

**HEARINGS BEFORE THE COMMITTEE
ON INTERSTATE AND FOREIGN
COMMERCE OF THE HOUSE OF
REPRESENTATIVES ON H. R. 15846,
RELATING TO BILLS OF LADING**

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Hearings Before the Committee on Interstate and Foreign Commerce of the House of Representatives on H. R. 15846, Relating to Bills of Lading by Various

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VARIOUS

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OF THE

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1906.

THE

BILLS OF LADING.

COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Tuesday, March 27, 1906.

The CHAIRMAN. The subject for consideration this morning is H. R. 15846, relating to bills of lading.

STATEMENT OF WILLIAM INGLE, OF BALTIMORE.

Mr. TOWNSEND. Where is your home?

Mr. INGLE. Baltimore. I am cashier of the Merchants' National Bank.

Mr. TOWNSEND. Is there an association of bankers interested in this bill?

Mr. INGLE. Yes, sir. At the last annual convention of the American Bankers' Association, held in this city in October I believe, there was adopted a resolution authorizing the president of that association to appoint a committee to confer with the shippers and carriers and these other parties interested in this matter with the idea of perfecting a document which would be entirely acceptable to everyone. We attempted to frame the matter up and we appointed five gentlemen, four of whom are present this morning.

Mr. TOWNSEND. Who constitutes that committee?

Mr. INGLE. The committee is headed by Mr. Lewis E. Ferry, president of the National Exchange Bank, and the members are William Livingston, president of the Dime Savings Bank of Detroit, and, incidentally, president of the Lake Carriers' Association, one of the largest grain carriers in the country, I believe; F. O. Wetmore, of the National Bank of Chicago, which bank, I assume, handles more paper of this character than any other bank in the United States; James Lewis, cashier of the National Bank of Commerce, of St. Louis, which, in its particular section, dominates the banking interests, I imagine; and myself. My bank handles this class of paper for grain and cotton, mostly from the South.

Mr. TOWNSEND. State as briefly as you can what you wish to about this legislation.

Mr. BURKE. You have stated that you drafted a bill that was satisfactory to all interests concerned. What do you mean by that?

Mr. INGLE. That I had drafted a bill which was satisfactory; no, sir. I said that committee was appointed for the purpose of consulting with these various interests of the bankers, carriers, and shippers so that these three interests, including ours, could get together and perfect some sort of legislation or agreement which would satisfy the demands of the situation.

Mr. BURKE. The object of my question was, knowing but little about this proposition, to ascertain whether you were speaking from the standpoint of the bankers or whether there was an understanding between the shippers, the carriers, and the bankers upon which they could agree.

Mr. INGLE. It was hardly to determine with reference to the respective interests, because they are all commingled. Their interests are identical with the interests of the shipper, because the moment the security is questioned, that moment the bank must stop accepting those papers as collateral, and at that moment the shippers are practically driven out of business, all excepting the monopolist or those having capital enough to take care of the business independently of the shippers.

Mr. RICHARDSON. Is there any association of carriers aiding in this legislation who are here to be heard?

Mr. INGLE. It is an effort at this juncture to reach a determination if possible. After our committee was appointed we had knowledge that there was to be held, in Lakewood, N. J., a conference between two committees, one on the part of the carriers and one on the part of the shippers. We went to that committee and found that it was working under a very excellent rule from its own point of view. They had mutually agreed among themselves that no other parties should be admitted to the conference until they had thrashed it out, and we had restricted our discussion entirely to two points covered by the present bill of lading. At first the carriers and shippers were unable to agree and it looked hopeless. We thought that probably they would not get together at all.

We afterwards had a conference in New York with the uniform bill of lading carriers who have charge of all matters relating to bills of lading in what is known as the official classification territory, being the territory north of the Potomac and Ohio rivers and east of the Mississippi River. It dominates the railroad interests of the country. We found the gentlemen very polite and pleasant, and they gave us assurances of a certain character, but when we talked the matter over we found that if every point was conceded and they had been in a position to bind their principals it would not have the legal effect of an agreement, certainly as to very important matters which the courts have determined. The courts could not determine a paper was a certain thing when the paper itself said it was not.

The great difficulty lies in the fact that we have forty-five States where a certain number of laws have been passed, but only a few have laws on that subject. Those are each of a different character. Outside of eight or ten States there is no legislation on the subject, so that these papers are subject to the operation of common law only, and the common law is interpreted in many ways, so that the holders of these papers have not the faintest idea of what they have. They must be familiar with the laws of the several States, but not with the character of the collateral they have taken.

Bills of lading at present issued, so far as I am informed, are prepared entirely by the carriers. Probably that led up to the bills of lading. I might state what a bill of lading is. Primarily a bill of lading is simply a transportation company's receipt for merchandise to be transported. Up to probably twenty-five years ago we never had any such thing. Rarely was any receipt given but the ordinary

plain receipt of such transportation company which was of no particular value except as evidence against the carrier that the goods had been given to it for transportation. As the country developed it became necessary to use more money to handle the commerce of the country, and the device was adopted of making use of what is known as the order bill of lading, in which the carriers themselves undertake to say that the goods named in this bill of lading will be held and delivered only to the order of the person to whom the papers were drawn, or on his indorsement, exactly as a check or any other evidence of debt. Those papers constitute what are known as the order bill of lading. It is a mere transportation receipt for merchandise which the carrier agrees to retain in his possession until the paper is delivered.

