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BILLS OF LADING GIVEN FOR GOODS NOT IN FACT SHIPPED

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OUTLINE.

I. Definition of a bill of lading as herein treated.
II. The legal character and uses of bills of lading.
III. The effect of a *false* bill of lading upon the rights and liabilities of those who may deal with it.
   First. As between the original parties.
   Second. As between a *bona fide* holder for value and either of the original parties.
   Third. As between a *bona fide* holder for value and the carrier whose agent signed the bill of lading.
      (1) The English cases holding carrier *not liable.*
      (2) The cases in United States adopting the English rule.
      (3) The cases holding the carrier *liable.*
IV. The point on which the conflict arises.
V. Some additional arguments for applying the doctrine of estoppel and holding the carrier liable.

I.

A bill of lading is at once a receipt and a contract. As a receipt it states that certain goods *have been* received for shipment. As a contract it contains an agreement for the transportation and delivery of these goods. It is with the bill of lading as a receipt that we shall deal in this paper.

Although a bill of lading is a receipt and is, in this respect, governed very largely by the rules of law applicable to receipts in general, yet it is far more important than the ordinary receipt, and deserves a brief preliminary consideration as to its true legal character. In the first place it is the symbol of the

NOTE.—States that hold carriers liable: New York, Connecticut, Kansas, Nebraska, Pennsylvania, Illinois, and Alabama. States that hold them not liable: Louisiana, Massachusetts, Ohio, Missouri, Maryland, Indiana, and Minnesota.

property described in it. The law-merchant regards it as a muniment of title, carrying the property with it, and as a negotiable instrument in itself. But the common law does not go quite so far. However, at common law it is the representative of the property to such an extent that a transfer of it transfers the property. In Evans *v.* Marlett[1] Chief Justice Holt said, "The consignee of a bill of lading has such a property that he may assign it over." Lord Mansfield, who is called "the founder of the commercial law of England," said,[2] "Since the case in Lord Raymond it has always been held that the delivery of a bill of lading transferred the property at law." The case of Lickbarrow *v.* Mason,[3] decided in 1787, is the leading case on this question. In it T. & Son had shipped goods to F. and had sent him an indorsed bill of lading. F. transferred this bill of lading to Lickbarrow, who made advances on it. Before F. had either received or paid for the goods he became insolvent. T. & Son, on learning this, attempted to exercise the right of stoppage *in transitu.* They sent a bill of lading which they had retained, to Mason, who, by the use of it, secured the goods and sold them for T. & Son. Lickbarrow sued Mason for conversion. Judge Ashurst, in deciding the case, approved the doctrine as stated by Chief Justice Holt and Lord Mansfield, and held that according to the law and "the universal understanding of mankind," a transfer of the bill of lading transferred the property. This being true, Lickbarrow had secured title to the goods through the bill of lading indorsed by the shipper, and hence he was allowed to recover.

But the doctrine of Lickbarrow *v.* Mason goes farther than simply declaring that "as between the vendor and third persons the delivery of a bill of lading is a delivery of the goods themselves." It holds that a bill of lading is, to a considerable extent, a negotiable instrument. Judge Ashurst said, "The assignee of a bill of lading trusts the indorsement; the instrument is in its nature transferable; in this respect therefore, it is similar to the case of a bill of exchange. If the consignor had intended to restrain the negotiability of it, he should have confined the delivery of the goods to the vendee only; but he has made it an indorsable instrument. So it is like a bill of exchange; in which case as between the drawer and the payee the consideration may be gone into, yet it *cannot* between the drawer

1 Lord Raymond 271.

2 Wright *v.* Campbell, 1 Fowl. Ex. 388.

3 2 Term Rep. 63.

