Deck Cargo

The enactment by Congress in 1936 of the Merchant Marine Act and the Carriage of Goods by Sea Act is a clear declaration that the United States intends to go forward in firm, steady strides in matters maritime. Renewed and greater interest will undoubtedly be taken in legal questions involving the relationships of shippers and ocean carriers in various situations. The present article deals with those relationships in matters of cargo carried on deck. The subject has been treated legislatively and judicially for so long a period, and at the same time so recently as not only to contain considerable historic interest but also to present questions of modern practical importance.

The Rule of Under-Deck Stowage

The general rule as to stowage of cargo, in the absence of an express agreement or universal custom of a particular trade for stowage on deck, is that cargo must be stowed under deck. This rule applies, as a matter of course, when no formal bill of lading has been issued. The fact that full freight has been paid for the transportation has also been held to be a factor evidencing the carrier's agreement to stow the cargo under deck. As early as 1838, in Varnard v. Hudson, Mr. Justice Story, sitting on circuit, held: "where goods

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3 "It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine (a) sufficient to carry its domestic water-borne commerce and a substantial portion of the water-borne export and import foreign commerce of the United States and to provide shipping service on all routes essential for maintaining the flow of such domestic and foreign water-borne commerce at all times.... It is hereby declared to be the policy of the United States to foster the development and encourage the maintenance of such a merchant marine."
4 A statute of Marseilles, dated 1253, decreed it to be unlawful to carry merchandise on the deck of a ship even by agreement, and provided that if so carried, the person responsible for the stowage should be held accountable for any loss occasioned thereby.
4 Pardessus, Collection des Lois Maritimes Antérieures Au XVIIIe Siècle (1837) 275.
8 (C. C. D. Mass. 1838) Fed. Cas. No. 16,921, at 1163. The leading decision on the point that issuance of a clean bill of lading evidences an agreement to stow the goods
are shipped under the common bill of lading, it is presumed that they are shipped to be put under deck, as the ordinary mode of stowing cargo.” The doctrine has been reaffirmed in more recent years by the United States Circuit Court of Appeals for the Second Circuit and well stated in a single sentence: “Where goods are shipped under a clean bill of lading the obligation is that they are to be put under deck, unless there is an express written agreement to the contrary or a custom to the contrary is proven.”

That the principle is to be applied also where the parties enter into a more complicated contract than one where a bill of lading only is used is demonstrated by a recent case in the Supreme Court of the United States. There a freight contract gave the vessel an option to carry the goods “on or under deck,” and the court held that issuance by the vessel of a clean bill of lading amounted to a “positive representation” by the vessel that the option “had been exercised and that the goods would go under deck.”

A clean bill of lading, in the sense in which that term is now being employed, is simply one which contains no marginal notations as to a special manner of stowage of the cargo for the receipt and carriage of which it is given. The term has been judicially defined as a bill of lading “which contains nothing in the margin qualifying the words in the bill of lading itself.”

As recently as June, 1938, a bill of lading which contained a clause to the effect that goods stowed in various named parts of the ship above the main deck, or in “any covered-in space commonly used in the trade for the carriage of goods” should be deemed to be stowed under deck was held not a clean bill of lading.


11 St. Johns N. F. Shipping Corp. v. S. A. Companhia Geral etc. (1923) 263 U. S. 119, 1923 Am. Mar. Cas. 1131. On the other hand, it has been held that where there is an express agreement to carry cargo on deck, a clerical error in failing to note such stowage on the bill of lading when issued does not prevent the vessel from relying on her right to carry the cargo on deck. Two Hundred and Sixty Hogsheads of Molasses (D. Me. 1866) Fed. Cas. No. 14,296. But where the bill of lading provides that the carrier may stow the cargo “on or under deck,” deck stowage is permissible. The Peter Helms, supra note 5.


It should be noted that there is one comparatively recent decision by the United States Circuit Court of Appeals for the Ninth Circuit holding that the Harter Act does not prohibit insertion of a clause granting "liberty to carry the goods and any other goods on deck or under deck" in the body of the bill of lading. In that decision, the carrier was held not liable for damage to cork board carried on deck, but the opinion of the court does not indicate whether there was a specific notation on the face of the bill of lading to the effect that the merchandise was to be carried on deck.

