

**A DIGEST OF THE
LAW RELATING TO
MARINE INSURANCE**

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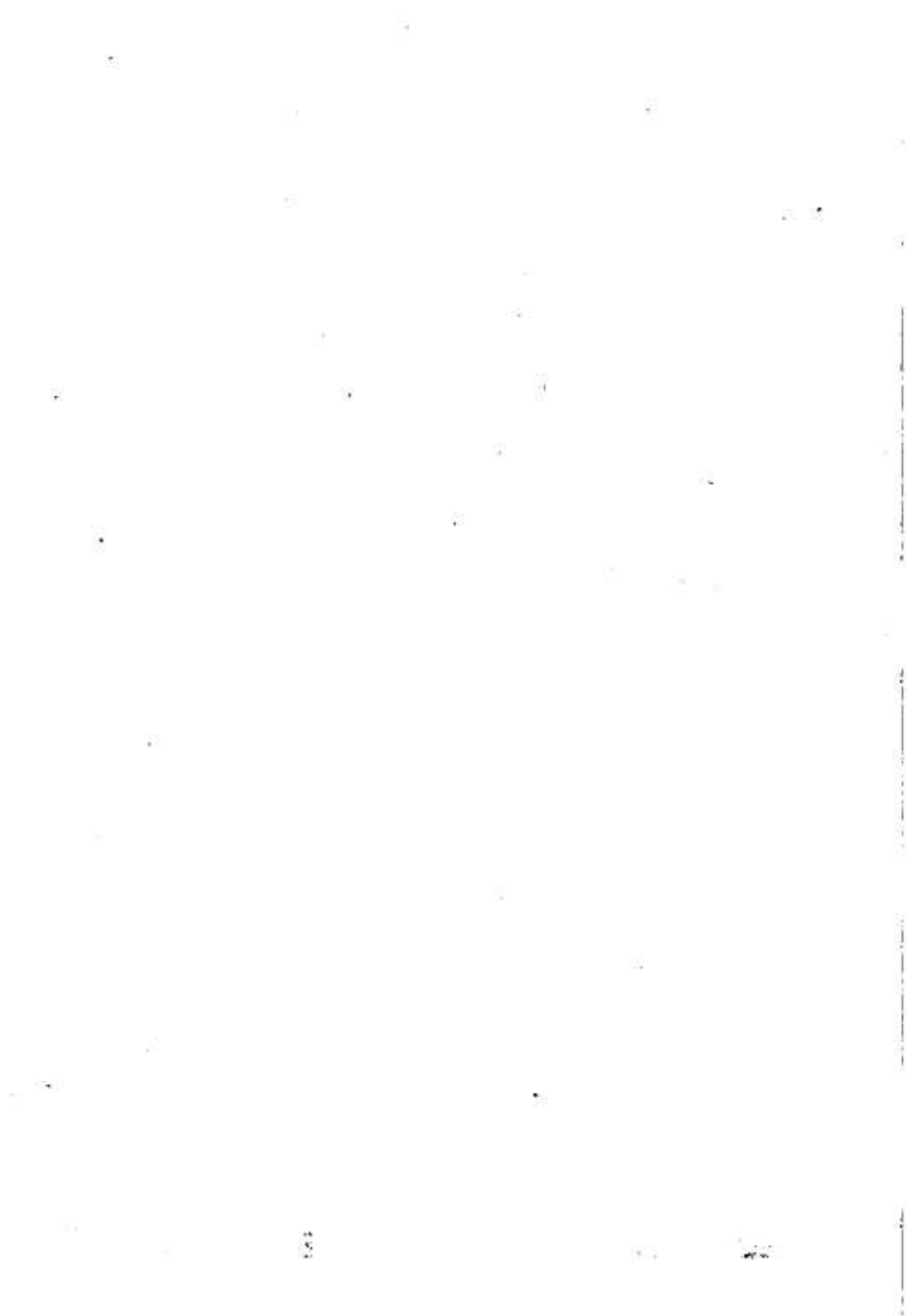
1903.

PREFACE TO SECOND EDITION.