and an indorsee; and the reason is because it would enable either of the original parties to assist in a fraud. The rule is founded *purely on principles of law*, and not on the custom of merchants. * * * This is also the case with respect to bills of lading." This extreme view has not been upheld by the later decisions. Lord Ellenborough said,[4] "A bill of lading indeed shall pass the property by a *bona fide* indorsement and delivery, where it is intended so to operate in the same manner as a direct delivery of the goods themselves would do, if so intended, *but it cannot operate further.*" Lord Campbell said,[5] "A bill of lading is not, like a bill of exchange or a promissory note, a negotiable instrument which passes by mere delivery to a *bona fide* transferree for a valuable consideration without regard to the title of the parties who make the transfer. * * * If it be stolen from him or transferred without his authority, a subsequent *bona fide* transferree for value cannot make title under it as against the shipper of the goods." From these and many other cases[6] it is evident that the common law does not regard a bill of lading as *strictly* and *technically* negotiable, like a bill of exchange, but it does give to the bill of lading a *quasi* negotiable character. An assignment of a bill of lading transfers rights *in rem*, rights to the specific goods, and these rights are to a certain extent wider than those possessed by the assignor. An indorser of a bill of lading does not become liable for the fulfilment of the contract part of it.[7] An assignment of a bill of exchange, on the contrary, merely confers upon the assignee rights *in personam.* A bill of lading, transferred without the authority, consent, or knowledge of the owner, gives no title—not even to a *bona fide* holder for value.[8] But it has been held that where a bill of lading was secured by fraud and transferred to an innocent purchaser it gave a good title.[9] Hence, it possesses many of the characteristics of a bill of exchange. By statute in England[10] bills of lading have been made negotiable by indorsement. Under this statute the consignee or indorsee to whom the property has passed by indorsement has all the rights and is subject to all the liabilities created by the instrument just as if

4 Newson *v.* Thornton, 6 East. 17.
5 Gurney *v.* Behrend, 3 El. and B. 622.
6 42 Conn. 579; 9 Fed. Rep. 133; 15 Wend. 474; 44 Md. 11.
7 Maybee *v.* Tregent, 47 Mich. 595.
8 101 U. S. 557, and 34 Ind. 1.
9 24 N. Y. 638.
10 18 and 19 Vict. c. iii. s. 1.

it had been made to him at first.[11] Several of the United States have passed similar statutes. Missouri and Pennsylvania made bills of lading negotiable in the same manner as bills of exchange and promissory notes, but the supreme court[12] held that these statutes referred only to the manner of transfer and not to the consequences of such transfer. Maryland has a statute which makes them negotiable in the same manner and to the same extent as bills of exchange. In Tiedeman *v.* Knox[13] it was held that this statute gave to one who took a bill of lading from the consignee and applied it to payment of an antecedent debt, all the rights of a *bona fide* holder for value and hence the right to the property described in the bill, although the consignee had not paid for the goods. The statutes of Mississippi, Minnesota, Louisiana, New York, California and Wisconsin, are somewhat to the same effect. But independent of statute many of the courts of this country hold that, to a very great extent, bills of lading are negotiable. In actual business they are given a negotiable character. They pass from hand to hand and are in constant use as collateral security. Next to commercial paper they are the most important instruments known to the business world. While this *quasi* negotiable character may be destroyed by a contract expressed upon the face of the instrument, it is well understood that unless so expressed the carrier is bound to recognize the validity of transfers and is liable to the holder of a *valid* bill for the goods therein described. The fact that every one who deals with bills of lading is presumed to know their uses and legal character is an important element in determining the effects of bills issued for goods not in fact shipped. This is the justification for considering their legal character as we have in this connection.

It often happens either by the mistake, the negligence, or the fraud of some one concerned, that bills of lading are given for goods not actually received by the carrier, or for more goods than in fact come into the carrier's possession. It is our purpose to consider the effect of these false receipts upon the rights and liabilities of the various parties who may deal with them.

The general rule of law is that *receipts* are only *prima facie* evidence of the truth of the statements they contain, and hence, that extrinsic evidence may be introduced to explain or contradict them. Bearing in mind the legal character and the

[11] 3 L. R. C. P. 594.
[12] 101 U. S. 557.
[13] 53 Md. 612 (1880).

ordinary uses of bills of lading, let us investigate the question, To what extent does this general rule apply to them as receipts? This question may arise, first, between the original parties (*i. e.*, the one signing the bill and the shipper, or those who take with notice, or without value); second, between a *bona fide* holder for value and either of the original parties; third, between a *bona fide* holder for value and the carrier by whose agent the bill of lading was issued.