I think probably twenty-five years ago or a little less, most of these papers that found their way into the banks were papers which did not bear the words "not negotiable."

Mr. ADAMSON. What is the difficulty with this last one? Is not that one all right by which they undertake to hold the property subject to order?

Mr. INGLE. Yes; that is what they agree to do. I am now getting a little on legal grounds, but I will state my personal impression. I believe that the railroad has not the faintest idea of stealing the goods and they would probably deliver in nine hundred and ninety-nine cases out of a thousand. That was the moving cause for our effort in asking Congress to enact some law which would make this paper negotiable until canceled. The company as the holder would carry the goods to destination. They might omit to take that paper up at its destination, as they engage to do. Now, the man who owns the paper and who received the goods possibly fails to turn that into the transportation company after he received the goods, but takes it to the bank. The bank sees the contract of the transportation company and the bank handles that paper.

Mr. ADAMSON. The bank can put that man in jail?

Mr. INGLE. Yes; but that does not pay the \$100,000 that the bank may have loaned on that paper.

Mr. ADAMSON. You have got to take chances with rascals.

Mr. INGLE. We are perfectly willing to do that, but we submit that the railroads ought not to be permitted to issue papers of that kind unless the paper can do what it says it will do, and that is that they must engage not to deliver the goods without receiving the paper.

Mr. ADAMSON. When they do not do what they promise, can not you recover upon it?

Mr. INGLE. No; they claim that they have delivered the goods named to its destination; that they have fulfilled their part of the contract.

Mr. TOWNSEND. It is violation of the contract?

Mr. INGLE. It is a violation of the contract, if you choose, but the bank taking that paper received it only subject to the equities of the man giving it. If he had received the goods and the contract was not taken up it is of no avail.

Primarily the railroad company permitting that permits a violation of an express contract. I suppose that we have sent thousands of letters around to different parts of the country, and I hope that you gentlemen may have heard from some of them. We have answers which have been received from thousands of them in return.

This business is the business of the country as a whole. It is largely on the cotton crop of the South and the grain and hay of the Middle West, and the flour of Minnesota, and the fruit of California. You will see that we have left out quite a large territory where the use of the bill of lading is not wide.

Mr. GAINES. Would not a great many inconveniences result from requiring goods to be delivered only on presentation of the bill of lading? A great many shippers would not have the bill with them.

Mr. INGLE. If you had a check and came to me and said, "Old fellow, I have a check for \$500, but I have left it at home and I wish you would cash this and I will bring in the check;" that would not be good business. This matter is provided for in the carriers' regulations. All of their regulations provide that in case of erasure the notation should mean that it was not negotiable. All we ask is that the carriers shall be obliged to live up to their contract. We think that the railroad when it receives a carload of wheat should engage not to deliver that until this particular paper is surrendered.

Mr. ADAMSON. Is that the agreement in that paper?

Mr. INGLE. It is not only on the back of the paper but is printed separately on the face.

Mr. ADAMSON. You say that the court has held that you can not collect that of the railroad.

Mr. INGLE. Yes; it has been so held.

Mr. MANN. Is it not true that it is like a past-due negotiable paper?

Mr. INGLE. It is subject to the equities.

Mr. ADAMSON. Is it not like a paper which is not due but that may be negotiable, after the manner of a private instrument between parties?

Mr. INGLE. No, sir.

Mr. ADAMSON. Is it not like the case where the party holds a paper not due but is transferable afterwards?

Mr. INGLE. This paper is not like a promissory note.

The CHAIRMAN. The chair would like to suggest that the gentleman be permitted to proceed with his statement. After that inquiries can be made, as it disturbs the arrangements of his remarks and diverts him from the objects to which he wishes to address himself.

Mr. TOWNSEND. They have an attorney who will discuss these legal points.

Mr. INGLE. I am not competent to go into the legal phase of the matter. I have a practical knowledge of the effect. I have stated what an actual bill of lading is. Scattered all over the western country are small grain elevators holding 5,000 bushels and upward. Farmers haul their wheat into these elevators and deliver it for cash. The elevator man has a certain capital. When his elevator is full his capital is exhausted. He has either to get rid of his grain or stop buying from the farmer. He gets cars to come up and he loads the grain into the railroad cars. He gets from the railroad company an order bill of lading. That bill of lading he takes to his local bank and the bank, on the faith of that instrument, cashes the draft. He has then an empty elevator and \$5,000 with which to buy more grain. The draft is in possession of the bank and that bank sends that bill of lading with the draft attached for the value of the wheat or the corn to its destination in Chicago or New York. The consignee pays that draft to the bank.

