW, C. J., citing *Lamb* v. *Parkman*, 1 Sprague 343; *Morrison* v. *Davis*, 20 Penn. St. 117.

held to be no excuse: *Siordet* v. *Hall*, 4 Bing. 607. But under the usual exception of perils of the seas, the shipowner is not responsible for an injury resulting from his vessel having run foul of another through misfortune; *Buller* v. *Fisher*, 3 Esp. 67; *Jones* v. *Pitcher*, 3 Stew. & P. 176; or the fault of such other vessel: *Smith* v. *Scott*, 4 Taunt. 126. See *Vennall* v. *Garner*, 1 Cromp. & M. 21; *Rigby* v. *Hewitt*, 5 Exch. 240.

If sufficient care, in view of all the risks, whether excepted or not, was not used, this is negligence for which the carrier will be answerable: *Muddle* v. *Stride*, 9 Car. & P. 380. The carrier has no right to load the goods on deck, unless authorized by the custom of the particular trade (of which, when established, the owner will be taken to be conusant), or by the agreement of the parties; and for any breach of his duty in this regard he is, of course, liable: *Barber* v. *Brace*, 3 Conn. 9; *Waring* v. *Morse*, 7 Ala. 343. And where goods are carried on deck by such authority, the rights and responsibilities of the carrier are the same as if they had been stowed in the hold; *Gould* v. *Oliver*, 4 Bing. N. C. 134; s. c., 5 Scott 445; *Smith* v. *Wright*, 1 Caines 43; *Baxter* v. *Leland*, 1 Abbott Adm. 348; except that the shipper must bear the risk of all perils arising from the mode of stowage which he has himself authorized; *Lawrence* v. *Minturn*, 17 How. U. S. 100; *Dodge* v. *Bartol*, 5 Greenl. 286. Where the goods were seized as contraband under the laws of a foreign country, other than that in which the goods had been shipped or to which the vessel belonged, and were condemned by legal process in the foreign courts, but it did not appear that there had been any wrongful act or neglect on the part of the owner of the goods, or any knowledge on his part that they were contraband in such foreign country, it was held that the loss proceeded from an inevitable necessity, for which the carrier must be held liable, in the absence of any stipulation to the contrary: *Spence* v. *Chadwick*, 10 Q. B. 517. See also *Howland* v. *Greenway*, 22 How. U. S. 491; *Schieffelin* v. *Harvey*, 6 Johns. 170. In *Lloyd* v. *Guibert*, Law Rep. 1 Q. B. 115, it was held that unless otherwise provided in the contracts, the law of the country to which the ship belongs must govern in all such agreements. In this case the bill of lading excepted only the act of God and the dangers of the seas. Moisture or dampness is a peril of the seas for which the carrier will not be liable, there being no defect in the ship or

