

To avoid any question, however, it will be better that the plaintiff should amend his plaint in this respect, and also by defining more precisely the terms of the injunction he seeks.

We, therefore, reverse the decree and remand the case for re-trial. The costs will abide the result.

Decree reversed. Case remanded.

PRIVY COUNCIL.

TURNER AND ANOTHER (DEPENDANTS) *v.* GOOLAM MAHOMED
AZAM (PLAINTIFF).

[On appeal from the High Court of Judicature at Bombay.]

Charter-party—Power to sublet—Sub-charter—Goods shipped under sub-charter and bills of lading authorized by time charter—Liability of such goods for lien given by time charter—Notice of time charter—“without prejudice to this charter,” meaning of—Form, construction, and effect of bills of lading—Lien for hire of vessel.

A vessel was chartered by a firm of merchants in Bombay for six months from 20th August, 1898, at a rate of freight which came to Rs. 18,000 a month, payable in advance. By the charter-party the charterers had the option of sub-letting the vessel, and it was provided that bills of lading were to be signed at any rate of freight the charterers or their agents might direct “without prejudice to this charter,” and that the owner was to have “a lien upon all cargoes for freight or charter money due under the charter. On 26th August the vessel was sublet by the charterers to the plaintiff for a sound voyage from Saigon to Réunion and back from Mauritius to Bombay. The vessel completed the voyage and on 2nd February, 1899, arrived at Bombay with sugar put on board by the plaintiff as sub-charterer, at Mauritius, for which he had received bills of lading from the Captain who signed them without obtaining payment of the month's freight then due under the time charter. The freight on the sugar was prepaid at Mauritius by the plaintiff's agents, so that on the arrival of the vessel at Bombay nothing remained to be paid by the plaintiff to the shipowner in respect of the bills of lading freight. Delivery of the sugar was, however, refused, the shipowner claiming a lien on it for the Rs. 18,000 due under the time charter. In a suit against the owner and the Captain of the vessel to recover the sugar, or its value and damages for its detention, the defendants relied on the lien under the time charter, and alleged that the Captain had been induced to sign the bills of lading as he did by misrepresentations of the plaintiff's

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agents. It was found that the plaintiff knew of the time charter, and the amount of and terms as to the freight, but that there had been no misrepresentation as alleged.

Held, that the Captain was authorized by the time charter to sign the bills of lading and therefore the shipowner had contracted with the plaintiff to carry the sugar on the terms of the bills of lading. *Colvin v. Newberry* (1); and *Small v. Moutes* (2) distinguished. The bills of lading were not mere receipts for the goods shipped; they entitled the plaintiff to delivery of the sugar on payment of the freight due on them, notwithstanding that he had notice of the time charter. Such notice had not the effect of incorporating into the bills of lading any terms inconsistent with them and which the Captain was not bound to embody in them.

Fry v. Chartered Mercantile Bank of India (3); and *Gardner v. Trechmann* (4), followed.

The words in the time charter "without prejudice to this charter," meant no more than that the rights of the shipowner against the time charterer, and *vice versa*, were to be preserved.

Hansen v. Harrold Brothers, followed.

Those words did not override or limit the power of the Captain to issue bills of lading at different rates of freight, or entitle the shipowner to a lien on the goods of persons who had come under no contract with him conferring a lien for the freight, payable under the time charter. A right to seize one person's goods for another person's debt must be clearly and distinctly conferred before a Court of Justice can be expected to recognize it.

Held, therefore (affirming the decision of the High Court on appeal) that the claim of the shipowner to the lien provided by the time charter could not be supported. He was, however, entitled to the benefit of any lien which the time charterer had on the goods of the plaintiff under the sub-charter.

APPEAL from a judgment and decree (19th April and 2nd September, 1901) of the High Court at Bombay reversing a decree (22nd March, 1900) of the same Court passed in the exercise of its Ordinary Original Civil Jurisdiction which latter decree was in the appellant's favour.

The appellant T. Turner was the master of the British steamship "Bombay," and the appellant C. T. Glanville was the owner of that vessel. The respondent Haji Goolam Mahomed Azam was a merchant carrying on business in Bombay and elsewhere. The appeal arose out of an action brought by the

(1) (1832) 1 Cl. & Fin. 283.

(2) (1838) 9 Bing. 574.

(3) (1866) L. R. 1 C. P. 69.

(4) (1884) 15 Q. B. D. 154.

(5) (1894) 1 Q. B. 612.

respondent to recover certain bags of sugar shipped by him on board the "Bombay," or their value, and damages for their detention. The appellants claim a lien for freight on the goods under the following circumstances.

The steamsip "Bombay" was by a charter-party, dated August 2th, 1898 (called the time charter), let for six months to Messrs. Issabhoy Thaver and Company, and by an agreement, dated 26th August, 1898, which was subsequently on 13th October, 1898, embodied in a charter-party (called the sub-charter), was sublet by Messrs. Issabhoy Thaver and Company to the respondent for a round voyage.

The time charter was entered into by Messrs. James Mackintosh and Company, the agents in Bombay, of the owners of the vessel, and the material provisions were :—

" Clause 2. The owners shall provide and pay for all the provisions and wages of the Captain, Officers, Engineers, firemen and crew, shall pay for the insurance of the vessel, and for all stores, etc.

" Clause 4. The charterers shall pay for the use and hire of the said vessel at the rate of 7 s. and 6 d. per gross registered ton per calendar month commencing on the day after delivery with a clean and clear hold, notice whereof to be given to the charterers, and at and after the same rates for any part of the month, hire to continue and be computed from such time as the said vessel is so delivered to the charterers until her delivery to owners at expiry of the period above specified (unless lost) at Bombay or Calcutta, charterer's option.

" Clause 8. Payment to be made in cash monthly in advance to owners' agents in Bombay, and in default of such payment or payments as herein specified, the owners or their agents shall have the faculty of withdrawing the said steamer from the service of the charterers without prejudice to any claim they, the owners, may otherwise have on the charterers in pursuance of this charter.

" Clause 14. That the Captain (although appointed by the owners) shall be under the orders and direction of the charterers as regards employment, agency or other arrangements, bills of lading are to be signed at any rate of freight the charterers or their agents may direct, without prejudice to their charter, the Captain attending daily if required at the offices of the charterers or their agents to do so, the charterers hereby indemnify the owners from all the consequences or liabilities that may arise from the Captain doing so, except for short delivery for which the steamer shall be responsible.

" Clause 21. Charterers to have the option of subletting the steamer.

" Clause 22. The owners shall have a lien upon all cargoes for freight or charter money due under this charter: and charterers to have a lien on the ship for all moneys paid in advance and not earned."

