

Dictionary of
SHIPPING LAW

E. R. Hardy Ivamy



Butterworths Professional Dictionary Series

Butterworths Professional Dictionaries Series

DICTIONARY OF SHIPPING LAW

by

E. R. HARDY IVAMY, LL.B., PH.D., LL.D.

*of the Middle Temple, Barrister
Professor of Law in the University of London*

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Preface

This is another volume in the 'Butterworths Professional Dictionaries Series', and, in general, it is written in the same style as my 'Dictionary of Insurance Law' (1981) and my 'Dictionary of Company Law' (1983).

The definitions in the 'Dictionary of Insurance Law' were largely founded on the reported cases and those in the 'Dictionary of Company Law' were mainly based on statute law.

The present Dictionary, however, is composed of definitions drawn both from case law and statute law. Some of the terms used in the Merchant Shipping Acts and other statutes are difficult to summarise, and I hope that I have given them precise and fair treatment. In addition, I have included definitions drawn from statutory instruments made under the Acts.

I have intentionally omitted referring to Marine Insurance, for although in a sense it is part of Shipping Law, I have already covered it in the 'Dictionary of Insurance Law'.

I am grateful to Butterworth & Co (Publishers) Ltd (the publishers of 'The All England Law Reports') and to 'Lloyd's Law Reports' for giving me permission to quote the extracts from the reports concerned.

Finally, I should like to thank the staff of Butterworths for seeing the book through the press.

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E. R. HARDY IVAMY

A

‘Accepted Safety Convention certificate’. A certificate which is issued in accordance with the Safety Convention by the government of any country other than the United Kingdom in respect of Safety Convention ships not registered in the United Kingdom and required by regulations made under the Merchant Shipping (Safety Convention) Act 1949 to be accepted as having the same force as corresponding certificates issued by the Secretary of State in respect of British ships registered in the United Kingdom: Merchant Shipping (Safety Convention) Act 1949, s. 36 (1). (See SAFETY CONVENTION; SAFETY CONVENTION SHIP).

‘Accident’, for the purposes of the Prevention of Oil Pollution Act 1971, s. 12, unless the context otherwise requires, includes the loss, stranding, abandonment of or damage to a ship: Prevention of Oil Pollution Act 1971, s. 12 (9).

‘Act, neglect or default in the management of the ship’. See DEFAULT IN THE MANAGEMENT OF THE SHIP.

Act of God. Any accident due to natural causes directly and exclusively, without human intervention, which no reasonable foresight could have avoided: *Nugent v Smith* (1876) 45 LJQB 697 at 708 (per James LJ); *Falconbridge Nickel Mines Ltd v Chimo Shipping Ltd* [1973] 2 Lloyd’s Rep 469, Supreme Court of Canada. Examples of Acts of God are lightning, a storm, or a sudden gust of wind.

But an accident arising from the navigation of a vessel is not an Act of God because it is partly due to human intervention: *Liver Alkali Co v Johnson* (1874) LR 9 Exch 338.

Action in personam. An action against a person (e.g. the owner of a ship) as distinct from an action in rem. (See ACTION IN REM).

An action in personam may, in general, be brought in the High Court in all cases within the Admiralty jurisdiction of that Court: Supreme Court Act 1981, s. 21 (1).

But in the case of a claim for damage, loss of life or personal injury arising out of

- (a) a collision between ships; or
- (b) the carrying out of, or omission to carry out, a manoeuvre in the case of one or more of two or more ships; or
- (c) non-compliance, on the part of one or more of two or more ships, with the collision regulations (see COLLISION REGULATIONS);

Action in rem

the court must not entertain any action in personam unless

- (i) the defendant has his habitual residence or place of business within England or Wales; or
- (ii) the cause of action arose within inland waters of England or Wales or within the limits of a port of England or Wales; or
- (iii) an action arising out of the same incident or series of incidents is proceeding in the court or has been heard and determined in the court: *ibid.*, s. 22 (2).

Action in rem. An action against the ship herself.

