# THE JOSEPH GRANT.

Case No. 7,538.
{1 Biss. 193.}[1]

District Court, D. Wisconsin. Oct. Term, 1857.

BILL OF LADING SIGNED IN BLANK VOID.

1. Although the master of a vessel employed in navigating the lakes is agent of the owners for giving bills of lading for goods shipped on board, he has no authority from the owners to sign bills of lading in blank, and a bill of lading so signed is not valid against the owners, even in the hands of a bona fide holder.

{Cited in the R. G. Winslow, Case No. 11,736; Robinson v. Memphis & C. R. Co., 9 Fed. 139.}

2. A bill of lading signed in blank by a master is no maritime contract binding on the vessel or owner.

{Cited in The John K. Shaw, 32 Fed. 493.}

3. Where two bills of lading describing the cargo shipped, were made out in full; one of which was signed by the master, and the other by the shipper, and a third one was signed in blank by the master and left with the shipper, who, after departure of the vessel, filled up the blank bill with a Change of the consignee, and transferred it to a bank as collateral security for advances for the owners of the cargo, no maritime contract is there by created between the bank and the vessel without notice to the master before delivery of the cargo according to the first bill of lading sent with the vessel.

4. The owner of the vessel is not estopped from having the circumstances attending the signing and transfer of the blank bill of lading inquired into by the court.

{Cited in Robinson v. Memphis & C. R. Co., 9 Fed. 139.}

{Cited in Sioux City & P. R. Co. v. First Nat. Bank of Fremont, 10 Neb. 556, 7 N. W. 311.}

In admiralty. Fitzhugh & Littlejohn, millers, in Oswego, New York, by George M. Chapman, their agent, in Chicago, were purchasing and shipping grain from that place to Oswego, Chapman from time to time drawing on his principals, through the Marine Bank of Chicago, and procuring from the bank advances on the security of bills of lading. The schooner, Joseph Grant, on the 19th of August, 1857, was freighted at Chicago, with 18,744 bushels of com to be transported to Oswego and delivered to Fitzhugh & Littlejohn. Duplicate bills of lading were made out, consigning the corn to Fitzhugh & Littlejohn. One bill was signed by the master, and one by Chapman, Which the master retained as his guide in the delivery, and the third was signed by the master in blank. From three to five days after the vessel departed, Chapman, having occasion to give the bank a bill of lading to cover advances on drafts, filled out the blank bill in every respect the same as the other two, except as to the consignee, which was "account Marine Bank, care Delos DeWolf, cashier, for Fitzhugh & Littlejohn, Oswego, New York." The vessel in due time arrived at Oswego, and the master delivered the cargo to Fitzhugh & Littlejohn, on the 5th of September, according to her bill of lading, signed by the agent, without notice or knowledge that the third bill of lading had been filled up with a different con-

signment, and delivered to the bank. Two or three days after the receipt of the cargo by Fitzhugh & Littlejohn, they failed in business. This libel is brought by the bank against the vessel for not delivering the cargo on account of the Marine Bank to Delos DeWolf for Fitzhugh & Littlejohn. It did not appear that the bank bad notice that the bill of lading had been signed in blank by the master and filled up by Chapman after the departure of the vessel, until after the failure of Fitzhugh & Littlejohn. Nor had the bank notice that the bills of lading, under which the vessel departed, consigned the cargo directly to Fitzhugh & Littlejohn. The bank knew that this firm was the owner of the cargo.

Wm. P. Lynde, for libellant, cited Bush v. Person, 18. How. [59 U. S.] 82; Pars. Mar. Law. 346; Chit. Carr. 250; Dickerson v. Seelye, 12 Barb. 100; Violett v. Patton 5 Cranch [9 U. S.] 142; Howard v. Tucker, 1 Barn. & Adol. 712.

Mr. Emmons, for claimant, cited Craighead v. Wilson, 18 How. [59 U. S.] 199; Grant v. Norway, 2 Eng. Law & Eq. 337; Warden v. Greer, 6 Watts, 424; Abb. Shipp. 408–414; Low De Wolf, 8 Pick. 101; Allen v. Williams, 12 Pick. 297; Salem Bank v. Gloucester Bank, 17 Mass. 1.

MILLER, District Judge. So far as a bill of lading partakes of the character of a receipt, it is open to explanation between the parties to it, but as a contract, when legally executed by the proper party, in the proper and usual manner, the master or owner of a vessel shall not be permitted to show a mistake in stating the destination of the property, unless when fraud or imposition is practiced on the party. Fland. Shipp. § 479, and note.