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The amount payable for the use and hire of the vessel under clause 4 of the time charter was £1,197 or Rs. 18,000 per month payable on the 19th of each month.

By the sub-charter the "Bombay" was let for a round voyage from Rangoon or Saigon (at the respondent's option) to Réunion; thence to Mauritius and back to Bombay.

By clause (3) "freight for the round voyage to be paid at the rate of Rs. 1-8 per bag of 168 pounds net which is to be calculated only upon the cargo shipped from Rangoon or Saigon to Réunion." By clause (4) the "Steamer shall sail from Réunion to Mauritius either in ballast or with about 50 tons cargo, and passengers if available, free of freight and there shall load a full and complete cargo of sugar for carriage to Bombay free of freight and so terminate the voyage." By clause (5) "Deck and Cabin passengers from Réunion to Mauritius, and from Mauritius to Bombay to be for the equal benefit of the sub-charterer and the time charterers." By clause (6) "on account of the freight so estimated Rs. 97,500 to be paid at Bombay before steamer's sailing from Rangoon or Saigon, Rs. 25,000 payable on delivery of cargo at Réunion or at Mauritius at the time charterer's option, and the balance at Bombay on right and true delivery of the cargo; but any money expended by the sub-charterer or his agents at any port under inspections either of the Captain or the time charterers for the steamer's disbursement, to be first of all deducted at the port from the sum as stipulated to be payable there." By clause 15 "the Captain, if necessary, to sign bills of lading at any freight without prejudice to this charter-party"; and by clause (24) "the time charterers to have a lien on the cargo for freight and demurrage (if any)."

On 13th October, 1898, the respondent exercised his option and elected that the voyage should begin from Saigon and not Rangoon. This led to some dispute, but on the 19th October a sum of Rs. 18,000 became payable by Issabhoy Thaver and Company under the time charter, and an arrangement was come to between that firm and the respondent which is set out in the following letter written by the former to the latter on 22nd October, 1898 (Exhibit R):

"With reference to the contract entered into between you and me, dated the 26th day of August, 1898, with reference to which there was a dispute between us, I hereby confirm the same and agree that s.s. "Bombay" which is on its way from Aden to Galle or Colombo shall sail direct from Galle or Colombo to Saigon to fulfil the said contract.

"Up to the date of determination of the said contract, dated the 26th August, 1898, between us I hereby request you to pay on my account and as my agent the sum of Rs. 18,000 and so on from month to month up to the said date to

Messrs. James Mackintosh and Company, the agents of the owners of the said steamer, being the monthly sums payable by me to them under the terms of the time charter-party of the said steamer given by them to me and up to the said date to pay and defray as my agent and on my account all monies and expenses payable or to be defrayed by me under the said charter-party until the date of completion of the said contract, dated 20th August, 1898, entered into between you and me. Out of the said sums so paid or to be paid and spent by you on my account and as my agent, you will be entitled to deduct all monies payable by you to me under the said contract and if the monies payable by you to me under the said contract are less than the monies paid or spent by you on my account as aforesaid, I undertake to repay to you the difference on demand. If on the other hand, the monies so paid or spent by you on my account be less than the amount payable by you to me, you will repay the said amount to me on demand. I shall not be entitled to demand payment from you of any monies payable by you to me under the said contract, but you will be entitled to set off the said amount payable by you to me under the contract against the monies paid or to be paid and spent by you on my account as aforesaid.

“ I undertake not to revoke this authority until the completion of the said contract between us.”

Under the authority given by that letter the respondent advanced the Rs. 18,000 and obtained a receipt for it from Chabildas Lalloobhoy, a partner in the firm of James Mackintosh and Company, agents for the appellant the owner of the “Bombay.” The respondent also paid similar sums in November and December. The vessel proceeded to Saigon where the appellant Turner received notice of the sub-charter. On 15th January, 1899, the “Bombay” reached Mauritius and on 19th January another sum of Rs. 18,000 became due to the appellants from the time charterers. At Mauritius the respondent shipped on board the vessel two lots of bags of sugar one consisting of 13,431 bags on 20th January, and the other consisting of 17,076 bags on 21st January, for which he received from the Captain, bills of lading of those dates respectively under which the 13,431 bags were deliverable to the respondent or his assigns “paying freight for the said goods at the rate of 6 annas of 75 kilograms gross French weight shipped paid in Port Louis”; and the 17,076 bags were deliverable similarly except that the freight was stated to be “payable in Port Louis.” The freight due in respect of these two shipments of sugar was found by the High Court on appeal, and by their Lordships in this appeal, to have been paid at Mauritius.

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The vessel reached Bombay on 2nd February, 1899, and at that time Issabhoy Thaver and Company, the time charterers owed the appellants the sum of Rs 18,000 due on 19th January; and the respondent owed to Issabhoy Thaver and Company the sum of Rs. 5,206-11-4 after taking credit for disbursements on account of the vessel. When the respondent claimed delivery of his shipments of sugar, it was refused by the appellants on the ground that they had a lien on the goods for the Rs. 18,000 which was due to them under the time charter.

The respondent therefore after an offer by him of Rs. 6,000 for freight had been refused filed his suit on 9th February, 1899, for delivery of the sugar or its value alleging that it was wrongfully detained by the appellants.

The appellant Turner in defence asserted that he was lawfully entitled to exercise the lien given by the time charter against the goods claimed in the plaint; that the respondent was all along aware of the terms of the time charter which conferred the lien; and that he, the appellant Turner, was induced to sign the bills of lading for the goods claimed without receiving any freight by misrepresentations made by the respondent's agents.

The second appellant contended that all the cargo shipped by the respondent upon the "Bombay" was subject to the lien given to the owners by the time charter and that the Captain had rightly exercised that lien; that the Captain had no authority to sign the bills of lading without providing that the freight payable in respect of the goods shipped thereunder should be paid to the Captain or the agents of the owner; that the signature of the Captain to the bills of lading was obtained at Mauritius by misrepresentation on the part of the agents of the respondent; and that without prejudice to any of the foregoing defences, the respondent was bound to pay reasonable freight for which the Captain was justified in exercising a lien upon the respondent's goods. He estimated this amount at Rs. 11,798-6-7.

The suit came on for hearing before one of the Judges (Russell, J.) sitting in the exercise of the Ordinary Original Civil Jurisdiction of the High Court. He held that the plaintiff was aware of the time charter and its terms, and that his goods were not exempt from the lien conferred by that charter; that the

bills of lading were signed by the Captain in the form used without the authority of the owners, and that the signature was obtained by misrepresentation, and was affixed by mistake, and the bills of lading had no validity as against the defendants.