The Admiralty jurisdiction of the High Court may be invoked by an action in rem against the ship in the case of (*inter alia*)

- (i) a claim to the possession or ownership of the ship or to the ownership of any share in it;
- (ii) a question arising between the co-owners of a ship as to possession, employment or earnings of that ship; and
- (iii) a claim in respect of a mortgage of or charge on a ship (*see* MORTGAGE OF SHIP) or any share in her: Supreme Court Act 1981, ss. 20 (1) (a), 21 (2).

In relation to the following claims, the jurisdiction may be invoked by proceeding in rem against the ship in question or against a 'sister ship'

- (1) damage done by or to a ship;
- (2) loss of life or personal injury sustained by any defect in a ship or equipment or of certain acts, neglects or defaults of her owners or certain other persons;
- (3) loss of or damage to goods carried in a ship;
- (4) any agreement relating to the carriage of goods in a ship or for the use or hire of a ship;
- (5) salvage (*see* SALVAGE);
- (6) towage (*see* TOWAGE);
- (7) pilotage;
- (8) goods or materials supplied to a ship for her operation or maintenance;
- (9) construction, repair or equipment of a ship or dock charges or dues;
- (10) wages or amounts recoverable as wages by a master or member of the crew of a ship;
- (11) disbursements made on account of a ship; and
- (12) general average (*see* GENERAL AVERAGE): *ibid.*, ss. 20 (2), 21 (4).

'Actual fault or privity'. *See* EXCLUSION OF LIABILITY.

Advance freight. Freight payable before delivery of the goods e.g. payable on the signing of bills of lading or on the sailing of the ship.

Where freight is payable in advance, payment must be made even though the ship is lost and the cargo never delivered: *De Silvale v*

Kendall (1815) 4 M & S 37. If, after advance freight has been paid, the voyage is abandoned, no part of the freight can be recovered: *Civil Service Co-operative Society v General Steam Navigation Co* [1903] 2 KB 756, CA.

Where freight is payable 'upon final sailing', the ship must have left the port of departure with no intention of returning: *Roelandts v Harrison* (1854) 9 Exch 441.

Advance freight must be distinguished from advances of cash which it is often agreed are to be made by a charterer to meet the current expenses of the ship. An advance payment will be construed by the court either as advance freight or as a loan according to the intention of the parties as expressed in the documents: *Allison v Bristol Marine Insurance Co* (1876) 1 App Cas 209. If the charter-party shows that it was the intention that the charterer making the advances should insure them, that is almost conclusive that the advances are to be on account of freight: *Hicks v Shield* (1857) 7 E & B 633.

Affreightment, contract of. See CONTRACT OF AFFREIGHTMENT.

'Agency or authority of a foreign government' includes any undertaking appearing to the Secretary of State to be, or to be acting on behalf of, an undertaking which is in effect owned or controlled (directly or indirectly) by a state other than the United Kingdom: Merchant Shipping Act 1979, s. 14 (11). A recital in an order under the Merchant Shipping Act 1979, s. 14, that the persons who have adopted, or propose to adopt, the measures or practices in question are an agency or authority of a foreign government, is conclusive: *ibid.*, s. 14 (11A). (See FOREIGN GOVERNMENT.)

Agent, forwarding. See FORWARDING AGENT.

Allotment note. A note issued in accordance with regulations made by the Secretary of State by which a seaman may allot to any person or persons part of the wages to which he will become entitled in the course of his employment in a ship or ships registered in the United Kingdom: Merchant Shipping Act 1970, s. 13 (1). (See SEAMAN).

Regulations prescribe the form of allotment notes and (i) may limit the circumstances in which allotments may be made; (ii) may limit, whether by reference to an amount or by reference to a proportion, the part of the wages that may be allotted and may prescribe the method by which that part is to be calculated; (iii) may limit the persons to whom allotments may be made by a seaman to persons of prescribed descriptions or persons standing to him in prescribed relationships; and (iv) may prescribe the times and intervals at which payments under allotment notes are to be made: Merchant Shipping Act 1970, s. 13 (3).