in the manner of loading the goods, unless it might have been prevented or remedied by reasonable skill and diligence on his part. And where any loss or injury proceeds from a principle of decay existing in the commodity itself, even though excited into action by the unavoidable close confinement of the ship, the shipper must bear the loss, unless the usual and proper precautionary measures have been omitted by the carrier: See 2 Redfield on Railways 127 (§ 168 of 3d ed.), and cases cited. And generally it may be said that a carrier by water is bound to provide a ship sufficiently well furnished in all respects for the voyage contemplated, well manned, and supplied with all needful sails, anchors, and other equipage; and for failure in all or any of these respects he is liable. See *Bancroft* v. *Hussey*, 2 Const. Ct. 114; *Bell* v. *Reed*, 4 Binn. 127; *Dickinson* v. *Haslett*, 3 Har. & J. 345. This being first done, he cannot afterwards be made liable for any excepted risk, unless it arise from some wrongful or negligent act or omission of himself or his servants: *Ohrloff* v. *Briscoll*, Law Rep. 1 P. C. 231; *Phillips* v. *Clarke*, 2 C. B. N. S. 156; s. c., 5 Id. 881; *Steamboat Co.* v. *Basin*, Harp. 262; *Williams* v. *Grant*, 1 Conn. 487; *Gordon* v. *Buchanan*, 5 Yerg. 71. Where damage or loss of the goods is shown, the burden is on the carrier to show that it occurred from an excepted risk; *The Ship Martha*, Olcott Adm. 140; *The Huntress*, Daveis 82; *The Emma Johnson*, 1 Sprague 527; *The Zone*, 2 Id. 19; *McManus* v. *Lancashire Railway*, 4 H. & N. 327; *The Rappahannock* v. *Woodruff*, 11 La. An. 698; *Edwards* v. *Steamer Cahawba*, 14 Id. 224; but when this appears to be the case, the burden is generally taken to be on the shipper or owner of the goods to prove some negligence that will render the carrier liable; *Hunt* v. *Propeller Cleveland*, 1 Newb. Adm. 221; s. c., 6 McLean C. C. 76; *Ohrloff* v. *Briscoll*, Law Rep. 1 P. C. 231; *Thomas* v. *The Morning Glory*, 13 La. An. 269; *The May Queen*, 1 Newb. Adm. 464; *Nav. Co.* v. *Shand*, 4 Moo. P. C. N. S. 272; though this has been doubted: *Tardos* v. *The Toulon*, 14 La. An. 429; *Roberts* v. *Riley*, 15 Id. 103; *Phillips* v. *Edwards*, 3 H. & N. 813; *Berry* v. *Cooper*, 28 Ga. 543; *Muddle* v. *Stride*, 9 Car. & P. 380.

The bill of lading, as it provides for a delivery of the goods to the order or assigns of the consignee, is regarded as a *quasi* negotiable instrument; *Fox* v. *Nott*, 6 H. & N. 630; *Lickbarrow* v. *Mason*, 1 Smith's Lead. Cas. 388, and notes; and the endorsee

takes all the rights of the original consignee, and sometimes, as we have seen (*Sears* v. *Wingate*, 3 Allen 103; *Howard* v. *Tucker*, 1 B. & Ad. 512; as to special endorsements, see *Gibbs* v. *Potter*, 10 M. & W. 70), even greater rights, inasmuch as he may generally regard the receipt as conclusive upon the carrier. And the right of stoppage in transitu is defeated by a previous *bonâ fide* endorsement and delivery of the bill of lading for value: *Lickbarrow* v. *Mason*, *supra*. The endorsee, under the present English statute, 18 & 19 Vict. c. 111, takes by transfer all vested or contingent rights of action, even though the goods are no longer at sea: *Short* v. *Simpson*, 12 Jur. N. S. 258; *Lewis* v. *M'Kee*, Law Rep. 2 Exch. 37; *Smurthwaite* v. *Wilkins*, 11 C. B. N. S. 842.

Unless there is an agreement to the contrary, the carrier may look for payment of the agreed charges to the shipper named in the bill of lading, although he does not own the goods, and the carrier has waived his lien thereon: *Wooster* v. *Tarr*, 8 Allen 270; *Blanchard* v. *Page*, 8 Gray 281; *Barker* v. *Havens*, 17 Johns. 234; *Layng* v. *Stewart*, 1 W. & S. 222; *Tapley* v. *Martens*, 8 T. R. 451; *Holt* v. *Westcott*, 43 Maine 445. *Tobin* v. *Crawford*, 9 M. & W. 716, *contra*, seems to have gone on the ground that the plaintiff had given credit to the endorsee of the bill of lading. And the consignee, or the endorsee of the bill of lading, to whom the goods are delivered at his request, impliedly contracts to pay the freight thereon (*Meriam* v. *Funck*, 4 Denio 110; *Dougal* v. *Kemble*, 3 Bing. 383; *Scaife* v. *Tobin*, 3 B. & Ad. 523; but see *Sanders* v. *Vanzeller*, 4 Q. B. 260), the consideration of the promise being the delivery of the goods; *Kemp* v. *Clark*, 12 Q. B. 647; see *Coleman* v. *Lambert*, 5 M. & W. 502; but the consignee cannot be made personally liable for general average, although before receiving the goods he has had notice that they have become subject to that charge, where the bill of lading does not make the payment of general average a condition precedent to the delivery of the goods: *Scaife* v. *Tobin*, 3 B. & Ad. 523. And any consignee, even though an intermediate one, has by virtue of his character as such, the right to adjust and settle a claim for damages to a part of the property: *Davis* v. *Patterson*, 24 N. Y. 317. But a neglect on the part of the carrier to enforce his claims against the consignee, whereby the shipper is injured, may release the shipper from liability:

Thomas v. *Snyder*, 39 Penn. St. 317; *Tobin* v. *Crawford*, 9 M. & W. 716; but see, per BIGELOW, C. J., 8 Allen 272. The ship has also a lien upon the goods for freight, both under the usual provisions of the bill of lading and by the general principles of the law of carriers; *Skinner* v. *Upshaw*, 2 Ld. Raym. 752; and this lien covers also charges for previous transportation: *Bissell* v. *Price*, 16 Ill. 408; *Lee* v. *Salter*, Lalor's Sup. to Hill & Denio 163. But any damage to the goods, for which the carrier is liable, may be recouped from the freight; and the goods can be held only for the balance.[1] But the master must tender the goods as ready for delivery on payment of the freight; *Palmer* v. *Lorilard*, 16 Johns. 356; *Lanata* v. *Grinnell*, 13 La. An. 24; and if he demand more than is due, he or his agents are liable in trover as for a conversion of the goods, the owner being ready to pay the proper amount; and a formal tender of the amount due is unnecessary: *Adams* v. *Clark*, 9 Cush. 215; *Isham* v. *Greenham*, 1 Handy 357. And it has been said that the relation of debtor and creditor must subsist between the owner of the goods and the carrier, so that an action at law might be maintained for the payment of the debt sought to be enforced: *Fitch* v. *Newbury*, 1 Doug. Mich. 1. And possession is necessary to the existence of every lien strictly so called; so that if the goods are once delivered, the lien is waived: *Boggs* v. *Martin*, 13 B. Mon. 243; but a delivery obtained by fraud, and probably one by mistake, if no rights of *bonâ fide* purchasers have intervened, will not cause a waiver of the lien: *Bigelow* v. *Heaton*, 6 Hill 43; s. c. 4 Denio 496; *Hays* v. *Riddle*, 1 Sandf. 248. And the lien is also destroyed by accepting security for the future payment of the freight, or by agreeing to postpone the time of payment until after the delivery of the goods, *Crawshay* v. *Homfray*, 4 B. & Ald. 50, the rule being that where the agreed mode of payment is inconsistent with the existence of a lien, that will be regarded as waived: 3 Kent Com. 221; *The Schooner Volunteer*, 1 Sum-

[1] *Snow* v. *Carruth*, 1 Sprague 324; *Bartram* v. *McKee*, 1 Watts 39; *Hill* v. *Leadbetter*, 42 Maine 572; *Fitchburg and Worcester Railroad Co.* v. *Hanna*, 6 Gray 539; *Edwards* v. *Todd*, 1 Scammon 462; *Humphreys* v. *Reed*, 6 Whart. 435; *Leech* v. *Baldwin*, 5 Watts 446. In England the rule is different; and any damage to the goods can be recovered for only by cross action: *Davidson* v. *Gwynne*, 12 East 380; *Shields* v. *Davis*, 6 Taunt. 65; *Gibson* v. *Sturge*, 10 Exch. 622; Lord CAMPBELL, C. J., in *Thompson* v. *Gillespie*, 5 El. & Bl. 209.