First. As between the original and immediate parties to a bill of lading the general rule applies with full force. The bill is strong evidence that the goods mentioned therein were delivered to the one signing the bill, but it is only evidence and is open to explanation or contradiction.[14] This rule not only allows the *master* or *agent* who signed the bill to show that the statements contained in the receipt part of it are false, but it also allows the ship-owners and carriers the same privilege. This evidence to explain or contradict is admissible not only against the shipper but also against any holder who is not a *bona fide* holder for value. Mr. Abbott[15] says, "Except as against a *bona fide* transferree of the bill of lading for value, the carrier may contradict it as to the delivery to him of the goods, or as to their description, quality, or condition." Judge Edmonds[16] has said: "As between the shipper of the goods and the owner of the vessel, a bill of lading may be explained so far as it is a receipt." Sutton *v.* Kittell[17] holds that a bill of lading is open to explanation against a consignee unless he has made advances upon it. In Sears *v.* Wingate[18] it is said, "The receipt of a bill of lading is open to explanation between the master and the shipper." Judge Shipman in Relyea *v.* New Haven R. M. Co.,[19] held that as between the ship-owners and the shipper the bill of lading was open to explanation. It has also been held[20] that where a carrier has issued a bill of lading for more goods than it received from the consignor and has paid the consignee the deficiency, it could recover the amount paid from the consignor. In a recent case[21] Mr. Justice White held that a railroad company was not liable to the shipper on a bill of lading given before the goods

14 Redfield on Car. and Bail. p. 218.
15 Trial Evidence, p. 537, § 45.
16 Dickerson *v.* Seelye, 12 Barb. 102.
17 Sprague's Decisions, 309.
18 3 Allen 103.
19 42 Conn. 579.
20 Graves *v.* Harwood, 9 Barb. 477.
21 Mo. Pac. R. R. *v.* McFadden, 154 U. S. 161.

were received, although the goods were destroyed by fire at the place where the carrier was to take possession of them. "The elementary rule is that the liability of a common carrier depends upon the delivery to him of the goods which he is to carry." This rule is not changed by the issuance of a bill of lading, so far as the shipper's rights are concerned.

Second. As between a *bona fide* holder for value and either of the original parties, the general rule of law is superseded by the equitable doctrine of estoppel. When the master of a vessel or the agent of any common carrier signs a bill of lading for goods not actually received, or for more than are received, such master or agent is estopped from denying the truth of the statements made in the bill, as against one who, in good faith, has relied on those statements and has parted with value.[22] The shipper who has transferred a bill of lading is also estopped to deny that he delivered the goods to the carrier as against a *bona fide* transferree for a valuable consideration. Byrne *v.* Weeks[23] held that the master was concluded by statements in his bill of lading as to the quantity of goods received as against a *bona fide* assignee or transferree, and the master was compelled to make good all loss caused by his misstatements. But if his misstatements are caused by misrepresentations of the shipper, the master may recover from the shipper all he is compelled to pay to the assignee.[24] This principle does not apply to one who buys the goods before shipment or who does not rely on the bill of lading.[25] Nor is the master concluded by statements of quantity followed by the qualification "more or less," unless the deficiency is great.[26] In Tindall *v.* Taylor[27] the consignor after having sent the bill of lading to the consignee, took the goods from the master of the vessel. Lord Campbell said, "An action of contract on the bill of lading could not have been maintained by the indorsee of the bill of lading; but in respect to his property in the goods he might have maintained an action against the master for detaining or converting them, and the master, after the declaration in the bill of lading on faith of which the indorsee had bought and paid for them, would be

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22 Berkley *v.* Watling (1837), 7 Ad. and El. 29.

23 7 Bos. 372.