A person to whom any part of a seaman's wages has been allotted by an allotment note in accordance with the regulations has a right to

All-round light

recover it in his own name: *ibid.*, s. 14 (1). In any proceedings brought by a person named in such an allotment note as the person to whom any part of the seaman's wages have been allotted it is presumed, unless the contrary is shown, that the seaman is entitled to the wages specified in the note and that the allotment has not been varied or cancelled: *ibid.*, s. 14 (2).

All-round light. A light showing an unbroken light over an arc of the horizon of 360 degrees: Collision Regulations 1972, r. 21 (e).

'Anchor'. See ANCHOR AND CHAIN CABLE.

'Anchor and chain cable' includes any shackle attached to or intended to be used in connection with the anchor or cable: Anchors and Chain Cables Act 1967, s. 1 (7).

'Any loss or damage arising from any cause whatsoever' includes damage caused by the negligence of an employee: *A. E. Farr Ltd v The Admiralty* [1953] 2 All ER 512.

'Apparatus' includes any vessel, vehicle or hovercraft, any structure, any diving platform or equipment and any other form of equipment: Merchant Shipping Act 1974, s. 16 (2). (See HOVERCRAFT; SUBMERSIBLE APPARATUS; SUPPORTING APPARATUS.)

'Apparatus, submersible'. See SUBMERSIBLE APPARATUS.

'Apparatus, supporting'. See SUPPORTING APPARATUS.

Arbitration clause. A clause in a charter-party or bill of lading stating that any dispute relating to it is to be referred to arbitration. See e.g. 'Any dispute arising under this Charter to be referred to arbitration in London (or such other place as may be agreed in Box 24), one Arbitrator to be nominated by the Owners and the other by the Charterers, and in case the Arbitrators shall not agree then to the decision of an Umpire to be appointed by them, the award of the Arbitrators or Umpire to be final and binding upon both parties.' ('Baltime 1939' charter-party, cl. 23.)

The charter-party or bill of lading may state that if an arbitrator is not appointed by a specified time e.g. 'within 3 months of final discharge', the claim will be barred.

In such a case, the nominated arbitrator must be actually informed within that period that he has been appointed: *Tradax Export SA v Volkswagenwerk AG* [1970] 1 Lloyd's Rep 42, CA.

The court has power to extend the time for commencing arbitration proceedings if it is of the opinion that, in the circumstances of the case, undue hardship would otherwise be caused: Arbitration Act 1950, s. 27.

'Arrived ship'. A ship which has reached the port or berth, as the case may be, specified in a charter-party.

In the case of a port charter-party (see PORT; CHARTER-PARTY), 'before a ship can be said to have arrived at a port she must, if she cannot

proceed immediately to a berth, have reached a position within the port where she is at the immediate and effective disposition of the charterer. If she is at a place where waiting ships usually lie, she will be in such a position unless in some extraordinary circumstances proof of which would lie in the charterer. . . . If the ship is waiting at some other place in the port, then it will be for the owner to prove that she is as fully at the disposition of the charterer as she would have been if in the vicinity of the berth for loading or discharge': *E. L. Oldendorff & Co GmbH v Tradax Export SA: The 'Johanna Oldendorff'* [1973] 2 Lloyd's Rep 285 at 291, HL (per Lord Reid). Thus, if a vessel carrying grain under a port charter-party anchors at the Bar anchorage at Liverpool, which is 17 miles from the usual discharging berth but is the usual place where grain vessels lie whilst awaiting a berth, she is an 'arrived ship', for she is then at the immediate and effective disposition of the charterer: *ibid.* Again, where a vessel reaches the intersection anchorage at Buenos Aires and is at a place where vessels customarily wait their turn for admission to a berth by the port authorities, she is an 'arrived ship': *Venizelos A.N.E. of Athens v Société Commerciale de Cereales et Financière SA of Zurich: The 'Prometheus'* [1974] 1 Lloyd's Rep 350. Where a vessel is directed to go to the port of Brake, she does not become an 'arrived ship' by anchoring at the Weser Lightship anchorage, for that anchorage is outside the legal, fiscal and administrative limits of Brake, lying 25 miles from the mouth of the River Weser in an area where none of the port authorities of the Weser ports do any administrative acts or exercise any control over vessels waiting there: *Federal Commerce and Navigation Co Ltd v Tradax Export SA: The 'Maratha Envoy'* [1977] 2 Lloyd's Rep 301, HL. Charterers, shippers and shipowners who use the Weser ports do not regard the waiting area at the Lightship as forming part of any of the ports: *ibid.*

