



The role of bills of lading in commercial transactions

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Abstract

The carriage of goods by sea is a fundamental aspect of international trade and bills of lading play a prominent role in ensuring the completion of a successful trade transaction. The bill of lading is a vital instrument in the international commercial transactions which facilitates the international sale of goods. Bills of lading function as receipts of the goods shipped, evidence of the existence of a contract of carriage and a document of title. This article examined the nature and role of bills of lading in commercial transactions.

Keywords: bills of lading, contract of carriage, document of title, Hague-Visby Rules, receipt for goods

Introduction

A bill of lading is a document issued by or on behalf of a carrier of goods by sea to a shipper with whom a contract of carriage has been entered into ^[1]. In a bill of lading the carrier undertakes to carry the goods to their destination and deliver them in accordance with the terms of the contract of carriage and the shipper agrees to pay the freight ^[2]. It contains details of the parties, the goods, conditions for the carriage, and other information about the carriage. Bills of lading traditionally represent a receipt for the goods and include statements as to their description and apparent order and condition ^[3]. A bill of lading is evidence of a contract of carriage. It can 'transfer rights of property and possession, and contractual rights and liabilities as against carriers ^[4]. The bill of lading serves as the carrier's guarantee to the shipper to deliver the goods to the holder of the bill of lading ^[5]. The bill of lading has three functions: it is a receipt that confirms that the goods have been placed on board a ship for delivery; it is evidence of a contract of carriage between the shipper and carrier; and it serves as a document of title which allows the carrier deliver the goods to the person as identified by the bill. This article examines these functions with a view to highlight the relevance of bills of lading in commercial transactions.

The Bill of Lading as a Receipt for Goods Shipped

The bill of lading signifies that the shipper has delivered the goods into the care of the carrier pending their discharge at the port of delivery ^[6]. Article III (3) of the Hague-Visby Rules provides that after receiving the goods the carrier or the master is to issue a bill of lading which shows among other things; the leading marks necessary for identification of the goods; either the number of packages or pieces, or the quantity, or weight, and; the apparent order and condition of the goods. A bill of lading containing the particulars stated in Article III (3) of the Hague-Visby Rules firmly establishes that the goods are in the possession of the carrier, and no contradictions are admissible when the person entitled to the goods is in possession of the bill.

The carrier has a duty to ensure that goods received in prime condition, arrive at the port of delivery undamaged. After a cursory survey of the goods to be delivered, the carrier or the shipmaster is to record his findings on the state of the goods in the bill of lading ^[7]. The carrier will be liable to the lawful holder of a bill of lading where the particulars of the goods which are recorded in the bill of lading are untrue. In *Compania Naviera Vasconzada v Churchill & Sim* ^[8] it was stated that for the particulars of the goods in the bill of lading to be held against the carrier the contents of the bill must have influenced the third party to whom delivery was to be made. A carrier who issues a clean bill of lading ^[9] will not be allowed to deny that the goods were delivered in good condition except if at the time the goods were examined there was no way he would have known about the damage to the goods ^[10]. The Court of Appeal held in *Silver v Ocean Steamship Co* ^[11] that the shipowners could rely on the fact that the holes in the tins could not have been noticed at the time of loading. It is important for the bill of lading to contain a record of the condition of the goods after they have been loaded on board ready to be shipped for delivery. In *Golodetz (M) & Co Inc v Czarnikow-Rionda Co Inc (The Galatia)* ^[12] it was held that the bill of lading was clean because the recording in the bill as to state of the goods did not reveal that before the fire the goods were damaged.