The learned Judge further found that under any circumstances the plaintiff was not entitled to demand his goods, or to maintain the suit without tendering the amount due under the terms of the sub-charter, and that no such tender had been made. His decree declared that the defendants were entitled to a lien for Rs. 15,411-12-8 and to be paid the costs of the suit.

From this decision the plaintiff appealed, and the appeal came before a Division Bench consisting of the Chief Justice (Sir L. Jenkins) and Tyabji, J., who held that assuming that the plaintiff had knowledge of the time charter and its terms, that fact was, under the circumstances, not material, and that the owner of the vessel having by the time charter authorized its being sublet, his lien was limited to the freight for which the time charterer had a lien, that is, for the freight due under the sub-charter; that there had been no misrepresentation inducing the signing of the bills of lading, but that the bills of lading were mere acknowledgments of the receipt of the goods, and the rights of the parties were to be determined by the sub-charter. The Court found that the plaintiff was ready and willing to pay Rs. 6,000 in respect of the amount due under the sub-charter, and that if the amount so due was less than that sum the plaintiff was entitled to damages.

The material portions of the judgment of the Chief Justice who delivered the judgment of the Court were as follows :—

I will proceed to consider first whether the plaintiff, as the learned Judge has held, stepped into the shoes of the time charterers: for admittedly, if he has, the plaintiff's claim fails.

Mr. Justice Russell's decision on this point proceeds upon the view he took of the undated letter Exhibit R, written on the 22nd October by the time charterers: for it appeared to him that thereby the plaintiff agreed with Issabhoj Thaver & Co. to pay to the owners Rs. 18,000 per month in advance during the currency of the charter. Even assuming that such an agreement would have had the result ascribed to it, I am unable to agree with the construction placed by the learned Judge on the letters. The plaintiff, no doubt, was anxious to secure the ship for his venture and he was aware that for that purpose the time charterers must pay the owners Rs. 18,000 a month. He further wished to ensure that this

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sum should be paid, and was up to a point prepared to make the necessary payments himself, provided he saw his way to reimbursement. It was to secure this end that he procured that letter from the time charterers: it entitled him to make the necessary payments on the time charterers' account and to deduct the amount from the sums payable by him to them. To further secure his position there was a provision entitling the plaintiff to repayment of any uncovered balance and an undertaking on the part of the time charterers not to revoke. But I fail to see in this anything which imposed on the plaintiff an obligation to continue payments of the instalments. Therefore, I think the learned Judge has attributed to Exhibit R a force of which it is not capable. I do not propose to elaborate this point further, as the Advocate General has conceded that he cannot support the construction placed by the learned Judge on Exhibit R. But while making this concession he did not give up his contention that the plaintiff was under an obligation: this, he maintains, arises out of an oral agreement independent of Exhibit R. He is unable to point to any direct evidence of this agreement, but he argues it is the just inference to be drawn from the language of the correspondence.

No doubt the time charterers and their attorneys not once only but continually alleged an obligation on the plaintiff's part, but they were throughout met with an emphatic repudiation. It is true also that in the letters written by the plaintiff to his agents he uses expressions capable of an interpretation that he regarded himself as under a legal obligation; but it appears to me that they are equally referable to the plaintiff's knowledge that having regard to the time charterers' financial position if he wanted to preserve the charter-party from determination he must make the necessary payments. But the direct evidence as to a separate agreement is all against the defendants' suggestion: for the result of the evidence given by him and his attorney is that the arrangement between the parties was embodied in Exhibit R and no agreement other than R is hinted at in the correspondence.

Russell, J., held as a fact that the agreement between the parties was in the terms of Exhibit R: he did not find there was any other agreement and I, too, think no such agreement is proved and therefore the defendants' contention on this point fails.

It is next said that the bills of lading were obtained under circumstances which disentitle the plaintiff to any answer he might otherwise have to the lien claimed: for it is alleged the Captain was induced to sign the bills of lading in their existing form by the misrepresentations of the plaintiff's agents. Assuming for the sake of argument that the misrepresentation could have the legal result for which the defendants contend, it is important to see how the misrepresentation has been formulated by them.

After referring to the defendants' pleadings and to the other evidence on the point, the judgment continued:—

Mr. Justice Russell, in dealing with the evidence, expresses the opinion that "the Captain's evidence is to be believed and the plaintiff's agent's evidence at

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Mauritius is not credible." The Mauritius agent's evidence was taken on commission, and the learned Judge in reference to it has said : "Is so untrustworthy that Mr. Macpherson did not attempt to rely upon it." Before us it is said that the learned Judge was under a complete misapprehension as to Mr. Macpherson's attitude and in his estimate of the evidence. I have referred to these matters at length as I have the misfortune to differ with the view of the learned Judge on this question. I do so with great hesitation, but I cannot accept his estimate of the master's evidence. The master, it is true, was examined before the learned Judge, but it was on a *de bene esse* commission a considerable time before the trial. But what emboldens me to differ is that I do not find there was present to the mind of the learned Judge those circumstances of suspicion which I have set forth. The truth is that in the view taken by Russell, J., of Exhibit R the rest of the case was but of secondary importance. The onus lay on the defendants to establish by clear evidence a misrepresentation affecting the rights of the parties, and this in my opinion they have not done. I come to this conclusion not so much because I believe the Mauritius evidence (though I fail to see how it merits the absolute rejection it has incurred) as because the evidence for the defence fails to convince me on this point.

This brings me to the question of notice which has been argued before us. Now there can be no doubt that from the first the plaintiff knew of the existence of the time charter: the firm offer itself purports to come from the time charterers. Lord Romilly in *Peck v. Larsen*⁽¹⁾ said : "I fully admit that every person is bound by the contents of a charter-party of which he has notice. If he does not choose to enquire what the contents of the charter-party are, that is his own fault, and he must take the consequences of it." It may perhaps be a question whether this doctrine of imputed notice should in a commercial connection transaction be carried as far as this passage indicates, but here, it is said, the plaintiff had actual knowledge of the contents of the charter-party.

After considering the evidence as to the plaintiff's knowledge the judgment proceeded :—

Though it may fairly be inferred from these passages that the plaintiff was acquainted with the terms of the time charter-party, it does not necessarily follow from them that the plaintiff *must* have had that knowledge: so that there is nothing in the plaintiff's denial of knowledge. Mr. Justice Russell, however, before whom the plaintiff was examined at the trial, disbelieved his evidence in this point, and I am not prepared to say that the learned Judge's appreciation of the evidence was wrong: more especially when I find that the plaintiff has attempted to dissociate himself from knowledge of the time charter-party to an extent that the facts do not justify.