In the case of a berth charter-party, the vessel is an 'arrived ship' when she reaches the berth concerned: *Stag Line Ltd v Board of Trade* [1950] 1 All ER 1105, CA.

If the charterers fail to nominate the port of discharge within the time limited by the charter-party, there is no implied term that the master may make the nomination himself, and thus cause the vessel to be an 'arrived ship': *Zim Israel Navigation Co Ltd v Tradax Export SA: The 'Timna'* [1970] 2 Lloyd's Rep 409.

There is an implied term that the charterer must act with reasonable dispatch and in accordance with the ordinary practice of the port in doing those acts which he must do to enable the vessel to become an 'arrived ship': *Sunbeam Shipping Co Ltd v President of India: The 'Atlantic Sunbeam'* [1973] 1 Lloyd's Rep 482 at 488 (per Kerr J). The burden of proving breach lies on the shipowners: *ibid.*

Assessors, nautical

Assessors, nautical. *See* NAUTICAL ASSESSORS.

Association of Average Adjusters. An association founded in 1869, among its objects being 'the promotion of correct principles in the adjustment of averages and uniformity among Average Adjusters'. The Rules of the Association fall into two categories: (i) *rules of practice*, which are rules for the adjustment of averages and the duties of adjusters in connection with them; and (ii) *uniformity resolutions*, which relate to matters of lesser importance on which uniformity of practice is desirable.

The rules of practice concern (a) general rules, (b) general average (*see* GENERAL AVERAGE), (c) the York–Antwerp Rules 1974 (*see* YORK–ANTWERP RULES 1974), (d) damage to and repairs to ship, and (e) particular average on goods.

'Authorised person', for the purposes of any provision of the Hovercraft (General) Order 1972 (S.I. 1972 No. 674), means any constable, and any person authorised in writing by the Secretary of State either generally or in relation to a particular case or class of cases: Hovercraft (General) Order 1972, art. 3 (1).

Average adjuster. *See* ASSOCIATION OF AVERAGE ADJUSTERS; GENERAL AVERAGE.

Average adjusters, Association of. *See* ASSOCIATION OF AVERAGE ADJUSTERS.

Average, general. *See* GENERAL AVERAGE.

Average, particular. *See* PARTICULAR AVERAGE LOSS.

Average statement. A statement prepared by an average adjuster concerning the adjustment of general average. (*See* GENERAL AVERAGE.)

B

Back freight. Freight consisting of expenses claimed by the shipowner from the cargo owner where the master is unable to deliver the goods to the consignee because e.g. the consignee refuses to take delivery, and the master deals with the goods as he thinks fit for the benefit of the shipowner and may even take them back to the port of loading: *Cargo ex Argos, Gaudet v Brown* (1873) LR 5 PC 134.

Ballast water, untreated. See UNTREATED BALLAST WATER.

'Baltime 1939' charter-party. A well-known form of time charter-party. (See TIME CHARTER-PARTY.)

'Bar'. See DETENTION OF VESSEL CLAUSE.

'Bareboat' charter-party. See DEMISE CHARTER-PARTY.

'Barge' includes a lighter and any similar vessel: Prevention of Oil Pollution Act 1971, s. 29 (1).

Barge, dumb. See DUMB BARGE.

Barratry. See LOSS BY BARRATRY.

'Beneficial interest' (1) where used in Part I of the Merchant Shipping Act 1894, includes interests arising under contract and other equitable interests: Merchant Shipping Act 1894, s. 57; (2) in relation to a hovercraft, includes interests arising under contract and other equitable interests: Hovercraft (General) Order 1972 (S.I. 1972 No. 674), art. 3 (1). (See HOVERCRAFT.)