ner 551; *Raymond* v. *Tyson*, 17 How. U. S. 53; *Olsager* v. *St. Katherine's Dock*, 14 M. & W. 794; *Foster* v. *Colby*, 3 H. & N. 705; *Kirchner* v. *Venus*, 12 Moore P. C. 361; *The Bird of Paradise*, 5 Wall. U. S. 481. This lien is favored by the law, and will not be overthrown unless the facts are clearly inconsistent with its maintenance: STORY, J., in *Certain Logs of Mahogany*, 2 Sumner 589; WARE, J., in *Drinkwater* v. *Brig Spartan*, 1 Ware 158; *The Schooner Volunteer*, 1 Sumner 551, 570; *Howard* v. *Macondray*, 7 Gray 516; *Clarkson* v. *Edes*, 4 Cow. 470. The lien includes only the charges for transportation, *Steamboat Virginia* v. *Kraft*, 25 Mo. 76; and cannot be extended to cover the expenses of keeping the chattels detained: *Somes* v. *British Empire Shipping Co.*, 6 Jur. N. S. 761; but where the consignee refused to pay freight until after the goods were placed in his store, and the shipper thereupon stored them in a warehouse, subject to his own order, giving notice to the consignee, it was held that the shipowners were not accountable for the subsequent misconduct of the warehouseman: *The Eddy*, 5 Wall. U. S. 481. And it is now well settled that where goods are received for transportation from a wrongdoer, without any knowledge or consent of the rightful owner, the carrier cannot set up any lien for freight as against the real owner; *Buskirk* v. *Purington*, 2 Hall 261; *Stevens* v. *Boston & Worcester Railroad Co.*, 8 Gray 262; *Ames* v. *Palmer*, 42 Maine 197; inasmuch as carriers are not bound to receive goods from any but the rightful owners, nor without taking payment in advance: FLETCHER, J., in *Stevens* v. *Boston & Worcester Railroad Co.*, *supra*. Such charges as dead freight, demurrage, or general average, may be made a lien upon the cargo by agreement; but it has been held that where, by charter-party, a vessel was to be loaded and despatched with all speed, freight payable on delivery, and the charterer's liability to cease upon shipment of the cargo, if the cargo was worth the freight upon arrival at the port of discharge, the cargo to be subject to a lien for freight, dead freight, or demurrage, which lien the master was bound to enforce,—the cargo being worth the freight when it reached the port of destination, the shipowners could not hold the charterers liable for delay in loading the vessel: *Bannister* v. *Breslauer*, Law Rep. 2 C. P. 497; *Scaife* v. *Tobin*, 3 B. & Ad. 523.

Freight is not earned unless the goods are carried to the port

of destination: *Benner* v. *Equitable Safety Ins. Co.*, 6 Allen 222; *Cook* v. *Jennings*, 7 T. R. 381; *Welch* v. *Hicks*, 6 Cow. 504; *Cage* v. *Baltimore Ins. Co.*, 7 Cranch 358; and the same rule applies to the carriage of passengers: *Howland* v. *Brig Lavinia*, 1 Pet. Adm. 123. See *Bonsteel* v. *Vanderbilt*, 21 Barb. 26; *Leman* v. *Gordon*, 8 Car. & P. 392; *Muloy* v. *Becker*, 5 East 316. And freight or passage-money paid in advance may be recovered back, if the vessel is lost or the voyage abandoned before reaching its destination: *Benner* v. *Equitable Safety Ins. Co.*, 6 Allen 222, without the fault of the shipper or passenger: *Griggs* v. *Austin*, 3 Pick. 20; *Detouches* v. *Peck*, 9 Johns. 210. But if the owner of goods voluntarily receives them at a place short of their destination, freight *pro ratâ itineris* is due: *Cage* v. *Baltimore Ins. Co.*, 7 Cranch 358; *Rossiter* v. *Chester*, 1 Doug. Mich. 154. But if the master refuses to repair the ship, or to send on the goods, this is not of itself such a voluntary acceptance as will render him liable for freight *pro ratâ*; and the *bona fides* of a subsequent offer by the master to repair and complete the voyage is a question for the jury: *Welch* v. *Hicks*, 6 Cow. 504; *Cage* v. *Baltimore Ins. Co.*, 7 Cranch 358. The owners of goods are deemed to have accepted them voluntarily at an intermediate port, when, knowing that the voyage has been abandoned, its further prosecution having become impossible or extremely hazardous, they then demand the same of the agents of the forwarders with whom the goods have been stored, at the same time tendering the charges for storage: but see *Somes* v. *Br. Em. Ship. Co.*, 6 Jur. N. S. 761; and bring replevin to recover the goods on the refusal of the agents to deliver them: *Rossiter* v. *Chester*, 1 Doug. Mich. 154. And the consignee must bear the expense of further transportation after he has voluntarily accepted the goods at an intermediate port: *Reed* v. *Dick*, 8 Watts 479. A reservation in the bill of lading of the privilege of reshipment does not vary the carrier's liability for the safe delivery of the goods: *Little* v. *Semple*, 8 Mo. 99; *Whitesides* v. *Russell*, 8 W. & S. 44. If the shipper, after the goods have been delivered to the master for transportation, but before the commencement of the voyage, wrongfully removes them, he is liable for the stipulated freight, less the substituted freight which the shipowner either has actually made, or by the use of due diligence might have made, on that voyage: *Baily* v. *Damon*, 3 Gray 92. And