A bill of lading which indicates that the goods are in less than perfect condition is 'claused' ^[13]. Where the defects in the goods are recorded in the bill of lading the carrier is not entitled to make any further statements in the bill as to such defects ^[14]. In *Sea Success Maritime v African Maritime Carriers* ^[15] the court concurred with the findings of the arbitrators and it was held that if the charterers were going to record the condition of the goods as contained in the survey report there was no reason why the goods should not be loaded. In *The David Agmashenebeli (Cargo Owners) v The David Agmashenebeli (Owners) (The David Agmashenebeli)* ^[16] the court

held that a shipmaster has a duty to record the state of the goods in the bill of lading as defective if he is satisfied that this would be done by 'a reasonably observant master, ... even if not all or even most such masters would necessarily agree with him...'. In an analysis of the decision in *The David Agmashenebeli* it has been stated that when the goods are referred to in the bill as damaged when they are not, it greatly reduces their worth^[17]. Additionally, it has been posited that while the decision in *The David* is of great importance, it will negatively affect the lawful holders of bills of lading^[18]. This is because the decision creates an avenue for carriers to escape liability by using words which have the effect of preventing them from making a definite record in the bill when referring to the condition of the goods^[19].

The shipper may offer to indemnify the carrier for the issue of a clean bill of lading even though the goods are not in the best condition. However, such an agreement will not avail the carrier in action instituted by the lawful holder of the bill, and he may be unable to recover his loss from the shipper^[20]. In *Brown, Jenkinson & Co Ltd v Percy Dalton (London) Ltd*^[21] where the claimants instituted an action to recover the loss suffered as a result of issuing clean bills of lading for cargo which was clearly damaged based on the reliance on the promise of an indemnity, it was held that the action of the shipowners was unlawful.

The bill of lading shows that the goods, the details of which are contained in it, are in the possession of the carrier and if the carrier alleges that the goods referred to in the bill were not shipped he must persuade the court that this is an accurate account of the facts^[22]. In *Smith v Bedouin Steam Navigation Co*^[23] Lord Shand stated that in order to persuade the court the carrier must show that the goods were not loaded on board the ship.

The carrier may include in the bill of lading the words which show that the quantity of the goods to be delivered have not been confirmed as being the same with the records supplied by the shipper^[24]. In *New Chinese Antimony Co Ltd v Ocean Steamship Co*^[25] the bill of lading contained a printed clause which stated 'weight, measurement, contents and value, except for the purpose of estimating freight, unknown', and a clause in the margin stated, 'a quantity said to be 937 tons'. It was held that the figure in the bill of lading was not indicative of the quantity of antimony oxide ore shipped. It was stated in *Noble Resources Ltd v Cavalier Shipping Corp (The Atlas)*^[26] that the quantity of goods shipped cannot be said to correspond with the information provided by the shipper where the bill of lading indicated that the weight of the goods was unconfirmed.

By virtue of Article III (3) of the Hague-Visby Rules it is the shipper's duty to ensure that a bill of lading is issued and he must establish that this duty was fulfilled. In *Agrosin Pte Ltd v Highway Shipping Co Ltd (The Mata K)*^[27] it was held that the claimants had not shown that they requested a bill of lading which did not contain the words 'weight unknown'. Depending on the particulars presented by the shipper the carrier may record either the quantity, weight or number of the goods in the bill of lading^[28].

The Bill of Lading as an Evidence of the Contract of Carriage

Another function of the bill of lading is that it serves as evidence of the contract of carriage.

The issuing of the bill of lading is not the first step taken in a contract of carriage, prior to the issue of the bill the shipper and the carrier will have decided on matters pertaining to the contract of carriage, although not in writing^[29]. If the goods are destroyed while in the possession of the carrier before the issuing of the bill, the shipper will recover the loss from the carrier^[30]. In *Pyrene v Scindia Navigation Co*^[31] it was held that when a contract is entered into between the parties with the intention that a bill of lading will be issued even if this is not done immediately, a contract of carriage has been created. Where the provisions of the bill of lading differ from the contract made between the parties, the shipper may prove this by providing the facts of the contract which was entered into orally^[32]. In *Crooks v Allan*^[33] it was noted that the bill of lading only contains the terms of the contract. In *SS Ardennes (Cargo Owners) v SS Ardennes (Owners) (The Ardennes)*^[34] it was stated that:

It is, I think, well settled that a bill of lading is not, in itself, the contract between the shipowner and the shipper of goods, though it has been said to be excellent evidence of its terms...The contract has come into existence before the bill of lading is signed. The bill of lading is signed by one party only and handed by him to the shipper, usually after the goods have been put on board. No doubt if the shipper finds that it contains terms with which he is not content, or that it does not contain some term for which he has stipulated, he might, if there were time, demand his goods back, but he is not in my opinion thereby prevented from giving evidence that there was a contract which was made before the bill of lading was signed and that it was different from that which is found in the document or contained some additional term. He is not a party to the preparation of the bill of lading, nor does he sign it.