Berth note. A form of contract used by shipbrokers by which the broker notifies the shipowner that his ship has been engaged to carry a specified cargo.

Such a contract may impose a personal liability on the broker: *Hick v Tweedy & Co* (1890) 63 LT 765.

Bill of lading. A document signed by the carrier and issued to a shipper of goods.

I. *Types of bills of lading*

The bill of lading may be (a) a 'shipped' bill of lading i.e. one showing that the goods have actually been shipped on board; or (b) a 'received for shipment' bill of lading i.e. one showing that the carrier has taken the goods into his custody.

Sometimes the bill of lading is a 'through' bill of lading (see THROUGH BILL OF LADING).

A bill of lading may be a (a) a 'clean' bill of lading i.e. one which does not contain a clause qualifying the statement in the bill of lading

Bill of lading

as to the apparent good order and condition of the bill; or (b) a 'claused' bill of lading, which is a bill of lading containing such a clause.

II. Usual clauses in bills of lading

A bill of lading usually contains provisions concerning

- (1) the name of the vessel, port of shipment, port of delivery and the person to whom delivery is to be made;
- (2) the number of the goods shipped, their apparent condition and leading marks (*see* LEADING MARKS);
- (3) a list of excepted perils (*see* EXCEPTION CLAUSES);
- (4) a 'deviation' clause (*see* DEVIATION CLAUSE);
- (5) the amount of the freight to be paid (*see* FREIGHT);
- (6) the extent of the shipowner's lien over the goods carried (*see* LIEN CLAUSE);
- (7) how delivery is to be made;
- (8) a clause incorporating the York-Antwerp Rules 1974 in relation to general average (*see* YORK-ANTWERP RULES);
- (9) a 'both-to-blame' collision clause (*see* 'BOTH-TO-BLAME' COLLISION CLAUSE);
- (10) what law is to govern the contract; and
- (11) an arbitration clause (*see* ARBITRATION CLAUSE).

III. Implied undertakings in bills of lading

Certain undertakings are implied (a) on the part of the shipowner; and (b) on the part of the shipper.

(a) ON THE PART OF THE SHIPOWNER: It is implied that (i) the ship is seaworthy (*see* SEAWORTHINESS); (ii) she shall proceed with reasonable dispatch; and (iii) she shall proceed without unjustifiable deviation (*see* DEVIATION).

(b) ON THE PART OF THE SHIPPER: The shipper impliedly undertakes that he will not ship dangerous goods (*see* DANGEROUS GOODS).

IV. Application of the Carriage of Goods by Sea Act 1971

In general, the carrier is entitled to insert in a bill of lading such terms as he likes.

But where the Carriage of Goods by Sea Act 1971 (*see* CARRIAGE OF GOODS BY SEA ACT 1971) applies, his freedom of contract is restricted and he is not entitled to lessen his liability under the Act. (*See* EXCLUSION OF LIABILITY; LIMITATION OF LIABILITY.)

V. The Hamburg Rules

A United Nations conference was held in Hamburg in 1978. A Convention was adopted and the rules contained in it are known as the 'Hamburg Rules' (*see* HAMBURG RULES). These may eventually replace the Hague-Visby Rules (*see* HAGUE-VISBY RULES) as set out in the Schedule to the Carriage of Goods by Sea Act 1971 (*see* CARRIAGE OF GOODS BY SEA ACT 1971).

VI. *Functions of bill of lading*

A bill of lading constitutes (i) evidence of the contract; (ii) a receipt for the goods shipped; and (iii) a document of title.

(i) EVIDENCE OF THE CONTRACT: Strictly speaking, the bill of evidence is not the contract itself, but only evidence that a contract has been made, for the contract to reserve space for the goods on the ship has already been made before the bill of lading is issued.

But, in practice, the bill of lading is regarded as the contract.