WHAT CONSTITUTES ON-DECK STOWAGE

In any study of reciprocal rights and liabilities in reference to deck cargo it is of course first necessary to decide what actually constitutes stowage on deck. The answer to this inquiry is not as simple as it may at first blush appear to be. The general rule seems to be that stowage of cargo in any space in which it is for all practical intents and purposes afforded the same protection from the weather as if it were under the main deck is under-deck stowage, whether the goods are actually under the main deck or not. The York Rules of 1864 and the York-Antwerp Rules of 1877 and 1890 all contained the following provision:

"Every structure not built in with the frame of the vessel shall be considered to be a part of the deck of the vessel."

But the York-Antwerp Rules of 1924 omitted this provision. This change was made as the result of an extensive controversy which had developed, and because of the generally prevailing opinion that the technical question as to whether cargo was stowed on or under deck should be left for decision as a matter of fact in each case as it arose. The rule as it stood prior to the adoption of the Rules of 1924 had led to considerable confusion, especially in cases of general average,

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17 Ibid.
18 Ibid. at 141.
19 Ibid. at 64.
because of the conflict between the generally accepted principle that properly protected cargo was deemed to be stowed under deck and the provision of the York-Antwerp Rules that stowage anywhere other than within the frame of the vessel was on-deck stowage. Since the adoption of the York-Antwerp Rules of 1924, the atmosphere has cleared considerably on this point.10

Consonant with the general rule stated above, it has been held that where vessels are so constructed as to have cargo space available on their main decks, properly protected against the elements, stowage in such places is under-deck stowage.11 Prior to the adoption of the York-Antwerp Rules of 1924, it was held that cargo stowed in bridge deck space, not specially constructed for that purpose, and covered only by tarpaulins and planking, or otherwise not adequately protected, is not stowage under deck.22 On the other hand, it has been held by federal courts of high authority that stowage in steel enclosed or other water-tight bridge deck space is under-deck stowage,23 and stowage in various portions of the superstructure of the vessel above the main deck, when adequately protected against sea perils, has frequently been held to be stowage under deck. Thus, stowage in a trunk hatch above the level of the other hatches,24 stowage in a poop deck added to the vessel after she had been in service for some time,25 stowage in the lazaret26 and in the ship’s hospital27 have all been held to be under-deck stowage.

LIABILITY OF VESSEL FOR DAMAGE TO DECK CARGO

The general rule of liability is that the vessel is responsible for any damage to deck cargo whenever such cargo is carried on deck without the consent of the shipper under a clean bill of lading, or without the sanction of an accepted custom of a particular trade. This


21 The Neptune; The William Crane; Gillett v. Ellis, all supra note 15.

22 The Kirkhill (C. C. A. 4th, 1900) 99 Fed. 575; The Fairhaven, supra note 6.


26 Lagerloef Trading Co., Inc. v. United States, supra note 15.

27 The Lossiebank, supra note 13.
rule, without reference to bills of lading, custom or express consent, has been maintained in a number of decisions. 28 Similarly, it has been held that where full freight was charged, under-deck stowage was impliedly required, and the vessel was rendered liable for any damage by perils of the sea to goods stowed on deck. 29 There has never been any doubt whatever but that the vessel is liable for damage by perils of the sea, regardless of bill-of-lading provisions exempting it from such liability, where it carries goods on deck under a clean bill of lading. The leading decision on the point is that of the Supreme Court of the United States in the case of *The Delaware*, 30 in which the court held:

"Goods, though lost by perils of the sea, if they were stowed on deck without the consent of the shipper, are not regarded as goods lost by the act of God within the meaning of the maritime law, nor are such losses regarded as losses by perils of the sea which will excuse the carrier from delivering the goods shipped to the consignee unless it appears that the manner in which the goods were stowed is sanctioned by commercial usage, or unless it affirmatively appears that the manner of stowage did not, in any degree, contribute to the disaster; that the loss happened without any fault or negligence on the part of the carrier, and that it could not have been prevented by human skill and prudence, even if the goods had been stowed under deck, as required by the general rules of the maritime law." 31

In an interesting opinion rendered by Circuit Judge Huff in 1918 in the Federal District Court for New York, it was held that the vessel owner was liable to a shipper of jettisoned cargo which had been stowed on deck under a clean bill of lading for the amount which the owner of the cargo would have been entitled to receive in general average had he not been precluded by a provision in his bill of lading from participating in general average. In other words, the bill of lading provided that general average was to be controlled by the York-Antwerp Rules. Those rules denied recovery in general average to deck cargo. The cargo was loaded on deck under a clean bill of lading,