The masters of vessels employed in the lake trade are considered the agents of the owners, to sign bills of lading or goods received on board for transportation. Usually triplicate bills of every shipment are made out,—one is signed by the shipper, which goes with the vessel as a guide for delivery, two are signed by the master, one of which is retained at the place of shipment, and the other is forwarded to the consignee. The master is the general agent of the owner,

and his acts in the scope of his duties as such bind the vessel. In the exercise of the duties of a general agent, the liability of the principal depends upon the fact that the act was done in the exercise and within the limits of the powers delegated. The acts of agents do not derive their validity from professing, on the face of them, to have been in the exercise of their agency. But the facts in relation to the powers and duties of general agents are necessarily inquirable into by the court. Mechanics Bank v. Bank of Columbia, 5 Wheat. [18 U. S.] 326.

The bank did not acquire an interest in the cargo or any service of the vessel by the shipment. It became an apparent assignee of the cargo, subsequent to the date of the bill of lading and the departure of the vessel. The libel raises the question, whether the bill of lading created a maritime contract between the master and the bank binding on the vessel, to estop the owner from inquiring into the circumstances attending it. The owner is not estopped from enquiring into the necessity of a sale of his vessel by the master, or of his creating a lien by a bottomry bond, or of his purchase of supplies. Maritime liens are stricti juris, and will not be extended by implication or construction. Vandewater v. Mills, 19 How. [60 U. S.] 82; Thomas v. Osborn, Id. 22; Pratt v. Reed, Id. 359; Tod v. Pratt, Id. 362.

When the master, as agent, receives goods on board, and gives a bill of lading, a contract is made between the shipper and the vessel. But he cannot bind either the vessel or its owner by a receipt for goods not delivered on board, for it is not a contract entered into by the master in good faith, or within the scope of his authority; and the general owner is not estopped from proving the facts, even against a bona fide holder of the bill of lading. Grant v. Norway, 2 Eng. Law & Eq. 337; The Freeman v. Buckingham, 18 How. [59 U. S.] 182. The master has no apparent authority to sign a bill of lading for goods not actually shipped, and there can be no implication that the owner of the vessel consented that false pretences of contracts, having the semblance of bills of lading should be created as instruments of fraud; or that if so created they should in any manner affect him or his property. To sign a bill of lading made out in full, describing the goods shipped, is within the authority of the master, but not a blank bill. A blank bill of lading is no contract binding on the vessel or owner. The master has no implied authority from the owner to sign any such paper. An agent of limited powers cannot bind his principal when he exceeds those powers. Schimmelpennich v. Bayard, 1 Pet. [26 U. S.] 264; Manella v. Barry, 3 Cranch [7 U. S.] 415; Lanusse v. Barker, 3 Wheat. [16 U. S.] 101; Parsons v. Armor, 3 Pet. [28 U. S.] 413; Owings v. Hull, 9 Pet. [34 U. S.] 607. Signing a blank bill of lading by the master should no more bind the vessel, than signing a bill of lading of goods not put on board,—or putting goods on board without the knowledge or consent of the master or receiving officer; but in such case the vessel may charge for freight of goods actually carried.

The vessel departed from Chicago, under a bill of lading signed by the owners of the cargo by their agent, and by the master, in which the cargo was consigned to said owners, Fitzhugh & Littlejohn. The cargo was so delivered in due course, without any knowledge on the part of said owners, or of the master, of the third bill of lading having been filled up and delivered to the Marine Bank. The vessel had no goods on board consigned to Delos DeWolf, cashier, on account of the Marine Bank, for Fitzhugh & Littlejohn. No maritime lien attached to the vessel in favor of the bank, and the libel must be dismissed, with costs.

NOTE. For a discussion of the rights of a bona fide transferee of a bill of lading as against the consignee, see Marine Bank v. Wright, 46 Barb. 45. If master signs bill of lading for goods never shipped, principal not bound. See cases cited in 1 Pars. Shipp. & Adm. 190. Or for greater quantity than actually on board, Hubbersty v. Ward, 8 Exch. 330. Master cannot, by signing bill of lading for goods not on hoard, charge the vessel or owner. And where bill of lading was signed upon misrepresentation, the vessel is not liable even to a bona fide holder. The Loon {Case No. 8,499}.

[1] {Reported by Josiah H. Bissell, Esq., and here reprinted by permission.}