(ii) RECEIPT: In the case of a bill of lading to which the Carriage of Goods by Sea Act 1971 (*see* CARRIAGE OF GOODS BY SEA ACT 1971) applies, the carrier or the master or agent of the carrier must, on demand of the shipper, issue to him a bill of lading showing

- (a) the leading marks necessary for the identification of the goods (*see* LEADING MARKS);
- (b) either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper; and
- (c) the apparent order and condition of the goods: Carriage of Goods by Sea Act 1971, Sch., art. III, r. 3.

No carrier, master or agent of the carrier is bound to state or show in the bill of lading any marks, number, quantity or weight which he has reasonable ground for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking: *ibid.*, Sch., art. III, r. 3.

Such a bill of lading is *prima facie* evidence of the receipt by the carrier of the goods as described in it: *ibid.*, art. III, r. 4. But proof to the contrary is not admissible when the bill of lading has been transferred to a third party: *ibid.*, art. III, r. 4.

The shipper is deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity and weight, as furnished by him: *ibid.*, art. III, r. 5. He must indemnify the carrier against all loss, damages and expenses arising or resulting from inaccuracies in such particulars: *ibid.*, art. III, r. 5. The right of the carrier to such indemnity in no way limits his responsibility and liability under the contract of carriage to any person other than the shipper: *ibid.*, art. III, r. 5.

The master is not bound to show *both* the number of packages and the weight; if the number is stated, the phrase 'weight unknown' may properly be inserted, and will have full legal effect: *Oricon Waren-Handels GmbH v Intergraan NV* [1967] 2 Lloyd's Rep 82.

An admission as to the condition of the goods on shipment will bind the shipowner only as to defects which ought to be apparent on a reasonable examination: *Compania Naviera Vasconzada v Churchill and Sim* [1906] 1 KB 237.

Bill of lading, 'claused'

(iii) DOCUMENT OF TITLE: The bill of lading is a symbol of the right of property in the goods specified in it: *Barber v Meyerstein* (1870) LR 4 HL 317. Its possession is equivalent to the goods themselves: *Cole v North Western Bank* (1875) LR 10 CP 354 at 362, Ex Ch (per Blackburn J). Its transfer is a symbolical delivery of the goods: *Sewell v Burdick* (1884) 10 App Cas 74, HL. It has the same effect as an actual delivery in the same circumstances: *Cole v North Western Bank* (supra).

On a transfer of a bill of lading by way of sale (*Wright v Campbell* (1867) 4 Burr 2046), a mortgage or pledge (*Sewell v Burdick* (supra)), the property in the goods passes absolutely or otherwise according to the intention of the parties, to the transferee.

As regards the shipowner, the bill of lading is a document of title, enabling its holder on production to delivery of the goods: *Barber v Meyerstein* (supra).

VII. Method of transfer

Where the bill of lading contains the name of the consignee and provides for delivery to his order or to his assigns, it is transferred by indorsement (see INDORSEMENT OF BILL OF LADING) and delivery: *Lickbarrow v Mason* (1794) 5 Term Rep 683.

If the bill of lading does not name the consignee but makes the goods deliverable to bearer or to order to assigns, the space for the name of the consignee being left blank, it may be transferred by delivery without indorsement: *Sewell v Burdick* (1884) 10 App Cas 74.

VIII. Effect of indorsement

The indorsement of the bill of lading does not deprive the shipowner of his right to claim freight (see FREIGHT) from the original shipper of the goods: Bills of Lading Act 1855, s. 2. (See BILLS OF LADING ACT 1855.)

A consignee or indorsee who indorses the bill of lading to a third person with the intention of passing the property in the goods to him ceases to be liable on the bill of lading: *Smurthwaite v Wilkins* (1862) 11 CBNS 842.

But if an indorsee sells the goods but retains the bill, he remains liable on the bill of lading: *Fowler v Knoop* (1878) 4 QBD 299.

Bill of lading, 'claused'. See BILL OF LADING.

Bill of lading, 'clean'. See BILL OF LADING.