Assuming, then, that the plaintiff had this knowledge, what is the legal result? Notice so often has the effect of imposing a liability where none would

(1) (1871) L. R. 12 Eq. 378 (383).

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otherwise exist, that one is apt to be led into the thought that established notice has in all cases some form of extended liability as its necessary sequel. But it is incumbent to see what it is that is brought to notice. What did the plaintiff learn when the contents of the charter-party came to his knowledge? He learnt the actual legal relations of the parties and their mutual rights and liabilities. But this is precisely what we have to determine for the purposes of this case.

Therefore I now propose first to examine the provisions of the charter-party: for it is on the effect of that document that this case primarily turns. By the charter-party the vessel is let to the charterers for a term of six calendar months (clause 1): the charterers are to pay for the use and hire of the vessel (clause 4): the payments are to be made in cash monthly in advance to the owners' agents in Bombay with power of withdrawal in the event of default (clause 8): the Captain is under the orders and directions of the charterers as regards employment, agency or otherwise, and bills of lading are to be signed at any rate of freight the charterers or their agents may direct without prejudice to the charter-party (clause 14): the charterers are to have an option of subletting the steamer (clause 21): and the owners are to have a lien upon all cargoes for freight or charter money due under the charter.

The power of subletting the steamer is unqualified by any stipulation as to the rate of freight, place of payment, hire, or otherwise: it is an absolute power to sublet. It is a concession obviously in the charterer's favour, and must be intended to confer some benefit on him beyond what would arise from mere assignment of the charter-party rights. The position is very clearly described by Lord Esher in *Hansen v. Harrold Brothers*.⁽¹⁾ The question there was as to the liability of a charter under the common cesser clause. There was a lump sum charter-party with power to re-charter without prejudice to the charter-party and a provision for the Captain to sign bills of lading at any rate of freight: the charter-party contained a cesser clause: the charterers re-chartered and goods were shipped under the sub-charter: bills of lading were given providing for a freight which worked out to less in amount than the lump freight. The owners sued their charterers for the difference and were met by a plea of the cesser clause. The claim was awarded.

Now it will be seen that this case, though differing materially in form from the present, calls into play and, in fact, depends on principles pertinent to the question now before us. Lord Esher in the course of his judgment said at page 619:—"The meaning of the words 'without prejudice to the charter-party' has been settled by decisions which cannot be questioned. The meaning as settled by the cases of *Shand v. Sanderson*⁽²⁾ and *Gledstanes v. Allen*⁽³⁾ is that it is a term of the contract between the charterers and the shipowners that notwithstanding any engagements made by the bills of lading, that contract

(1) (1894) 1 Q. B. 612 (619): 63 L. J. Q. B. 744 (747).

(2) (1859) 4 H. & N. 881: 28 L. J. Exch. 278.

(3) (1852) 12 C. B. 202.

shall remain unaltered. Therefore in this case the Captain was bound to sign the bill of lading presented to him; but his doing so was to be 'without prejudice to the charter-party.' These words do not limit the obligation under the charter-party to sign the bills of lading presented to him: but when he has done so it does not affect the contract contained in the charter-party. If a shipowner puts up a ship as a general ship, he may insist on a bill of lading in any terms he pleases, or he may refuse to take the goods. Here the shipowner deprives himself of that right and agrees to sign bills of lading as presented, but that is not to affect the charter-party. Therefore the Captain was bound to sign the bill of lading which he did. The shipowner in this case has put it into the power of the charterers to re-charter the ship and to allow the sub-charterer to make any stipulation he pleases as to the rate of freight in the bill of lading and accordingly the charterers exercising that power, the bill of lading freight has been made by the sub-charterers payable according to the weight of the cargo delivered at the port of discharge, which necessarily made the bill of lading freight not equivalent to the balance of freight payable under the charter-party." Later on he says: "In this case, therefore, as, by the act of the charterers, the bill of lading freight was not equivalent to so much of the chartered freight as remained due after the payment made at the port of shipment, the cesser clause does not relieve the charterers, but leaves them liable for what is not covered by the lien under the bill of lading."

Lord Davey (then Davey, L. J.) also delivered judgment in the case, and I would refer to the following passage in his judgment at p. 621: "Then whose fault is it that the shipowner in this case has not got the lien for which he stipulated? The defendants' counsel says that it is the Captain's fault and he bases his argument in that respect on the Scotch case of *Arrospe v. Barr*(1). Notwithstanding some of the dicta attributed to the Lord President in that case I do not regard it as an authority for the proposition that the master could have and ought to have refused to sign the bill of lading presented to him, unless words were inserted in it which would have the effect of incorporating all other provisions of the charter-party except that as to the rate of freight. I do not think that the case is an authority for more than this, *viz.*, that except so far as the rate of freight is concerned he ought not to sign any bill of lading which contains provisions at variance with the charter-party. I am not prepared to say, if the Captain had insisted on having created by the bill of lading a lien in favour of the shipowner, not only for the bill of lading freight, but also for the charter-party freight, that such a stipulation would have been consistent with the obligation to grant a bill of lading at any or (it may be) a lower rate of freight. Whether that be so or not, I am of opinion that it must be taken to be the fault of the charterers that the lien which they contracted in the charter-party to create or procure for the ship-

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(1) (1881) S Court of Sessions Cases (4th Series) 602.

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owner was not created or procured. If they elected to re-charter the ship, they might have made a stipulation with the sub-charterers that they should create or procure such a lien as the charter-party contemplated. The master was in my opinion guilty of no negligence or default in signing the bills of lading which he signed. I think the charterers made default in not making such arrangements with the sub-charterers and through them with the actual shipper as to procure such a lien. The result is that, the bill of lading freight only covering a portion of the charter-party freight, there is no lien to secure that portion of the charter-party freight which was not covered by the bill of lading freight: and, whether the case is put on the ground of condition precedent or on the ground of breach of contract for which the damages are the difference between the two freights, the result is the same. For these reasons I agree that the appeal should be dismissed." It is throughout that case assumed that the owner had no lien against the shippers for more than the freight under the sub-charter; that in fact is an essential part of the *ratio decidendi*. It may be objected that they were not then considering the effect of notice, but the judgments in no way proceed on the absence of notice, while Lord Davey in expressing a doubt whether the Captain could have insisted on a lien for the charter-party freight could not have thought that an essential condition. Now if that be the real *ratio decidendi*, how far it is applicable to this case. To determine that we must see what precisely are the facts here. The power of subletting has been exercised and a sub-charter taken in the name of the plaintiff at a specified rate of freight or hire amounting to Rs. 80,000 odd. Under this sub-charter, which, by the way, was prepared at Chabildas' office, the freight was payable as to Rs. 37,500 in Bombay before sailing from Saigon, Rs. 25,000 on delivery of cargo at Réunion or Mauritius at the time charterers' option and the balance at Bombay on delivery of the cargo, but any money expended by the sub-charterer or his agents at any port under instructions either of the Captain or the time charterers for the steamer's disbursement to be first of all deducted at the port from the sum as stipulated to be payable there (clause 6). The Captain is, if necessary, to sign bills of lading at any freight without prejudice to the sub-charter. Goods were shipped by the plaintiff at Mauritius and the evidence of the Captain and the supercargo shows this was done under the sub-charter. The plaintiff got two bills of lading, one for 13,431 bags of sugar at the rate of 6 annas of 75 kilograms French weight shipped paid in Port Louis, and the other for 17,076 bags of sugar at the rate of six annas payable in Port Louis. In both bills it is stated that the goods are shipped by the plaintiff.