28 Cases cited in note 6, supra.
29 Sheldon v. The Water Witch; Gardner v. Smallwood, both supra note 7; Barber v. Brace, supra note 6.
30 Supra note 8, at 598-599.
and was jettisoned in order to save the ship and the remainder of the cargo when the vessel stranded. Since the owner of the cargo could not recover general average contributions from the remainder of the cargo under the York-Antwerp Rules by which he was bound under the bill of lading, the court permitted him to recover from the vessel the entire amount which he could have recovered against both the vessel and the other cargo if his cargo had not been stowed on deck.\textsuperscript{32}

In another very interesting decision it was held that a vessel owner was not liable for damage caused to merchandise by reason of under-deck stowage, even though the shipper had marked his goods "may not be put in hold," but had failed to call the attention of the carrier in any other way to his requirement that the goods be stowed on deck.\textsuperscript{33} Just a hundred years ago, Mr. Justice Story of the Supreme Court of the United States, sitting on circuit in Massachusetts, held that where goods were shipped under a clean bill of lading at an under-deck freight, but were carried on deck, and delivered without damage at destination, the shipper was entitled to a refund of the difference between deck freight and under-deck freight.\textsuperscript{34}

It has been held a number of times that stowage on deck of cargo shipped under a clean bill of lading is a deviation, depriving the vessel of all defenses under the bill of lading when sought to be held for damage to cargo so shipped and handled.

"To deviate, lexicographically, means to stray, to wander. As applied in admiralty law, the term 'deviation' was originally and generally employed to express the wandering or straying of a vessel from the customary course of the voyage, but in the course of time it has come to mean any variation in the conduct of a ship in the carriage of goods whereby the risk incident to the shipment will be increased, such as carrying the cargo on the deck of the ship contrary to custom and without the consent of the shipper. . . . Such conduct has been held to be a departure from the course of agreed transit and to constitute a 'deviation' whereby the goods have been subjected to greater risks, and when lost or damaged in consequence thereof, clauses of exceptions in bills of lading limiting liability cease to apply."\textsuperscript{35}

\textsuperscript{32} The Freda (S.D. N.Y. 1918) 266 Fed. 551.
\textsuperscript{33} The New Orleans (C.C.E.D. La. 1885) 26 Fed. 44.
\textsuperscript{34} Varnard v. Hudson, supra note 8.
Thus, for example, it has been held that where cargo shipped under a clean bill of lading is stowed on deck and damaged by reason of such stowage, the vessel owner may not even avail himself of the benefit of a clause in the bill of lading limiting liability to a fixed amount per package. And in what is now the leading American case on this point, the Supreme Court held that on-deck carriage of goods, shipped under a clean bill of lading, deprived the vessel of the benefit of the limitation-of-value and *vis-major* clauses in her bill of lading, saying:

"By stowing the goods on deck the vessel broke her contract, exposed them to greater risk than had been agreed and thereby directly caused the loss. She accordingly became liable as for a deviation, cannot escape by reason of the relieving clauses inserted in the bill of lading for her benefit, and must account for the value at destination." 

There seems never to have been any question but that the vessel may not be held liable for damage by sea perils to deck cargo, where such cargo is stowed on deck pursuant to an accepted general custom of the particular trade in which the cargo is being carried. It seems equally clear that the vessel is immune from liability for damage to deck cargo by perils of the sea when such cargo is being carried on deck pursuant to an express agreement. Thus in *Lawrence v. Min-turn* the Supreme Court said:

"If the vessel is seaworthy to carry a cargo under deck, and there was no general custom to carry such goods on deck in such a voyage, and the loss is to be attributed solely to the fact that the goods were on deck, and their owner had consented to their being there, he has no recourse against the master, owners, or vessel, for a jettison rendered necessary for the common safety, by a storm, though that storm, in all probability, would have produced no injurious effect on the vessel if not thus laden. It is not for him to say that, in the first storm the vessel encountered, though not of unusual severity, she proved to be unable to carry the deck load, and so was not of sufficient capacity to perform the contract into which the carrier entered. The carrier does not contract that a deck load shall not embarrass the navigation of the vessel in a storm, or that it shall not cause her so to roll

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80 The Sarnia, *[supra* note 10].
87 St. Johns N. F. Shipping Corp. v. S. A. Companhia Geral etc., *[supra* note 11], at 124.
and labor in a heavy sea, as to strain and endanger the vessel. In short, he
does not warrant the sufficiency of his vessel, if otherwise staunch and sea-
worthy, to withstand any extraordinary action of the sea when thus laden.
If the vessel is in itself staunch and seaworthy, and her inability to resist
a storm arises solely from the position of a part of the cargo on the deck, the
owner of the cargo, who has consented to this mode of shipment, cannot
recover from the ship or its owners, on the grounds of negligence or breach
of an implied contract respecting seaworthiness. His right to contribution
is not involved in this case."