Bill of lading, indorsee of. See INDORSEE OF BILL OF LADING.

Bill of lading, indorsement of. See INDORSEMENT OF BILL OF LADING.

Bill of lading, indorser of. See INDORSER OF BILL OF LADING.

Bill of lading, 'received for shipment'. See BILL OF LADING.

Bill of lading, 'shipped'. See BILL OF LADING.

Bill of lading, 'through'. See THROUGH BILL OF LADING.

Bill of sale. A document by which a registered ship or a share in her, when disposed of to a person qualified to own a British ship, must be

transferred: Merchant Shipping Act 1894, s. 24 (1). (*See PERSON QUALIFIED TO BE OWNER OF A BRITISH SHIP.*)

The bill of sale must contain such description of the ship as is contained in the surveyor's certificate or some other description sufficient to identify the ship to the satisfaction of the registrar, and must be executed by the transferor in the presence of, and be attested by, a witness or witnesses: Merchant Shipping Act 1894, s. 24 (2).

The bill of sale must be in the form prescribed by the Commissioners of Customs and Excise with the consent of the Secretary of State, or as near to it as circumstances permit: *ibid.*, s. 65 (1).

Every bill of sale for the transfer of a registered ship or of a share in her must be produced to the registrar of the port of registry (*see PORT OF REGISTRY*) with the declaration of transfer (*see DECLARATION OF TRANSFER*): *ibid.*, s. 26 (1). The registrar must enter in the register book the name of the transferee as owner of the ship or share, and must indorse on the bill of sale the fact of that entry having been made, with the day and hour of it: *ibid.*, s. 26 (1). (*See REGISTER BOOK.*)

Bills of sale of a ship or of a share in her must be entered in the register book in the order of their production to the registrar: *ibid.*, s. 26 (2).

Bills of Lading Act 1855 enacts that (i) every consignee of goods named in a bill of lading, and every indorsee of a bill of lading to whom the property in the goods passes on or by reason of such consignment or indorsement, shall have transferred to him all rights of suit, and be subject to the same liabilities as if the contract contained in the bill of lading had been made with himself (s. 1); (ii) nothing in the Act shall prejudice any right of stoppage in transit or any right to claim freight against the original shipper or owner (s. 2); and (iii) every bill of lading in the hands of a consignee or indorsee for valuable consideration, representing goods to have been shipped on board a vessel, is conclusive evidence of such shipment as against the master or other person signing the bill of lading, notwithstanding that such goods or some part of them may not have been shipped unless the holder of the bill of lading had actual notice at the time of receiving the goods that they had not been, in fact, loaded (s. 3). (*See BILL OF LADING; FREIGHT; STOPPAGE IN TRANSIT.*)

Blast, prolonged. *See* PROLONGED BLAST.

Blast, short. *See* SHORT BLAST.

Blue Book, The. The 1978 Report of the Department of Trade's Advisory Committee on the Carriage of Dangerous Goods: Merchant Shipping (Dangerous Goods) Regulations 1981 (S.I. 1981 No. 1747), reg. 1 (2).

Blue ensign. A blue flag with a Union Jack described in a canton in the

'Both-to-blame' collision clause

upper corner next to the staff. It is to be used by merchant ships commanded by officers of the Royal Naval Reserve with the permission of the Admiralty: Order in Council, 8 July 1894.

By Admiralty warrant under the Merchant Shipping Act 1894, s. 73 (1), certain yacht clubs are allowed to fly the blue ensign with or without a device.

'Both-to-blame' collision clause. A clause found in bills of lading issued by shipowners whose vessels are likely to visit the United States.

By the law in the United States, where cargo is lost or damaged in a collision for which both ships are to blame, the cargo owner may recover in full against the non-carrying ship: *The Atlas* (1876) 93 US 302. The non-carrying ship may claim one-half of this sum from the carrying ship: *The Chattahoochee* (1899) 173 US 540. This is an anomalous result because under the United States Carriage of Goods by Sea Act 1936, s. 4 (2), the shipowner is not directly responsible to cargo owners for damage arising out of negligent navigation provided that he has exercised due diligence to make the ship seaworthy. Accordingly, if he is solely to blame for a collision, he is usually under no liability to cargo owners. But if he is partly to blame, he will become indirectly liable to them, as explained above.