Therefore on the face of things we have the position of bills of lading given to a sub-charterer in respect of goods loaded under his sub-charter. If this be also the real position then as between the plaintiff and the time charterers the bill of lading was a mere acknowledgment of the receipt of the goods: the contract between them is the sub-charter, and the freight payable to the time

charterers is that stipulated for in the sub-charter. It would follow that the shipowner having authorized the subletting, his lien must be limited to the freight for which the time charterers had a lien: in other words his lien cannot exceed that of the time charterers: in effect it is limited to the freight payable under the sub-charter.

But then the Advocate General taking advantage of an argument advanced by Mr. Inverarity has contended that we have not here the case of bills of lading given to a sub-charterer. He has acceded to plaintiff's suggestion that the real sub-charterers were a firm of which the plaintiff was a member. Starting from here it is argued that the shipowner is under these circumstances entitled to the bill of lading freight. But to this it is answered that this freight has been paid. This is a question of fact, and looking at all the evidence I think it is shewn that the plaintiff's agents in January did settle accounts between the plaintiff and the plaintiff's firm, and in that account the plaintiff was treated as having paid the bill of lading freight. It is true those accounts did not come before the plaintiff until later, but they were adopted with the result, as I think, that as between the plaintiff and his firm the bill of lading freight must be deemed to have been paid. For the defendants it is then urged that the bills of lading could not be signed by the master in that form; that they could only provide for freight payable in Bombay. Assuming for the moment that this is so, it clearly is a defence of which the master cannot avail himself, and though this may not make any great difference, so far as actual recovery by the plaintiff is concerned, it would have an important bearing on the question of costs. But are the defendants right when they contend that the freight under the sub-charter party could not be made payable at Port Louis? The goods, as I have already said, were loaded under the sub-charter, and that was a contract between Issabhoj and the sub-charterers. Therefore it was competent to them to make any alterations they pleased in the terms of their sub-charter and we know as a matter of fact that an alteration was actually made. But then these two bills were drawn by the Captain with the consent of Allibhoj, the time charterer's agent and there is absolutely no evidence that his principal ever repudiated or now disapproves of what has been done, therefore it appears to me not to be open to the defendant owner to contend that the bills could not be made payable in the way they were.

I may here conveniently notice a counter argument of the plaintiff based on the hypothesis with which I am now dealing, *viz.*, that his firm really were the sub-charterers. He argues that as the freight was paid under the bills of lading there is no freight payable and consequently nothing on which Issabhoj can have a lien. But there appears to me to be two initial difficulties in the way of this argument which form a complete answer to it. Whatever may have been the arrangement between the plaintiff and his firm, as between him and Issabhoj he was the only disclosed sub-charterer: if he had principals they were undisclosed and Issabhoj could not be prejudiced by their existence. And in the next place the plaintiff in advancing this argument is giving the go-by to his own pleadings in which he alleges the sub-charter to have been made with

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himself, and never for a moment suggests that he was acting in the matter otherwise than as principal.

The conclusion therefore to which I come is that for the purposes of this case the plaintiff must be taken to be the sub-charterer and that Issabhoj therefore had a lien on the cargo for the amount due under the charter-party so that to this extent the defendants were entitled to a lien.

I will now deal with certain other arguments that have been advanced.

I have already indicated that one of the principal points urged by the defendants was that the plaintiff stood in the shoes of the time charterers and had identified himself with them. I have already dealt with this point so far as it was sought to support it on the grounds of misrepresentation, notice, and an assumption of legal obligation under Exhibit R or some other agreement. That, however, does not exhaust all the grounds urged by the plaintiff in this connection. Now it is said that in November for a consideration moving from the plaintiff the owner or his agents altered the charter-party for the plaintiff's benefit by allowing the ship to go to Saigon, and that this brought the plaintiff within the doctrine of identification. This contention is to my mind untenable; there is no evidence that Chabildas ever entered into an agreement with the plaintiff to take the ship to Saigon, and he does not venture to go into the box to say he even understood that there was such an agreement. The contention, moreover, is inconsistent with the undertaking in the receipt to refund the Rs. 18,000 in the event of the steamer not sailing to Saigon * * * * *

Cases have been brought to our notice for the purpose of showing that the doctrine of identification is applicable, or in other words that the plaintiff is not (as it has been termed) a stranger to the contract; but in examining them it has to be borne in mind that questions like the present must depend upon the particular contracts and facts of each case, and it is unsafe to rely on any general expression or principle as applicable. The Advocate General has relied on *Christie v. Lewis*⁽¹⁾ as showing that the freight under the bills of lading was recoverable by the shipowner, but that case is distinguishable on two grounds: first the goods were not, as here, loaded under an authorised sub-charter party, and secondly the goods in respect of which bills were given were those of third parties, and not, as here, of the sub-charterer.

Reynolds v. Jex⁽²⁾, again, was a decision on facts so dissimilar from the present as to be no guide. What was there decided was that it was outside the scope of the master's authority to make bills of lading under which the freight was payable to the charterer's agents as security for advances to the master. But there again there was no opportunity of considering what was the effect of a power to sublet such as we have here: that really is the whole crux of the case.

Then we were referred to three cases which were said to illustrate favourably to the defendant the doctrine of identification.

The first of the series is *Foster v. Colby*⁽³⁾ which was an action of trover for a quantity of linseed brought against the master. The case is cited for the

(1) (1821) 2 Brod. and Bing. 410. (2) (1865) 34 L. J. Q. B. 251: 7 B & S. 86.