IN the present edition, we have noted up the cases which have been decided since the first edition of this little book was published, and have carefully revised the text and notes. In so doing, we have endeavoured to take advantage of the valuable suggestions on the Marine Insurance Bill which have been received from various experts in marine insurance, and which are directed to making the Bill a more exact expression of the existing law.

M. D. C.
D. O.

Easter, 1903.



INTRODUCTION TO FIRST EDITION.

THE large type propositions of this Digest are taken, with a few slight corrections, and with the necessary verbal alterations (such as the substitution of the indicative for the imperative), from the clauses of the Marine Insurance Bill, which was introduced in the House of Lords in 1894, 1895, 1896, and 1899.

The object of that Bill was to reproduce as exactly as possible the existing law, without making any attempt to amend it. Lord Herschell, who originally took charge of the Bill, was strongly of opinion that a codifying Bill, in its inception, ought to be a mere reproduction of existing law. If amendments in the law are made in the initial stage, the whole Bill becomes controversial. Any amendment which seems desirable should be deliberately inserted by the Legislature when the Bill is under consideration. In some instances, of course, the Bill has to deal with questions where the law is unsettled, and the framers of the Bill must decide what they believe the law to be. In the Digest, propositions which appear to be unsettled law are included in square brackets, and the doubt is dealt with in the notes. Again, in one or two instances, the Lords Select Committee, which partially examined the Bill, introduced some small amendment in the law. In those cases the

Digest reverts to the original draft, and the point is mentioned in the notes.

The law of marine insurance rests almost entirely upon common law. Only a few isolated points are dealt with by statute. The reported cases are very numerous, being over 2000 in number. On some points there is a plethora of authority. On other points of apparently equal importance the decisions are meagre, and not always satisfactory. Some important questions are still untouched by authority, and the rule depends on recognized commercial usage. Again, many of the older cases turn upon commercial conditions which are now obsolete. The subject, therefore, is not an easy one to deal with in a brief Digest. It would be altogether beyond the scope of this Digest to attempt even to refer to the great bulk of decided cases, much more so to endeavour to criticize them in detail. The objects of the Digest are twofold: first, to state the main principles of marine insurance law in brief consecutive propositions; and, secondly, to support those propositions, where possible, by references to leading cases, or cases containing good expositions of principle by eminent commercial judges. Each case is dated, and if a later case reviews previous cases only a reference to the later case is given. Where rules of law seem difficult to apply, illustrations drawn from decided cases are inserted after the section to show the application of the abstract proposition to concrete states of fact.

After the list of cases referred to, there is added a list of important cases, which have been overruled, doubted, or explained. This list has no pretensions to completeness, but may be useful as far as it goes.

Occasional reference is made to foreign codes by way of illustration, but no attempt has been made to

compare the English rules systematically with any foreign code.

The Marine Insurance Bill was first introduced by Lord Herschell in 1894. Its history up to the present time sufficiently appears from the following extract from the Memorandum attached to it, viz. :—

“The Bill is founded on the Bill which was introduced in 1894. Its provisions and suggestions received from various sources have been carefully considered by a Committee appointed by the late Lord Chancellor (Lord Herschell). The Committee met at first under the presidency of the late Attorney-General (Sir R. T. Reid, Q.C.), and afterwards under the presidency of Lord Herschell. It consisted of Mr. John Glover and Mr. Milburn, representing the shipowners, Mr. McArthur (Chairman of the Liverpool Chamber of Commerce), and Mr. Hogg, representing the average adjusters, and Mr. J. E. Street, Deputy Chairman of Lloyd's, Mr. Douglas Owen, of the Alliance Marine and General Assurance Company, Mr. William Walton (legal adviser to Lloyd's), representing the underwriters and insurance companies, Mr. C. B. Vallence, Chairman of the Liverpool Underwriters' Association, and the draftsman, Mr. Chalmers.

“The first 33 clauses were examined and passed with some small amendments, by a select Committee of the House of Lords, which included the Lord Chancellor (the Earl of Halsbury), Lord Herschell, Lord Watson, and Lord Rothschild.

“In dealing with rules of law, which may be modified by the stipulations of the parties, it is to be borne in mind that the certainty of the rule laid down is of more importance than its theoretical perfection. As Willes, J.,