The last words quoted above, it will be noted, expressly take the case
out of the rules applying to general average contributions. As will be
seen, the rules applying to the right of deck cargo to participate in
general average are not in the same as those governing the direct lia-
bility of the vessel to cargo damages or loss by reason of its stowage
on deck. The rule that recovery against the vessel for loss by perils of
the sea to cargo carried on deck with the express consent of the ship-
per is denied is succinctly stated in an opinion by the Supreme Court
of the Philippine Islands:

"Where cargo is, with the owner's consent, transported on the deck of
a sea-going vessel upon a bill of lading exempting the ship's company from
liability for damage, the risk of any damage resulting from carriage on deck,
such as the damage caused by rain or the splashing aboard of sea water,
must be borne by the owner."

This rule has been adopted in all other jurisdictions in which the point
has been considered.42

While it is clear from the authorities cited that the vessel may not
be held liable for damage by perils of the sea to cargo carried on deck
with the consent of the shipper, it is equally clear that the vessel is
liable where the damage results from faulty stowage and not merely
by reason of the fact that the cargo is stowed on deck; e.g., where
the cargo is lost because not adequately secured or not properly
trimmed.43 Thus in a recent decision the court divided between the

42 Higgins v. Watson (S. D. N. Y. 1860) Fed. Cas. No. 6,470; Two Hundred Sixty
Hogsheads of Molasses, supra note 11; The Thomas P. Thorn (E. D. N. Y. 1875) Fed.
Cas. No. 13,927; The Rokeby, supra note 39; Dorsey v. Smith (1832) 4 La. 211; Shackle-
43 Olsen v. United States Shipping Co. (C. C. A. 2d, 1914) 213 Fed. 18; Talbot v.
771; The Colima (S. D. N. Y. 1897) 82 Fed. 665; The Royal Sceptre (S. D. N. Y. 1911)
187 Fed. 244; The Carlos (N. D. Cal. 1916) 237 Fed. 731; Da Costa v. Edmunds (1815)
4 Camp. 142.
charterer and the owner the damages resulting from loss of a deck load of pulpwood on account of defective cribbing. The charter provided for loading by the charterer under supervision of the master, and the trial court found that the cribbing was constructed as a joint venture for both parties. A few months ago a United States district judge in New York held that pig iron normally carried on the deck of a river scow is not so carried at the risk of the cargo. The facts of that decision indicate that it was based primarily on the fact that the cargo was not properly stowed on the deck, and that the scow was unseaworthy in the first instance. Of course, when deck cargo is jettisoned in the absence of any real peril, the fact that deck stowage was permitted does not relieve the vessel of liability for the loss.

RIGHT OF DECK CARGO TO GENERAL AVERAGE

In discussing the situation with reference to general average for jettisoned deck cargo it must be borne in mind that the right of such cargo to general average arises only when it is being carried on deck by universally accepted custom or consent of the shipper. When cargo is stowed on deck under a clean bill of lading, in the absence of an accepted custom of the trade, or without the consent of the shipper, and is jettisoned, the cargo owner has a right to recover the entire value of his cargo from the vessel, and need not resort to claims for general average contributions. Generally, deck cargo which has been jettisoned is entitled to general average contributions if it was carried under an accepted custom of the trade; but it is not entitled to such contributions in the absence of custom, even when so carried by consent of the shipper. These situations are treated briefly hereunder.

It is impossible to reconcile all of the decisions with reference to the rights of deck cargo in general average. Some confusion results from the fact that cargoes carried on the decks of sailing vessels were assumed to increase the hazard of the voyage to the knowledge of all concerned, and such cargo was accordingly presumed to be carried at the risk of the shipper under all circumstances. When steamships came into use, it was at first assumed that the weight of the machinery at the bottom of the vessel more than compensated for the added hazard of carriage on deck:

46 Compania de Navigacion La Flecha v. Brauer (1897) 168 U. S. 104.
"The old rule was established when all vessels were propelled by sails, and when there was no machinery in the hold of the ship; but the introduction of steam into marine service, has wrought great changes in the situation of the motive power, and has rendered the steamboat deck the fitter place for the stowage of cargo. The reason of the rule has ceased, and the rule should perish with the reason."\textsuperscript{47}