(3) (1858) 28 L. J. Exch. 81 (86).

principle enunciated by Pollock, C. B., in these words: "I would rather put my judgment on the plain, clear and honest principle, that a *bonâ fide* indorsee of a bill of lading, having no notice whatever of any charter-party, or any other freight to be paid, except that which is expressed in the bill of lading, and not colluding with any person to get an advantage that he is not entitled to,—that the plaintiffs standing in that situation, as *bonâ fide* indorsees of the bill of lading, are entitled to the goods, on payment of the freight stipulated in the bill of lading." Had the facts giving rise to those remarks existed here, obviously they would have been most pertinent, but the whole question here is whether the documents have not vested in the plaintiff the rights he claims and on that the decision throws no light.

Shand v. Sanderson ⁽¹⁾ simply follows *Foster v. Colby* ⁽²⁾ which it is said must govern in the absence of fraud. Possibly it was this reference to fraud that induced the Advocate General before us to open the case of fraud which we have already decided was not open to him.

Then there is the case of *Kern v. Deslandes* ⁽³⁾. It was there said "All the cases show that as against the charterer there is a lien on his goods for the amount of the charter freight. From the moment, therefore, the goods were put on board, they were, as against Ferguson" (he was the charterer and shipper) "and those who must stand on his title, bound by that lien under the express terms of the charter-party." The case then goes on to show that the Gregorys did stand on the plaintiff's title, and obviously they did. Their only title to the goods was from Ferguson by whom they had been shipped and they acquired that title with notice of the lien to which the goods were subject in Ferguson's hands and consequently their title was necessarily subject to the same lien. There is no similarity here to that state of facts. The goods are the plaintiff's, and he has acquired them from no one who was in the position of charterer to the owner. Thus the expression "not a stranger to the charter-party" has been much used in the argument before us: it is no doubt a convenient phrase but to appreciate its applicability one has to see what was the contract in those cases where the facts it implies result in an extended liability, and to compare or contrast them with the contracts in this case: for obviously if the charter-party here contemplated the introduction of a third party into the position occupied by the plaintiff free from an unlimited lien, it would be to no purpose to rely on decisions imposing liability under circumstances bearing a general resemblance, if the contract on which they proceeded was not capable of the same construction.

Holding then as I do that the legal result of the documents and evidence in this case is that there was a lien against the plaintiff only for the amount of the sub-charter freight it is necessary to determine what that amount is.

The parties are not at one on this and they have accordingly agreed that it shall be determined hereafter. Assuming that the amount found due is less

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(1) (1859) 4 H. & N. 881; 28 L. J. Exch. 278. (2) 1858) 28 L. J. Exch. 81 (86).

(3) (1861) 30 L. J. C. P. 297 (301); 10 C. B. N. S. 205 (225).

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than Rs. 6,000 then I think the plaintiff has been right. That sum he was ready and willing and offered to pay unconditionally and under circumstances to which no exception could be taken. Therefore if the balance due is less than Rs. 6,000 the plaintiff is entitled to damages, but we have not had placed before us materials on which the amount can now be determined.

By the decree the decision of the Court below in favour of the defendants was reversed and they appealed to His Majesty in Council.

T. G. Carver, K.C., and *A. Adair Roche* for the appellants contended that by the terms of the time charter they were entitled to a lien upon the goods of the respondent for sums due under that charter for the hire of the vessel. The power given to the time charterer to sublet was to be exercised subject to the terms of the time charter; he could not give any one more than he himself had under that charter, and therefore he could not give the respondent as sub-charterer the right to ship goods free from the lien conferred by the time charter. It had been found both by the first Court and by the Court of appeal that the respondent had knowledge of the time charter and of its terms, and such notice had the effect that he was bound by the terms of that charter, and among other terms by those of clause 22 which gave the owners a lien on all cargo shipped on the vessel. The sub-charter therefore could not get rid of that lien. Reference was made to *Peek v. Larsen*⁽¹⁾ per Lord Romilly; and *Ralli Brothers v. Paddington Steamship Company*⁽²⁾ per Mathew, J. As to the amount of the lien, therefore, the appellants were not, as held by the High Court on appeal, limited to the amount due under the sub-charter. Nor did the bills of lading get rid of the lien given by the time charter: if they had any such effect the Captain had no authority to sign them in that form. *Reynolds v. Jea*⁽³⁾ and *Small v. Moates*⁽⁴⁾ were cited. He had no power to sign bills of lading which were inconsistent with the owners' power, under the time charter clause 8, of withdrawing the vessel, or with their lien (under clause 22) on all goods put on board. The only bills of lading he had authority to sign were those "without prejudice to" the time charter. Reference was made to *Hansen v. Harrold*

⁽¹⁾ (1871) L. R. 12 Eq. 373 (383). ⁽³⁾ (1865) 34 L. J. Q. B. 251: 7 B. & S. 86.

⁽²⁾ (1900) 5 Commercial Cases 124.

⁽⁴⁾ (1833) 9 Bing. 574.

Brothers⁽¹⁾. It was not assumed in that case, as the High Court on appeal says it was, that the shipowner had no lien against the shippers for more than the freight under the sub-charter. If on the other hand the bills of lading were mere receipts for the goods shipped, the respondent had no greater rights than the time charterers themselves had. As to the relation to the shipowner in which a man stood who put goods on board without a contract except with the charterer, reference was made to *Delaurier and Company v. Wyllie*⁽²⁾. It was also contended that the evidence showed that the Captain's signature to the bills of lading had been obtained by misrepresentation by the respondents' agents, and was given under a mistake as to the facts, and that this made the bills of lading invalid as against the appellants; and reference was made to the Contract Act (IX of 1872), s. 19.

J. A. Hamilton, K.C., and *Lauriston Batten* for the respondent contended that the appellants had no lien under the time charter on the goods shipped by the respondent. Such a right, if it existed, must have arisen out of a contract between the shipowners and the respondent, but no such contract, either express or implied, had been proved. The respondent had not consented in any way to his goods being subject to a lien which he was under no obligation to pay. He would have been entitled to have the goods he had shipped returned to him if he had been told before the ship sailed that the whole amount of lien under the time charter might be enforced against the goods. *Tharsis Sulphur and Copper Mining Company v. Culliford*⁽³⁾ was cited. The evidence showed that the goods put on board by the respondent were shipped under the sub-charter which was one that the time charterers had power to make, and his contract as to the goods was under the sub-charter and the bills of lading which both under the time charter and the sub-charter the captain had authority to sign; and by that contract alone the respondent should be bound. His goods were therefore liable only for the lien provided by the sub-charter. The respondent when he shipped the goods knew there was a time charter, but there was nothing to show that he knew its terms. The doctrine

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(1) (1894) 1 Q. B. 612 (619) : 63 L.

J. Q. B. 744 (747).

(2) (1889) 17 Court of Sessions Cases,

4th Series, 167 (191).