24 Saten *v.* Standard Oil Co., 17 Hun. 140.

25 Meyer *v.* Peck, 28 N. Y. 590.

26 Kelley *v.* Bowker, 11 Gray 428, and Blanchet *v.* Powell, etc., Co., L. R. 9 Ex. 74.

27 4 El. and Bl. 219.

estopped from denying that he had received them." Judge Hoar has said,[28] "The master is estopped, as against a consignee who is not a party to the contract and as against an assignee of the bill of lading, when either has taken it for a valuable consideration upon the faith of the acknowledgments which it contains, to deny the truth of the statements to which he has given credit by his signature, so far as these statements relate to matters which are or ought to be within his knowledge." Other cases[29] give the consignee a right of action against the master and estop the master from denying the statements made in his bills of lading. The same rule is applied to a warehouseman who has given a false receipt.[30] Hunt *v.* Miss. Cent. R.R.,[31] holds that an agent of a common carrier would be liable on a false bill of lading signed by him, as against a *bona fide* holder for value. In England this rule was embodied in the Bill of Lading Act,[32] in which it is said, "Every bill of lading in the hands of a consignee or endorsee for a valuable consideration, representing goods to have been shipped on board of a vessel, shall be conclusive evidence of such shipment as against the *master* or *other person* signing the same." This section of that act was interpreted in Meyer *v.* Dresser[33] and Jessel *v.* Bath.[34] In those cases it was held to apply only to the one signing the bill. It is a well-known application of the doctrine of estoppel that prevents the consignor who has secured and transferred a false bill of lading, from denying the truth of its statements. This is taken as a settled doctrine in Schooner *Freeman v.* Buckingham,[35] and numerous other cases. So we may conclude that it is a well-established rule, both in this country and in England that the immediate parties to a bill of lading (*i. e.*, the consignor and the one who signs it) are estopped to deny the truth of its statements as against a *bona fide* holder for value.

Third. As to the application of the general rule to cases which arise between a *bona fide* holder for value and the carrier whose agent has issued a false bill of lading, there is an interesting conflict of opinion. The courts of England, the Federal

28 Sears *v.* Wingate, 3 Allen 103.

29 Relyea *v.* New Haven R. M. Co.. 42 Conn. 579, and Bradstreet *v.* Heran, 2 Blatchf. 116.

30 McNeil *v.* Hill, Woolworth's R. 96.

31 29 La. Ann. 446.

32 18 and 19 Vict. c. iii. s. 3.

33 16 Com. Bench (N. S.) 644.

34 L. R. 2 Ex. Cases 267.

35 18 How. 182.

courts of this country, and several of our State courts hold that the general rule applies and that the carrier is not estopped by the act of its agent, to deny the truth of the bill so far as it is a receipt. Several other State courts, however, with a considerable show of reason, hold that the carrier is estopped to deny the statements made by its agent, when the bill comes into the hands of a *bona fide* holder for value. Let us consider in chronological order as nearly as may be convenient: (1) The English cases; (2) The cases in the United States which adopt the English doctrine; and (3) The cases which hold the doctrine of estoppel.

(1) The great case of Lickbarrow *v.* Mason (1787) did much to settle the legal character of a bill of lading in England. From that time until 1851 the conclusiveness of a bill of lading in the hands of a *bona fide* holder for value as against the carrier whose agent signed it, does not seem to have been passed upon directly. However, in 1851, Grant *v.* Norway[36] decided this question and established the rule which has been followed by subsequent decisions. This was an action by the indorsee against the owner of a vessel to recover the amount advanced on faith of a bill of lading signed in due form by the master of the vessel. It was shown to be a custom among merchants to make advances in that way, but Chief Justice Jervis held that, although the authority of the master was extensive, yet it had well-known limitations. He is a general agent to give bills of lading for goods received. No one could assume that the master had authority to sign a bill of lading before the goods were put on board. Hence, in this case he had acted clearly outside his authority and the owner could not be held liable. Hubbesty *v.* Ward[37] (1853) followed the doctrine of Grant *v.* Norway. Chief Baron Pollock said, "We think that when a captain has signed bills of lading for a cargo that is actually on board his vessel, his power is exhausted; he has no right or power, by signing other bills of lading for goods that are not on board, to charge his owner." The case of Coleman *v.* Riches[38] (1855) is in the same line. R. was a wharfinger and carrier. His agent issued a false receipt for corn on which C., as was his custom, made advances. The court held that the agent was not acting within the scope of his authority and did not bind his principal. In

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36 10 Com. Bench 665.