While the principle that deck stowage on steamships is permitted has long since been abandoned, the reasoning exemplified in the foregoing opinion accounts largely for the variance in the rules of the earlier decisions, and to some extent in the later decisions which followed one or the other line of precedents. The earlier cases denied the right of deck cargo to participate in general average, if such cargo was carried solely pursuant to an express agreement between shipper and vessel.\textsuperscript{48} On the other hand, a decision of a United States District Court in Michigan in 1874, and a decision by the British Admiralty Court in 1865, allowed claims of cargo, stowed on deck with the consent of the shipper, to general average contributions as against the vessel.\textsuperscript{49}

Where cargo is carried on deck pursuant to a universally accepted custom of the trade in which it is carried, it is presumed that the vessel and all other cargo participate in the marine venture with knowledge of the custom. Thus, two leading English cases and a decision by a federal district court in Massachusetts have permitted deck cargo so carried to participate in general average when jettisoned.\textsuperscript{50} Apparently, claims for general average contributions by cargo carried on deck pursuant to an established custom of the trade have never been denied.

Obviously, when cargo is carried on deck pursuant to an accepted custom of the trade, as well as with the express consent of the shipper, and such cargo is jettisoned for the safety of the vessel and the remainder of the cargo, the deck cargo is permitted to participate in general average.\textsuperscript{51}

\textsuperscript{47} Harris v. Moody (N. Y. 1859) 4 Bos. 210, 218, aff'd, (1864) 30 N. Y. 266.
\textsuperscript{48} Dodge v. Bartol (1828) 5 Me. (5 Greenl.) 245; Cram v. Aiken (1836) 13 Me. 229; Smith v. Wright (N. Y. 1803) 1 Caines 43.
\textsuperscript{50} The William Gillum, supra note 39; Gould v. Oliver (1837) 4 Bing. (n. c.) 134; Milward v. Hibbert (1842) 3 Q. B. 120.
\textsuperscript{51} Hazleton v. Manhattan Ins. Co. (N. D. Ill. 1880) 12 Fed. 159; The John H. Cannon (D. Md. 1892) 51 Fed. 46.
There is a definite distinction between claims of deck cargo against a vessel alone for contribution in general average, and such claims against both the vessel and the rest of the cargo. Claims against the vessel alone by cargo carried on deck by agreement between the shipper and the vessel might well be allowed against the vessel and disallowed against the remaining cargo without notice of the agreement between the shipper of deck cargo and the vessel. This additional factor, and the fact that it has not uniformly been taken into consideration by courts relying on random precedents, unquestionably accounts for some further confusion in the cases.

From what has already been said, it seems obvious that cargo carried on deck, under an agreement between shipper and vessel, in the absence of an accepted custom, should have no claim in general average against the remaining cargo, and such has been the uniform rule of the decisions. There has been at least one decision, however, by a federal court, allowing such a claim for general average contributions.

Lowndes, in his leading English work on General Average states that cargo carried on deck pursuant to a universally accepted custom of the trade, should be permitted to participate in general average when jettisoned, and the York-Antwerp Rules, since their amendment in 1924, permit such participation. Both the more authoritative earlier and the later decisions in England, as well as in America, have always allowed such recovery; and that fact undoubtedly accounts for the amendment of the York-Antwerp Rules in that regard in 1924 to conform to the precedents of the civil law in which the principles of general average had their origin.

52 The Milwaukee Belle (D. Wis. 1869) Fed. Cas. No. 9,627; Hampton v. The Brig Thaddeus (La. 1817) 4 Mart. 582; Lenox v. United Ins. Co. (N. Y. 1802) 3 Johns. 178. See also Rudolf, op. cit. supra note 16, at 141, Rule I.
53 The Schooner May & Eva (D. N. J. 1881) 6 Fed. 628.
54 (6th ed. 1922) 73-74.
55 Rudolf, op. cit. supra note 16, at 141, Rule I.
57 The York-Antwerp Rules of 1890 did not permit participation in general average by deck cargo so carried, and a few of the earlier decisions were to the same effect: Sproat v. Donnell, supra note 39; Wolcott v. Eagle Ins. Co. (1827) 21 Mass. (4 Pick.) 429; Taunton Copper Co. v. Merchants' Ins. Co. (1839) 39 Mass. (22 Pick.) 108.
58 "The rules laid down in this article [Art. 13 of the Ordonance de la Marine of Louis XIV—1681—denying general average to jettisoned deck cargo] do not apply to
A bill of lading has a dual character; it serves as a receipt and as a contract of carriage. In its role as a receipt, the facts which it recites may, if erroneous, be corrected by extrinsic evidence. Insofar, however, as the bill of lading is a contract its provisions may not be varied by oral testimony. The written agreement is presumed, as a matter of law, to be the agreement of the parties. On the other hand, the document may be explained or amplified by oral evidence when it is silent or ambiguous on any point.