(3) (1873) 22 W. R. (Eng.) 46.

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of notice, moreover, must be applied, if, at all, with its limitations and one of them was that it did not apply to a chattel interest. As to the authority of the Captain to sign the bills of lading reference was made to *Small v. Moates*⁽¹⁾; *Gledstaves v. Allen*⁽²⁾; *Kern v. Deslandes*⁽³⁾, and *Reynolds v. Jew*⁽⁴⁾; and *The "Shillito"*⁽⁵⁾ per Barnes, J., was relied upon. The respondent was entitled to delivery of his goods on payment of an amount which might be less than that due under the time charter. *Hansen v. Harrold Brothers*⁽⁶⁾ was referred to with reference to the words in the time charter "without prejudice to this charter," it being contended that they did not deprive the Captain of authority to sign such bills of lading as he had done for the respondents' goods. Clause 14 of the time charter was not a personal clause applying only to the time charterer himself. The true construction of the time charter was that the time charterer had power to sublet on terms not included in the time charter. The case of *Peck v. Larsen*⁽⁷⁾ had only one sentence by Lord Romilly pertinent to the question for decision in this case and that was not conclusive. Reference was made to *Sewell v. Burdick*⁽⁸⁾; *Ledue v. Ward*⁽⁹⁾; *Rodocanachi v. Milburn*⁽¹⁰⁾; and *Hatwood v. Brunswick Building Society*⁽¹¹⁾: the only lien which could be enforced against the respondents' goods was for what was due under the sub-charter; this he had been always ready and willing to pay.

As to misrepresentation it was submitted there was none proved, but if it were proved it was not material because it was not false to the knowledge of the person making it: the Captain had full power and opportunity of ascertaining whether what was stated was true or not, and was not induced by it to sign the bills of lading.

Carver, K.C., replied contending that there was no foundation for the contention that there could be no lien under the time

(1) (1833) 9 Bing. 574 (579, 591, 592) (2) (1861) 10 C. B.N. S. 205: 30 L. J. C. P. 297

(3) (1852) 12 C. B. 202.

(4) (1865) 34 L. J. Q. B. 251: 7 B. & S. 80.

(5) (1897) 3 Commercial Cases 44 (46, 47, 48).

(6) (1894) 1 Q. B. 612 (619): 63 L. J. Q. B. 744 (747).

(7) (1871) L. R. 12 Eq. 378.

(8) (1858) 20 Q. B. D. 475 (479).

(9) (1884) 10 App. Cas. 74 (105).

(10) (1886) 18 Q. B. D. 67.

(11) (1881) 8 Q. B. D. 403 (406).

charter on the respondents' goods unless there was a contract between the respondent as shipper of the goods and the ship-owners: the lien arose if the shipper knew the terms of the time charter. But if it were necessary to show a contract there was, it was submitted, an implied contract between the shipowners and the respondent sufficient to render the latter liable for the lien claimed on his goods: the respondent had taken advantage of the time charter, and had treated the vessel as practically his own.

The judgment of their Lordships was delivered by—

LORD LINDLEY:—The question raised by this appeal is whether the appellants, who are shipowners, are entitled to a lien for freight payable under a time charter on the goods of the respondent who was no party to that charter, but whose goods were carried in the appellants' ship under a sub-charter and bill of lading. The Judge of First Instance decided this question in favour of the appellants. His decision was reversed by the Court of Appeal in Bombay, and the present appeal is from the decision of that Court.

The undisputed facts are as follows:—

The appellant Glanville was the registered owner of the steamship "Bombay," and the appellant Turner was her Captain. By a charter dated the 20th August, 1898, and entered into by the agents of the owners and some Bombay merchants named Issabhoy Thaver & Co., the owners agreed to let and the charterers agreed to hire the ship for six calendar months. She was placed at their disposal with a full complement of officers and men at Bombay for employment in the Indian Ocean and other Eastern waters as the charterers or their agents should direct, on certain conditions of which the following are important:—(2) The owners were to pay the Captain and crew. (4) The charterers were to pay freight monthly in advance at the rate of 7s. 6d. per ton, which came to Rs. 18,000. (8) In default of such payment the owners were entitled to withdraw the steamer from the service of the charterers without prejudice to any claim the owners might otherwise have against them. (14) The Captain, although appointed by the owners, was to be under the orders and directions

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of the charterers as regards employment, agency, or other arrangements. Bills of lading were to be signed at any rate of freight the charterers or their agents might direct without prejudice to that charter, and the Captain was to attend daily, if required, at their offices to do so. The charterers were to indemnify the owners from all consequences or liabilities that might arise from the Captain doing so except for short delivery. (21) The charterers were to have the option of subletting the steamer. (22) The owners were to have a lien upon all cargoes for freight or charter money due under the charter, and the charterers were to have a lien on the ship for all moneys paid in advance and not earned.

The 14th, 21st and 22nd conditions are those which have given rise to the controversy between the parties; but, before considering them, it will be convenient to state what was done, and, for the purpose of avoiding confusion, the charterers under this charter will be referred to as the "time charterers" in order to distinguish them from the respondent, who is their sub-charterer.

Shortly after the time charter was made the ship was sub-chartered to the respondent for a round voyage from Saigon to Réunion and back from Mauritius to Bombay. She was to take rice from Saigon to Réunion and sugar from Mauritius to Bombay. Freight was to be payable for the whole voyage at the rate Rs. 1-8 per bag of 168 lbs., calculated only on the cargo, shipped from Saigon to Réunion. There was to be no freight payable by the sub-charterer to the time charterer for any other cargo. On account of the freight thus estimated, Rs. 37,500 were to be paid at Bombay before the steamer sailed from Saigon, Rs. 25,000 at Réunion or Mauritius, and the balance was to be paid at Bombay after delivery of the cargo there.

It will be observed that neither of these documents took the ship out of the legal possession of the owners so as to deprive them of the power of detaining goods on board, and of enforcing any lien to which they might be entitled. The Captain retained possession for the owners, and was in a position to enforce the lien expressly conferred by the time charter if it was properly enforceable against the goods in question.

The steamer completed this voyage, and on the 2nd February, 1899, she arrived at Bombay, having on board a quantity of

sugar put on board by the sub-charterer at Mauritius, and for which he had received bills of lading from the Captain. The freight payable by these bills of lading was at the rate of 6 annas per 75 killograms, and this freight was prepaid by the sub-charterer, in Mauritius, so that when the ship arrived in Bombay nothing remained to be paid by the sub-charterer to the owners in respect of the bill of lading freight. It appears, however, that something was due from the sub-charterer to the time charterers for money payable under the sub-charter.