37 8 Exch. 330.

38 16 Com. Bench 103.

Meyer *v.* Dresser[39] (1864) the master of a vessel sued the indorsee of a bill of lading for freight. The indorsee invoked the statute[40] already referred to and claimed the right to set off for goods named in the bill of lading but not shipped. It was held that a cross-action might lie against the *master*, but that a deduction could not be allowed from the amount of *freight due on other goods.* In Jessel *v.* Bath[41] (1867) B.'s agent gave a bill of lading for a certain number of pounds of manganese, when a much smaller number had been shipped. J., who had paid for the full amount, relying on the bill of lading, was not allowed to recover, on the ground that the agent exceeded his authority. McLean *v.* Fleming[42] (1871) was a case against the owner of a vessel for failing to deliver all the goods called for in the bill of lading. Held, that the bill of lading was *prima facie* evidence of the amount of goods shipped, but that the owners might show that their agent had given it for more goods than were received. In Brown *v.* Powell Coal Co.[43] (1875) the owners of a vessel, who had voluntarily paid a consignee the difference between the value of the goods delivered and those called for in the bill of lading, sued the charterer of the vessel to recover this amount. It was held on the authority of McLean *v.* Fleming that the owners were not legally liable to the consignee on the false bill of lading and hence that they could not recover from the charterer. In the case of Car *v.* R. R.[44] (1875), Car had bought goods to be shipped by the railroad and had received from the railroad advice-notes stating that *three* parcels had been received when only *two* had been in fact received. The servants of the railroad knew that only two had been received but failed to give Car notice. Car paid for three and after finding only *two*, sued the railroad. Judge Brett, in deciding the case, said that the suit could not be maintained except on the doctrine of estoppel *in pais.* He discussed the elements of estoppel and showed that it could not be applied to the railroad because the railroad did not know the statements were false and was not negligent. Lord Esher in Cox *v.* Bruce[45] (1886), held that it was beyond the agent's authority to bind the owners of a vessel by false

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39 16 Com. Bench (N. S.) 646.
40 18 and 19 Vict. c. iii. s. 3.
41 L. R. 2 Ex. cases 267.
42 L. R. 2 Scotch Appeals 128.
43 L. R. 10 C. P. 562.
44 L. R. 10 Com. Pleas. 307.
45 L. R. 18 Q. B. D. 147.

statements in regard to the quality or condition of the goods shipped. The owners were not estopped from proving that the bill of lading was false in that regard.

These cases show that in England the rule is well established that a carrier may explain or contradict any bill of lading signed by its agent without express authority, so far as it is a receipt, even against a *bona fide* holder for value.

(2) The Federal courts of this country have adopted the same rule as that established in England. The first great case was Schooner *Freeman v.* Buckingham[46] (1855). In this case the general owner of a vessel had made a conditional sale of it and the special owner by fraud had induced the master to sign a false bill of lading on which B. had made advances. The court in deciding that this did not create a lien on the vessel in favor of B. held that while the vessel was bound to the freight and the freight to the vessel for the performance of the contract, yet no lien could arise until a *valid contract* was made and the cargo actually shipped. In discussing the doctrine of estoppel in connection with this case Mr. Justice Curtis said, "If the signer of a bill of lading was not the master of the vessel, no one would suppose the vessel bound; and the reason is because the bill is signed by one not *in privity* with the *owner.* But the same reason applies to a signature of a *master made out of the course of his employment.* The *taker assumes the risk* not only of the genuineness of the signatures and of the fact that the signer was master of the vessel, but also of the *apparent authority* of the master to issue the bill of lading. * * * But the master of a vessel has no more apparent unlimited authority to sign bills of lading than he has to sign bills of sale of the ship. He has an apparent authority if the ship be a general one to sign bills of lading for *cargo actually shipped* and he has also authority to sign a bill of sale of the ship, when in case of disaster his power of sale arises. But the authority in each case arises out of and depends upon a particular state of facts. It is not an unlimited authority in the one case more than in the other, and his act in either case does not bind the owner, even in favor of an *innocent purchaser*, if the facts upon which his power depends did not exist; and it is incumbent on those who are about to change their condition, upon faith of his authority, to ascertain the existence of all the facts upon which his authority depends." The case of Montell *v.* Schooner *Rutan*[47] (1865) was a libel against the vessel and her