When the bill of lading is transferred to the consignee it 'becomes conclusive evidence of the terms of the contract of carriage'^[35].

However, in *Leduc v Ward*^[36] Lord Esher stated

[I]f the goods have been received by the captain, [the bill of lading] is the evidence in writing of what the contract of carriage between the parties is; it may be true that the contract of carriage is made before it is given, because it would generally be made before the goods are sent down to the ship: but when the goods are put on board the captain has authority to reduce that contract into writing; and then the general doctrine of law is applicable by which, where the contract has been reduced into writing, which is intended to constitute the contract, parol evidence to alter or qualify the effect of such writing is not admissible, and the writing is the only evidence of the contract except where there is some usage so well established and generally known that it must be taken to be incorporated with the contract.

It has been posited that the duty on the shipper to adduce oral evidence in favour of his assertion that the bill of lading contains terms different from those agreed on between the shipper and the carrier may be almost impossible to fulfil^[37]. The shipper contributes to the preparation of the bill of lading by furnishing the details of the goods in the form provided by the carrier. Therefore, this provides an opportunity for the shipper to ensure that the bill of lading conforms with the agreement made with the carrier^[38]. In an analysis of Lord Esher's statement, it has been stated that a rejection of the decision in *The Ardennes* would be unwise in view of the practice obtainable today as the law on oral evidence has since changed^[39].

The Bill of Lading as a Document of Title

In *Sanders Bros v Maclean*^[40] the function of the bill of lading as a document of title was described thus:

A cargo at sea while in the hands of the carrier is necessarily incapable of physical delivery. During this period of transit and voyage, the bill of lading by the law merchant as universally recognised as its symbol, and the indorsement and delivery of the bill of lading operates as a symbolical delivery of the cargo. Property in the goods passes by such indorsement and delivery of the bill of lading, whenever it is the intention of the parties that the property should pass, just as under similar circumstances the property would pass by an actual delivery of the goods.

A negotiable bill of lading performs the function of a document of title as a result of its transferability while a straight bill which is intended to enable a particular individual obtain delivery of the goods is non-negotiable and as a result was regarded as not being a document of title^[41]. However, the House of Lords in *JJ MacWilliam Co Inc v Mediterranean Shipping Co SA (The Rafaela S)*^[42] upheld the decision of the Court of Appeal that a straight bill of lading is a document of title under the Hague-Visby Rules. In an analysis of the basic functions of the bill of lading and the decision of the House of Lords and Court of Appeal in *The Rafaela S* it has been noted that straight bills of lading are documents of title^[43].

Property in the goods does not automatically pass as a result of the transfer of the bill of lading as this is dictated by the agreement between the parties^[44]. The goods referred to in the bill of lading are to be delivered specifically to the holder of an original bill of lading. If the goods are delivered to person who is not in possession of the bill of lading, an action may be instituted against the carrier for conversion^[45]. Where the carrier deliberately delivers the goods to a person who is not entitled to them, even though that person is in possession of the bill, he will be held liable^[46]. A letter of indemnity may be provided by the indorsee if the bill of lading is not in his possession or the carrier needs some other form of assurance in order to part with the goods^[47]. The delivery of the goods without presentation of a bill of lading is outside the scope of duty of the carrier. In *Sze Hai Tong Bank v Rambler Cycle Co Ltd*^[48] the shipowners were held to be liable in conversion where the goods were delivered without the bill of lading to the wrong person. It was stated that:

It is perfectly clear that a shipowner who delivers without production of the bill of lading does so at his own peril. The contract is to deliver, on production of the bill of lading, to the person entitled under the bill of lading... The shipping company did not deliver the goods to any such person. They are therefore liable for breach of contract unless there is some term in the bill of lading protecting them. And they delivered the goods, without production of the bill of lading, to a person who was not entitled to receive them. They are, therefore, liable in conversion unless likewise protected.

