

REVIEW OF CURRENT ENGLISH CASES.

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SHIPPING—BILL OF LADING—UNTRUE STATEMENT AS TO CONDITION OF GOODS—"SHIPPED IN GOOD ORDER AND CONDITION"—CONTRACT—ESTOPPEL—MASTER'S AUTHORITY—LIABILITY OF SHIP OWNER.

Compania Naviera Vasconzada v. Churchill (1906) 1 K.B. 237 was an action by ship owners to recover freight in which the defendants counterclaimed for damages for not delivering the goods in good order and condition. This is one of those cases in which, in spite of all modern efforts to effectuate substantial justice, a judge finds himself under the necessity of doing what, in effect, appears to be an apparent injustice, as Channell, J., who tried the case, is compelled to admit. The goods for which the freight was claimed consisted of timber, for which the master of the plaintiffs' ship signed a bill of lading stating it to be "shipped in good order and condition." As a matter of fact, the timber was not shipped in good order and condition, and defendants, who were transferees of the bill of lading, had paid the full price of the timber, but in an arbitration with the shippers had obtained an award of £572 12 on the ground that the goods were not according to the contract; this, however, they had taken no steps to enforce, the shippers being a foreign firm, but it was not shewn that they were insolvent. The defendants rested their counterclaim on contract, or estoppel. Channell, J., however, held that the words "shipped in good order and condition" did not constitute a contract, but that they did constitute a representation which, notwithstanding it was untrue, was one within the master's authority to make, and was, therefore, binding on the plaintiffs, and although the learned judge thought it would be more satisfactory if the damages could be confined as against the shippers to those actually occasioned by the defendants acting on the erroneous statement, yet he felt compelled to hold that they were liable for the difference between the value of the goods in good condition and in the condition they were actually delivered. And though he confessed that "it hardly seems just" that the plaintiff should pay this damage where the shippers were really the persons who ought to pay, yet he felt constrained to so direct, and he also held that the defendants were entitled to interest on money paid for the goods, and increased