FREIGHT AND ALL CONDITIONS AS PER CHARTER PARTY

By

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In the tramp business the Bill of Lading is a short and clear document without the superfluity of words which is found in liner Bills of Lading, and which have made these documents so unpopular.

The Bill of Lading as a rule in the tramp business contains a short reference to the Charterparty. It would make the Bill of Lading unnecessarily lengthy to incorporate the Charterparty word for word, or to attach the Charterparty to it; nor would this be a practical solution for the Charterparty is not always to hand at the loading place when the Bill of Lading has to be issued. I know that this solution has been the subject of discussion in connection with the forthcoming revision of the provisions of the French commercial code relating to chartering — but this cannot be the right solution.

It is clear that both parties — shipowner and charterer — are entitled to claim that the conditions of the Charterparty shall bind the receiver. To achieve this in a simple manner applicable to all cases people have from early times been content with quite a short clause referring to the Charterparty. The intention has been in this way to give sufficient notification to the holder of the Bill of Lading that the Charterparty contains all the conditions which are to apply. One would have thought that this method would have achieved its object but unfortunately the interpretation put upon the clause "freight and all conditions as per Charterparty" by British Courts has created obscurity and confusion in a way which was never expected. A series of British judgments lay it down that this reference to the Charterparty in no way corresponds to what was intended. For it merely means that the only conditions

1) Translated by Mr. H. M. Pratt, Barrister, London.
in the Charterparty which are a part of the Bill of Lading are those which can be said to be of the same kind (ejusdem generis) as the freight or as it is also expressed "conditions which are to be performed by the consignee".

One of the leading judgments which is always cited in the text-books on this question is Russell v. Niemann decided by the Court of Common Pleas in 1864. The case related to a voyage from Russia to Ireland with wheat in a German ship. At that time Germany was at war with Denmark and owing to the capture of the ship the voyage could not be completed. The question to be decided was whether the shipowners were liable in damages to the holders of the Bill of Lading for the loss of the cargo. According to the Charterparty the ship was not to be responsible for acts of "enemies, restraint of princes & c." The Bill of Lading excepted "the King's enemies" and contained the usual clause "paying freight for the said goods and all other conditions as per Charter-party". It seems as if the owners were uncertain whether the exception of "King's enemies" would protect them. For the ship was registered in Mecklenburgh and it was not a king but a duke who was ruler there! On that ground the owners' counsel thought it safest to rely also upon the expression "enemies" in the Charter-party as this undoubtedly included dukes who were enemies. The owners won the case because Mecklenburgh was at war with Denmark and it was thus Mecklenburgh's enemies who prevented the completion of the voyage. Under these circumstances it became unnecessary for the Court to deal with the clause of the Bill of Lading which has been cited but nevertheless the judgment contains some general observations by Willes J. These were merely obiter dicta as they are called in England i.e. remarks made en passant and with no bearing on the result. But they have been given binding authority in a long series of similar cases where the question arose of the scope of the clause "freight and all conditions as per charter" and where these little considered words of Willes J. were cited and referred to as if they were words of wisdom. They were as follows:—

"We now proceed to dispose of the second question, which is, whether the exception contained in the bill of lading is expanded by the exception in the charterparty. That depends upon whether the words 'and other conditions as per charterparty' include all the stipulations and conditions contained in that instrument, or whether they are not limited to conditions ejusdem generis with that previously mentioned, viz. payment of freight,