In *MB Pyramid Sound NV v Briese Schifffahrts GmbH (The Ines)*^[49] Clarke J, stated the importance of delivering the goods to the party entitled where an original bill of lading has been handed over. It has been argued that other documents apart from the shipped bill should be made negotiable^[50].

Conclusion

From the discussion above, it is reasonable to assert that bills of lading are indispensable in international commercial transactions. It contains details about the shipment of goods. The bill of lading is a receipt for the goods shipped, evidence of the contract of carriage and a document used to transfer title. The bill of lading as a document of title allows the lawful holder to accept delivery of the goods from the carrier. It shows the existence of a contract of carriage. As a receipt of goods shipped, the bill signifies that the goods are in the custody of the carrier and it contains the conditions in which the goods were shipped.

References

1. Treitel GH, Reynolds FMB and Carver TG. Carver on Bills of Lading (Sweet & Maxwell 2011) 10.
2. *ibid.*
3. Todd P. Bills of Lading and Bankers' Documentary Credits (4th edn, Taylor & Francis, 2013) 3.
4. *ibid.*
5. Kasi A. The Law of Carriage of Goods by Sea (Springer Nature, 2021).
6. Chuah J. Law of International Trade: Cross-Border Commercial Transactions (5th edn, Sweet and Maxwell 2013) 212.
7. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 123.
8. [1906] 1 KB 237.
9. A clean bill of lading is a bill of lading which includes an acknowledgment by the person on whose behalf the bills were signed that the goods described were loaded in apparent good order and condition. See Baughen S. Shipping Law (6th edn, Routledge 2015) 6.

10. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 124.
11. [1930] 1KB 416.
12. [1980] 1 WLR 495; [1980] 1 All ER 501.
13. Chuah J. Law of International Trade: Cross-Border Commercial Transactions (5th edn, Sweet and Maxwell 2013) 215.
14. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010)123.
15. [2005] EWHC 1542 (Comm), [2005] 2 All ER (Comm) 441.
16. [2002] EWHC 104 (Comm), [2002] 2 All ER (Comm) 806.
17. Parker B. Liability for Incorrectly Clousing Bills of Lading. LMCLQ, 2003, 205.
18. *ibid* 248.
19. *ibid*.
20. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 126.
21. [1957] 2 QB 621(Lord Evershed dissenting).
22. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 120.
23. [1896] AC 70.
24. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 122.
25. [1917] 2 KB 664.
26. [1996] 1 Lloyd's Rep 642, 646 (Longmore J).
27. [1998] 2 Lloyd's Rep 614.
28. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 122.
29. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 129.
30. *ibid*.
31. [1954] 2 QB 402, 419.
32. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 129.
33. (1879) 5 QBD 38.
34. [1951] 1 KB 55.
35. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 130.
36. (1888) 20 QBD 475.
37. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 130.
38. *ibid*.
39. Wilson JF. Carriage of Goods by Sea (7th edn, Pearson 2010) 131-132.
40. (1883) 11 QBD 327.
41. Chuah J. Law of International Trade: Cross-Border Commercial Transactions (5th edn, Sweet and Maxwell 2013) 230.
42. [2005] UKHL 11, [2005] 2 WLR 554.
43. McMeel G. Straight Bills of Lading in The House of Lords. LMCLQ, 2005, 280.
44. Murray C, Holloway D and Timson-Hunt D (eds). Schmitthoff: The Law and Practice of International Trade (12th edn, Sweet & Maxwell 2012) 333-334.
45. *ibid* 289.
46. *ibid*.
47. *ibid*.
48. [1959] AC 576.
49. [1995] 2 Lloyd's Rep 144,152.
50. Pejovic C. Documents of Title in Carriage of Goods by Sea: Present Status and Possible Future Directions. JBL, 2001, 487.