Many of these people who buy grain have only a small capital on which to conduct their business. They send away perhaps 20,000 bushels of wheat with the draft attached. It may be that such a man has no more than \$10,000 in his business. He will take that order bill of lading and borrow money on it to do more business, so that at every step of this proceeding those papers represent value. These papers are all held by the bank until the exporter is ready to send his grain across the water or has sent it across. He then comes, perhaps overnight, turns that in and gets money in the shape of a foreign bill of exchange. He does that the next day or at once. That is the function of a bill of lading.

If you do anything to restrict the usefulness of that instrument you gentlemen can readily see that it would be a serious hardship placed on the commerce of the country. While this matter is being discussed, although we know perfectly well the character of these papers, yet we know that the papers are not what they say they are. As bankers we have determined that we will help this matter to be worked out. The bankers of the country annually advance on securities supposed to be good the sum of \$2,500,000,000. We lend per annum this amount on these papers. If you do anything to disturb that you can see what happens. You have here specimens of blanks. You are possibly familiar with the ordinary bill of lading.

Mr. ADAMSON. What is the difference between a straight bill of lading and an order bill of lading?

Mr. INGLE. The straight bill of lading is principally a plain carrier's receipt, such as was originally made use of back before we had an order bill of lading, just such a receipt as you give when you take a package to the express office. You do not get a demand to surrender that receipt.

Some two or three State legislatures have endeavored to make these papers mean what they say they mean, and have passed statutes which recite that any receipt given by any carrier for merchandise to be delivered shall be a negotiable paper unless it be stated specially that it is nonnegotiable and be so stamped. As a result of that they have gotten over that difficulty by stamping them all nonnegotiable. That nullifies the law. It was the purpose of the statute to make the paper good, whereas now it is not good when it is stamped nonnegotiable.

That is one suggestion. Further than that, up until eighteen months ago, we rarely saw a bill of lading. It was not signed by anybody except the agent of the carrier or some one representing him. Then this uniform bill of lading was provided. It is nominally held in abeyance. These regulations are prohibitive, and I think are arranged for two sets of rates. The shipper will sign a certain contract, and on the bottom of that paper the bill of lading makes that paper a contract enforceable only according to what is in it.

Mr. BARTLETT. That is due to the fact that the shipper gets a reduced rate for doing that.

Mr. INGLE. No, sir; he gets the same rate as he always paid. If he wants to get the paper free from that contract he is fined 20 per cent of the rates he has always paid—not 1 per cent, which would cover the risk, but 20 per cent, which is prohibitive. Those are the regulations. The shipper who waives his common law right pays a fine of 20 per cent for getting the paper subject to common-law interpretation.

Mr. BARTLETT. The ordinary common-law statute, in a number of States—notably my own State of Georgia—provides a waiver, and that waiver is vital to the railroad interests because it is against public policy. Unless in pursuance of that waiver the shipper gets some benefit he would not otherwise be benefited by the waiver.

Mr. INGLE. Technically he would not get the benefit of this 20 per cent. Only 12 States in the Union have laws on the subject. I have referred to the nonnegotiable feature and the contract feature. Those are vital and objectionable to the holder. We have no selfish purpose. Every holder of these papers is in exactly the same position. Furthermore, many of these papers are altered in material particulars, especially as to dates. Many of them are prepared by the shippers themselves and taken to the carrier. He may begin sending off a shipment one day and does not get it down until the next day. He takes the old bill, and the carrier makes an "8" out of a "7," and that will go. But he will keep on making it 1805 without altering the year of those other altered bills. Every such alteration of these bills voids that instrument. We can not go into court with it. The clause on the back is supposed to cover that. It says that any alteration or erasure that shall be made shall be void. The railroad company tells us in a pleasant way that it means exactly what it says, but any alteration of that paper affects that and throws it back and makes it enforceable only in such terms. We can not go into court with it because the railroad attorney is there, and he will say that this is an altered bill and that we have no standing in court.

That is the trouble. Certainly we think that 20 per cent of these papers we receive are altered bills. There is another difficulty in the way.

I have referred to the straight consignment of bills or shippers' receipts.

These papers are carelessly drawn—drawn by everybody, and those are known as straight bills. The railroad has no responsibility whatever. This man takes this straight consignment bill, and all that is necessary to do is to take a pen and write "order of" before the name of the consignee, and to all intents and purposes, in the hands of a third party, that is a bona fide order bill of lading. So that we think if the railroad company be permitted to issue these papers to be negotiable at all, that they should be so beyond doubt as far as possible. We think that the words "order of" should be printed in. I think that is a reasonable suggestion, and I do not think that they have any serious objection to doing that. That is the thing that forces itself to the front when we begin discussing this subject. I have here bills which have been altered in both particulars. It is one of the difficulties to be overcome. They are alterations, erasures, and changes from the straight shipments to order shipments. I have at present three bills. We do not question them. They may be paid, and they may not be. Maybe the fellow has gone wrong and the only satisfaction that we will get will be in sending him to jail. I have seen thousands of altered bills, but I do not believe that I have ever seen an alteration that has been noted. We have two bills. They are not negotiable. That is done by scratching out the word "not," which makes them all right. I do not know who scratched out that word, but I have no doubt that it was done before issuance.

Mr. ADAMSON. Do you not get that man's oath?