Obviously, the bill of lading contains no recital of customs. The very concept of the term "custom" precludes its being the subject of specific agreement. It is accordingly a generally accepted principle that a universal custom of a particular trade to carry cargoes in that trade on deck may be proved by parol, even though a clean bill of lading, otherwise importing under-deck stowage, has been issued for the cargo. "This legal import of the bill of lading implied by the general custom may be varied by proof of the custom of a particular trade, and the contract then withdrawn from the operation of the general rule requiring carriage under deck."[59]

While proof of an accepted custom to carry deck cargo is permitted even in the face of a clean bill of lading, proof of an agreement to carry on deck when a clean bill of lading has been issued is not admissible. This doctrine rests on the principle that the issuance of a clean bill of lading is in effect an express agreement to carry the merchandise under deck; and such express agreements may not be varied or contradicted by oral testimony. "The carrying contract, reduced to writing in a bill of lading, can no more be altered or varied by parol evidence than any other written contract."[60]

As stated, the bill of lading is presumed to be the final agreement between the par-
ties, and it accordingly may not be varied by evidence of any prior oral agreements between shipper and carrier, unless the bill of lading has been issued as a mere memorandum after the goods have already been shipped under an oral agreement. The leading decision on this point is that of the Supreme Court of the United States in the case of The Delaware. The court said that if the bill of lading is silent as to the mode of stowing the goods, it imports that the goods are to be carried under deck, and parol evidence that the shipper agreed that the goods should be stowed on deck cannot be received. The only opinion which indicates that oral evidence of an agreement by the shipper to permit his cargo to be carried on deck may be admitted in the face of a clean bill of lading is contained in the decision of the United States Circuit Court of Appeals for the Second Circuit in the case of The Sarnia, in which it was said that: "Where a bill of lading is silent as to stowage, the shipowner may prove an agreement for deck carriage when a claim for loss is made." The quoted dictum apparently represents careless language rather than changed principle. In the first place, the court gives as its authority for the statement the case of The Delaware in which the principle that such testimony is not admissible was established, and in the second place, the very preceding sentence in the opinion in The Sarnia states that in the absence of custom or of "an express written agreement" goods shipped under a clean bill of lading must be stowed under deck. It may accordingly be assumed that the rule that oral testimony of an agreement to ship on deck is inadmissible to vary the express agreement to stow under deck imported in the issuance of a clean bill of lading has been followed in all instances.

Finally, in this connection, it seems that the burden of proving even an express agreement by the shipper to carry his cargo on deck is always on the vessel.

**THE EFFECT OF STATUTES**

The rules governing the rights and liabilities of parties involved in carriage of cargo on deck are of so special a nature that they have

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61 The Caledonia (1895) 157 U. S. 124, 139; The Wellington, supra note 8.
63 Supra note 8. To the same effect see Transatlantic Shipping Co., Inc. v. St. Paul F. & M. Ins. Co.; The Wellington, both supra note 8; The New Orleans, supra note 33.
64 Supra note 10.
65 The Peytona, supra note 9.
uniformly been held to be outside the scope of statutes regulating
maritime commerce. Just as it has been held that a usage to carry
certain heavy and imperishable cargoes on deck is reasonable, so it
has been held that a clause in a bill of lading granting "liberty to
carry the goods and any other goods on deck or under deck" was
not invalid under the Harter Act which forbids the insertion in such
documents of any provisions by which the vessel is relieved from liabil-
ity for improper stowage.

In recognition of the special nature of deck cargoes, the Carriage
of Goods by Sea Act of 1936 like the Hague Rules from which it
arose, provides:

"The term 'goods' includes goods, wares, merchandise, and articles of
every kind whatsoever, except live animals and cargo which by the contract
of carriage is stated as being carried on deck and is so carried."

It seems probable that under the Carriage of Goods by Sea Act, there
will be further expansion and probable unification of rules govern-
ing carriage of cargo on deck, especially in the trades in which such
carriage has become customary. The foregoing compilation of back-
ground, precedent and trend may possibly be of some guidance in the
future development of the principles involved. The life of the law is
still experience.

Eberhard P. Deutsch.

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66 The William Gillum, supra note 39.
67 The Carriso, supra note 14.