if a bill of lading has been given, the shipper must also indemnify the master or owner for the difference, if any, between the value of the goods when shipped and the amount which he may be compelled to pay to an assignee of the bill of lading: *Bartlett* v. *Darnley*, 6 Duer 194.

Disputes have sometimes arisen as to the amount of freight to be paid, generally either from a variation in the measurement of the cargo, or else from a discrepancy between the charter-party or other written contract of affreightment and the bill of lading. In one case a vessel agreed to carry a cargo of cotton at an agreed rate "per ton of fifty cubic feet delivered." Previously to being loaded the cotton had been subjected to a high pressure, and so expanded considerably on being taken from the ship; whereupon the shipowners claimed freight according to the measurement when delivered. A custom was proved to pay freight, under such circumstances, according to the measurement when shipped; and it was held that, independently of such custom, freight was demandable only on the measurement shipped: *Buckle* v. *Knoop*, Law Rep. 2 Exch. 125 & 333; S. P. in *Gibson* v. *Sturge*, 10 Exch. 622. In these cases, had the cargoes shrunk instead of expanding, there can be no doubt that the ship would not have been liable to deliver more than it had received. In another late case a shipowner at L. requested the defendants to purchase goods for him at C.; and as the goods were to be on the owner's account he consented to a nominal rate of freight being inserted in the bills of lading. Before the order was completed he transferred the ship to the plaintiffs; but neither the defendants nor the shipmaster had any notice of this transfer. The defendants accordingly procured and shipped the goods; and the master signed bills of lading therefor, with the clause, "Freight on said goods free on owner's account." Before the vessel arrived the consignee stopped payment, and the defendants thereupon claimed to stop the goods *in transitu* without paying anything for freight. Held, that they were not liable for any freight: *Mercantile Bank* v. *Gladstone*, Law Rep. 3 Exch. 233. Although the price named in the bill of lading is generally conclusive, *Foster* v. *Colby*, 3 H. & N. 705, *Palmer* v. *Gracie*, 4 Wash. C. C. 410, yet one party is not bound by it where the other knew that the master had no right to insert such a rate: *Barnard* v. *Wheeler*, 24 Me. 412.

The mortgagee of a vessel, who intervenes by taking possession,

or, where that is impossible, by giving notice to the mortgagor and the charterers before the freight is payable, but after it is earned, is entitled to the freight as against the assignee in bankruptcy of the mortgagor: *Rusden* v. *Pope*, Law Rep. 3 Exch. 269. The general question of the priority of claims has been much discussed in some late English cases: *The Great Eastern*, Law Rep. 2 Adm. & Ecc. 88; *The Feronia*, Id. 65; *The Scio*, 1 Id. 353; *The Edward Oliver*, 1 Id. 379; *Brown* v. *Tanner*, Law Rep. 3 Ch. 597; *Bell* v. *Blyth*, Law Rep. 6 Eq. 201.