There was also due to the owners a month's freight, *i.e.*, Rs. 18,000 (£1,197) from the time charterers under the time charter, and the owners claimed a lien for this amount on the sub-charterer's sugar. Hence the dispute between the parties. The sub-charterer brought an action to recover his sugar, or its value, and damages for its detention, and the shipowners defended the action relying on their lien.

So far there is no dispute about the facts. The shipowners, however, also defended the action upon the ground of misrepresentation alleged to have been made by the sub-charterer to the Captain before the sugar was shipped, and on the faith of which he is said to have signed the bills of lading.

This alleged misrepresentation was denied and a considerable amount of evidence upon it was adduced. The Judge of First Instance thought the defence proved. But the Court of Appeal took a different view. The evidence has again been laid before their Lordships and they have carefully considered it. It appears that the sub-charterer had paid to the agents of the shipowners some of the freight payable in advance under the time charter, and there was undoubtedly some misunderstanding on the part of the Captain as to similar payments being made in future. But their Lordships are not satisfied that the sub-charterer made any false statement to the owners' agents or to the Captain, nor any representation or promise which could confer on the owners any lien on the sub-charterer's goods other than such as the documents above referred to entitle them to assert.

Their Lordships, however, agree with both Courts in India in their conclusion that the sub-charterer knew, in a general way, of the time charter, and that the freight payable under it by the time charterers was Rs. 18,000, payable monthly in advance.

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Bearing these conclusions in mind, their Lordships will consider the legal position of the parties.

The first question which arises is the effect of the bills of lading. Apart from them there was no contract between the shipowners and the sub-charterer. But he shipped his sugar on board the steamer on the terms of those bills of lading, and the Captain was authorised by the time charter to sign them. Whether he signed them for the shipowners or for the sub-charterer he had express authority from the shipowners to sign them. Under these circumstances the shipowners appear to their Lordships to have contracted with the sub-charterer that his sugar should be carried to Bombay in that ship on the terms of the bills of lading. This distinguishes the present case from *Colvin v. Newberry* ⁽¹⁾, where the bill of lading given by the Captain of a chartered ship was held to bind the charterer only, although the shipowners retained possession of the ship by the Captain. Nor is the present case governed by *Small v. Moates* ⁽²⁾ and others of that class, where the holder of the bill of lading had no better title than the charterer who was himself the Captain of the ship and the original shipper of the goods.

‘It further appears to their Lordships that the bills of lading in this case are not mere receipts for goods given to a charterer already bound to the shipowner by a charter-party entered into between them and which the Captain had no authority to depart from.

Unless, therefore, the fact that the sub-charterer had notice of the time charter makes a difference, the bills of lading entitled him to have his goods delivered to him on payment of the bills of lading freight. This was decided in *Fry v. The Chartered Mercantile Bank of India* ⁽³⁾, which was followed in *Gardner v. Trechmann* ⁽⁴⁾. In both of these cases the bill of lading expressly referred to the charter-party, but not in such a way as to incorporate either the obligation to pay the charter freight or the lien for it.

These cases, and others like them, show that notice by a shipper of a charter-party has not the effect of incorporating into

(1) (1832) 1 Cl. & Fin. 288.

(2) (1838) 9 Bing. 574.

(3) (1866) L. R. 1 C. P. 689.

(4) (1884) 15 Q. B. D. 154.

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the bill of lading any terms which are inconsistent with it and which the Captain was not bound to embody in the bill of lading. If the charter-party shows that the Captain exceeded his authority in signing the bill of lading, and the shipper knew this, he cannot enforce the terms of the bill of lading uncontrolled by the charter-party. If the shipper knew that there was a charter-party, and had an opportunity of reading it, and did not trouble himself about it, he might be treated as knowing its contents. In the present case the time charterer had authority to let other persons have the use of the ship for six months for any voyage in the waters mentioned in the time charter. The Captain was not only empowered to sign but was bound to sign bills of lading at any rate of freight which the charterers or their agents might direct, but "without prejudice to" that charter. These words introduce a difficulty. It is said that they limit the authority of the Captain to sign bills of lading which do not preserve to the owners the power to withdraw the ship under Condition 8 of the time charter and their lien on all goods under Condition 22. This construction is a possible construction, but it has long ago been rejected both by commercial men and by judicial decision.

There can be no doubt that the sub-charterer must, for this purpose, be regarded as an agent of the charterer. The words "without prejudice to this charter" mean that the rights of the shipowners against the time charterers, and *vice versa*, are to be preserved. That this is the true meaning and legal effect of the words "without prejudice to this charter" has often been the subject of controversy and of judicial decision, and has long been treated as settled by authority. In *Hansen v. Harrold Brothers* (1), Lord Esher said its meaning was "that it is a term of the contract between the charterers and the shipowners that, notwithstanding any engagements made by the bills of lading, that contract shall remain unaltered." It means no more. Condition 8 in the time charter, empowering the owners to withdraw the ship, cannot mean that, after the Captain has shipped goods for Bombay and given bills of lading for them to persons other than the time charterers, the owners can refuse to allow the ship

(1) (1894) 1 Q. B. 612 : 63 L. J. Q. B. 744.

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to go to Bombay and deliver the goods there as agreed by the bills of lading. So as regards Condition 22 giving a lien upon all cargoes for freight or charter money due under that charter. This is a stipulation binding on the time charterer, and gives the shipowner a more extensive lien than he would have for freight payable in advance. But this clause does not override or limit the power of the Captain to issue bills of lading at different rates of freight, or entitle the shipowners to a lien on the goods of persons who have come under no contract with them conferring a lien for the freight payable under the time charter. A right to seize one person's goods for another person's debt must be clearly and distinctly conferred before a Court of Justice can be expected to recognize it.

If their Lordships had taken a different view of the legal effect of the bills of lading there might have been more difficulty in the case, for there is great force in Mr. Carver's argument that, if the bills of lading were mere receipts for goods put on board, the sub-charterer could have had no greater rights than those which the time charterers had themselves. It is not, however necessary to solve the difficulties which would have arisen if there had been no bills of lading. For the reasons above stated, their Lordships are of opinion that the claim of the shipowners cannot be supported and that the order appealed from ought to be affirmed.

Their Lordships observe that the Court of appeal gave the shipowners the benefit of any lien which the time charterers had on the goods of the sub-charterer. This seems right and the sub-charterer's Counsel did not contend that it was not.

Their Lordships will therefore humbly advise His Majesty to dismiss the appeal and the appellants must pay the costs.

Appeal dismissed.

Solicitors for the Appellants: Messrs. *Maples, Teesdale & Co.*

Solicitors for the Respondent: Messrs. *Wallons, Johnson, Bubb
Whallon.*