[46] 18 How. 182.

[47] 17 Fed. Cases 615.

master, who was a part owner, by the assignee of a fraudulent bill of lading issued by the master. Judge Betts said, "A cardinal restriction which applies to this case is, that a master cannot subject a ship *in rem*, much less his co-owners, to a responsibility for a safe carriage and delivery of a cargo *not actually laden on board* of it for transportation in the lawful employment of the vessel. This principle is too firmly rooted in the doctrines of commercial jurisprudence to be subjected to question in this country or in England. That, as the libellants prove by the master himself that he executed the bill of lading with knowledge that the wheat was not on board at the time, the bill of lading was *nugatory* and *fraudulent as to the vessel and all her co-owners, except the master himself.*" The case of *The Lady Franklin*[48] (1868), was a libel against the vessel on a bill of lading issued by mistake for goods which had been shipped by another vessel and lost. Mr. Justice Davis in deciding that the owners of the vessel were not estopped to contradict the bill of lading, said, "There was no cargo to which the ship could be bound and there was no contract for the performance of which the ship stood as security." *The Loon*[49] (1870) was a case almost exactly like the Schooner *Freeman v.* Buckingham, and Judge Woodruff arrived at the same decision. He held that, although bills of lading ever since the case of Lickbarrow *v.* Mason had been considered negotiable for some purposes, yet they do not import *absolute verity* and are not conclusive on the owners of a vessel even in the hands of an innocent purchaser. Pollard *v.* Vinton[50] (1881) is a great case and passes on the main question directly. P. accepted and paid a draft relying on the bill of lading which the agent of V.'s boat had issued for goods not in fact shipped. Mr. Justice Miller held that the act of the agent was beyond his authority and not binding on the owner. In answer to the argument that the bill of lading was negotiable, he said, "A bill of lading is an instrument well known in commercial transactions and its character and effect have been defined by judicial decisions. In the hands of the holder it is evidence of ownership, special or general of the property mentioned in it, and of the right to receive said property at the place of delivery. Notwithstanding it is designed to pass from hand to hand, with or without indorsement, and it is efficacious for its ordinary purposes in the hands of the holder, it is not a negotiable instru-

[48] 8 Wall. 325.
[49] 7 Blatchf. 244.
[50] 105 U. S. 7.