As the right of lien upon the goods carried depends upon possession, it often becomes important to determine whether, under a charter-party, the possession and control of the ship remain in the general owners, or have passed to the charterers, who thus become owners for the voyage, or *pro hac vice*: *Sandeman* v. *Scurr*, Law Rep. 2 Q. B. 86; *Trinity House* v. *Clark*, 4 M. & S. 288; *Colvin* v. *Newberry*, 1 Cl. & Fin. 283; *Dean* v. *Hogg*, 10 Bing. 345; *Lucas* v. *Nockells*, 4 Bing. 729; *Reynolds* v. *Toppan*, 15 Mass. 370; *Pickman* v. *Woods*, 6 Pick. 248; *Drinkwater* v. *The Spartan*, 1 Ware 149; *Pitkin* v. *Brainard*, 5 Conn. 451; *Emery* v. *Hersey*, 4 Greenl. 407; *Clarkson* v. *Edes*, 4 Cow. 470; *Schooner Argyle* v. *Worthington*, 17 Ohio 460; *Holmes* v. *Pavenstedt*, 5 Sandf. 497; *McLellan* v. *Reed*, 35 Maine 172; *Eames* v. *Cavaroc*, 1 Newb. Adm. 528; *The Golden Gate*, Id. 308; *The Aberfoyle*, 1 Abbott Adm. 242. In one case it was provided that the ship should receive on board at London all such goods as the freighter thought fit to load, proceed therewith to Madras, there deliver the outward cargo, receive from the freighter's agents a homeward cargo, and deliver the same in London. All the cabins but one, which was reserved for the captain, to be at the disposal of the freighter, who was to appoint the supercargo; the captain and crew were employed and paid by the owners. The court held that as there were no actual words of demise in the charter-party, the possession remained in the general owners: *Saville* v. *Campion*, 2 B. & Ald. 503. But in another case, although the charter-party did contain express words of present demise, yet taking the whole instrument into consideration, it was held that the possession did not pass to the freighters, but remained in the general owners: *Christie* v. *Lewis*, 5 Moore 211; s. c. 2 Brod. & B. 440. And the general rule is to follow the

intention of the parties, as they have expressed it in their written contracts.

The principal questions that have arisen in regard to passenger-carriers by water have concerned the treatment of the passengers by the officers of the ship. The master of the vessel is liable for any injury to a passenger caused by his negligence or wrongful act, either towards the passenger or in the management of the ship: *Nieto* v. *Clark*, 1 Cliff. C. C. 85; *Chamberlain* v. *Chandler*, 3 Mason 242; *Young* v. *Fewson*, 8 Car. & P. 55; *Boyce* v. *Bayliffe*, 1 Camp. 58; *Malton* v. *Nesbitt*, 1 Car. & P. 70. The ship is bound to furnish a good and sufficient supply of provisions; but an action for breach of this duty will not be sustained except for a real grievance: *Young* v. *Fewson*, 8 Car. & P. 55; *The Aberfoyle*, 1 Blatchf. C. C. 360. The captain may exclude passengers from the cabin-table for ungentlemanly conduct, though it would be hard to define the precise degree of want of polish which would justify such exclusion: *Prendergast* v. *Compton*, 8 Car. & P. 454. For an unlawful exclusion, the captain is liable: Ibid. And conversely, the passengers are entitled to courteous and proper treatment from the officers and crew of the vessel: *West* v. *Steamer Uncle Sam*, 1 McAll. C. C. 505; *Chamberlain* v. *Chandler*, 3 Mason 242; see *McGuire* v. *Steamship Golden Gate*, 1 McAll. C. C. 104. There is some doubt as to the extent of the authority of the captain of a merchant vessel to imprison a passenger for refusing, upon the approach of an enemy, to take the post assigned him: *Boyce* v. *Bayliffe*, 1 Campb. 58. But a passenger, by reason solely of his character as such, is under no such obligation to the ship as will deprive him of the right to recover for meritorious salvage services performed by him: *Newman* v. *Walters*, 3 Bos. & P. 612. But the services must be extraordinary. See 2 Parsons, Shipping & Admiralty, 2d ed., 268, note 5. A passenger assaulted by the shipmaster, has his remedy against the shipowners; but he can recover only his actual, and not vindictive damages: *McGuire* v. *Steamship Golden Gate*, 1 McAll. C. C. 104; *Pearson* v. *Duane*, 4 Wall. U. S. It has been held that the sale of a passage-ticket by a certain steamer does not constitute an unconditional contract to carry the person purchasing such ticket by that steamer; and if at the time of the sale, and without the knowledge of either party, the steamer was lost at sea, the holder of the ticket can recover no more than he paid