The 'both-to-blame' collision clause states:

'If the vessel comes into collision with another ship as a result of the negligence of the other ship and any act, neglect or default of the master, mariner, pilot or servants of the Carrier in the navigation or in the management of the vessel, the Owner of the goods carried hereunder will indemnify the Carrier against loss or liability to the other or non-carrying ship or her Owners in so far as such loss or liability represent loss of or damage to or any claim whatsoever of the Owner of the said goods paid or payable by the other or non-carrying ship or her Owners to the Owner of the said goods and set off, recouped or recovered by the other or non-carrying ship or her Owners as part of their claim against the non-carrying ship or her Owners as part of their claim against the carrying vessel or Carrier. The foregoing provisions shall also apply where the Owners, Operators or those in charge of any ship or ships of objects other than, or in addition to, the colliding ships are at fault in respect to a collision or contact.'

Breadth of a vessel, unless the context otherwise requires, means her greatest breadth: Collision Regulations 1972, r. 3 (j).

Breakage, loss by. See LOSS BY LEAKAGE OR BREAKAGE.

'British Islands', unless the contrary intention appears, means the United Kingdom, the Channel Islands and the Isle of Man: Interpretation Act 1978, s. 5, Sch. 1. (See UNITED KINGDOM.)

‘British marine structure’. A marine structure owned by or leased to an individual resident in or a body corporate incorporated under the law of any part of the United Kingdom: Dumping at Sea Act 1974, s. 12 (1). (See MARINE STRUCTURE.)

‘British possession’. Unless the contrary intention appears, means any part of Her Majesty's dominions outside the United Kingdom, and where parts of such dominions are under both a central and a local legislature, all parts under the central legislature are deemed, for the purposes of this definition, to be one British possession: Interpretation Act 1978, s. 5, Sch. 1. (See UNITED KINGDOM.)

British seaman's card. A card issued to a British seaman. (See BRITISH SEAMEN.)

Every person who is present in the United Kingdom, is a British seaman and is not a holder of a British seaman's card must apply, if he has a right of abode, for a card within 7 days of satisfying the above conditions, and may do so if he has not such a right: Merchant Shipping (Seamen's Documents) Regulations 1972 (S.I. 1972 No. 1295), reg. 2. (See RIGHT OF ABODE.)

A person applying for a British seaman's card must do so in the prescribed manner, and unless it has been lost or destroyed, surrender to a superintendent any British seaman's card previously held by him: Merchant Shipping (Seamen's Documents) Regulations 1972, reg. 4 (1). (See SUPERINTENDENT.)

If a person applying for a British seaman's card satisfies the above conditions, and has paid the fee, if any, prescribed, then in the case of a person having the right of abode, the Secretary of State must, and in any other case may, issue a card to him: Merchant Shipping (Seamen's Documents) Regulations 1972, reg. 5.

A British seaman's card is valid (i) until the end of the period of 5 years from the date of its issue; and (ii) if it has been indorsed, until the end of a further period of 5 years from the end of the period of 5 years from the date of its issue: *ibid.*, reg. 7.

The holder of a British seaman's card must produce it to a superintendent, a proper officer, his employer or master of his ship, on demand or within such period as the person requiring its production may allow: *ibid.*, reg. 10 (1). (See PROPER OFFICER.)

The holder of a card must surrender it to a superintendent immediately, upon his ceasing to be a British seaman or upon the card being defaced, and on demand after he has ceased to have the right of abode: Merchant Shipping (Seamen's Documents) Regulations 1972, reg. 11 (1). Any person who comes into possession of a British seaman's card of which he is not the holder must at once deliver it to the Registrar General of Shipping and Seamen or to a superintendent: *ibid.*, reg. 12 (1). (See REGISTRAR GENERAL OF SHIPPING AND SEAMEN.)