ment or obligation in the sense that a bill of exchange or promissory note is. Its transfer does not preclude, as in those cases, all inquiry into the transaction in which it originated, because it has come into the hands of a person who has innocently paid value for it. The doctrine of *bona fide* purchasers only applies in a limited sense." Robinson *v.* M. & C. R. R. Co.[51] (1881) was decided in the same year and on almost the same facts as Pollard *v.* Vinton. A *bona fide* purchaser sued the railroad on a bill of lading issued by its agent when no goods were shipped. In a very learned and exhaustive opinion Judge Hammond attempts to answer all the arguments in favor of the railroad's liability. He shows that the bills of lading have been developed exclusively for the advantage of the trader and not of the railroad. They are not negotiable securities which the railroad is bound to protect. Carriers should not be made insurers or guarantors on an instrument in which they have no interest. It is a liability *dehors* the contract, and the amount of freight paid does not cover the risk. It would compel the carriers to employ and pay agents whose qualifications are the same as those of banks and trust companies. The supposed convenience to commerce is not sufficient to overcome these considerations. Besides it would not be difficult for those who deal with bills of lading to find out concerning their genuineness. Banks and factors must attend to the honesty of their customers and they should know that it is the carriers' business to carry and deliver goods and that its liability does not begin until the goods are actually received. Carriers were not created for the purpose of issuing commercial paper. Bills of lading are only *quasi* negotiable and those who deal with them must ascertain their genuineness. No special or general custom can make them negotiable like bills and notes.[52] The doctrine of estoppel is the strongest argument in favor of the carrier's liability. The principal is estopped by the representations of his agent so long as that agent is acting *within the apparent scope of his authority.* But carriers do not hold out their agents as having authority to issue *false* bills of lading. Such an act is clearly beyond *even the apparent* scope of a freight agent's authority. It is doubtful if the directors themselves could estop the company. The charter gives no power to issue *false* bills of lading. The master of a vessel cannot bind the owners by issuing false bills and he is a general agent with extensive powers. A freight agent is a spe-

[51] 9 Fed. R. 129.

[52] Whart. Agency, §§ 134, 675, 676.

cial agent and every one is presumed to know the limitations of his authority. The whole question rests on the doctrine of agency and since the agent has acted outside of the scope of his authority he has failed to bind the carrier. The case of St. Louis, etc., R. R. *v.* Knight[53] (1887) was one in which the consignee attempted to hold the railroad liable on a bill of lading because the goods delivered were not of the *quality* described. Mr. Justice Matthews held that the agent had no authority to misdescribe the goods and hence that the railroad was not estopped to show that the goods delivered to the consignee were the very goods received for transportation. In Friedlander *v.* Texas, etc., R. R.[54] (1889) an assignee for value of a false bill of lading sued the railroad. Chief Justice Fuller, in giving the decision, pointed out the legal character of the instrument and discussed the doctrine of estoppel as applied to it. He agreed with the opinion of Mr. Justice Story,[55] that a transfer of a stolen bill of lading would not transfer the title to the goods, but that if the owner or carrier is negligent, or holds out the agent as having the necessary authority to issue or transfer the bill of lading, the doctrine of estoppel would apply. He found that the railroad had not been negligent and that the agent had departed from his authority and become *particeps criminis* for the purpose of committing a fraud. He therefore held that the action could not be maintained against the railroad either *on contract* or *for tort.* Judge Townsend, in Dun *v.* City Nat. Bk.[56] (1893), gives a very learned opinion on this question of agency. It is a case in which one of Dun's sub-agents had given false information to the bank concerning the financial standing of an acceptor of a draft which the bank was about to purchase and which it did purchase on the faith of this information. The question raised was, "To what extent is an innocent principal liable for damages caused by the frauds and deceits of his agent?" The Judge said the cases on this question were not harmonious but that the difference was not one of principle but one of application. Was the agent acting within the scope of his authority? If so the principal is liable. If not, the principal is not liable. He found that Dun's agent was not acting within the scope of his authority when he purposely gave the false information and hence that Dun was not liable. The case of

[53] 122 U. S. 79.
[54] 130 U. S. 416.
[55] 101 U. S. 557.
[56] 58 Fed. R. 174.

Walters *v.* W. and A. R. R.[57] (1893) seems at first view to be out of line with the other United States court decisions. A firm was doing business at A and at M. The railroad officials appointed one of this firm as agent at M. This agent delivered goods to the firm without cancelling the bills of lading. Afterwards the firm sold these bills of lading and the railroad was estopped to deny their validity. But this case is distinguished from the others in that the bills were valid when issued and in that the railroad officials had negligently acquiesced in such irregular dealings with the firm. So we may say that the decisions in the Federal courts present a strong and unbroken line to the effect that the carrier is not estopped to deny the receipt part of a bill of lading issued by its agent, even as against a *bona fide* holder for value.

T. H. Cobbs.

(*To be continued.*)

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[57] 56 Fed. R. 368.