

Reconsideration of the Bill of Lading as a Document of Title

Zeng Luling^{1,2}, Jiang Zhengxiong¹, Ren Lvzhen^{2,*}, Yang Chaoyang¹

¹Law School, Shanghai Maritime University, Shanghai, China

²Navigation College, Jimei University, Xiamen, China

Email address:

zeng@jmu.edu.cn (Zeng Luling), zxjiang@shmtu.edu.cn (Jiang Zhengxiong), lzren@jmu.edu.cn (Ren Lvzhen),

tonyyyyzy@163.com (Yang Chaoyang)

*Corresponding author

To cite this article:

Zeng Luling, Jiang Zhengxiong, Ren Lvzhen, Yang Chaoyang. Reconsideration of the Bill of Lading as a Document of Title. *International Journal of Law and Society*. Vol. 5, No. 1, 2022, pp. 66-72. doi: 10.11648/j.ijls.20220501.18

Received: December 29, 2021; **Accepted:** January 25, 2022; **Published:** February 9, 2022

Abstract: The bill of lading is a primary transport document generally signed by or on behalf of the carrier by sea. Because of its comprehensive characteristics, it also plays an important role in the field of international trade. It is widely treated as a document of title in maritime law research and legal practice, but as to the specific meaning of the document of title, there is no accurate and universally accepted interpretation. It is an academic topic left to scholars to discuss. With the changes in the form of bills of lading in practice, it is also a fundamental issue to reduce the disputes arising from the delivery of goods and payment settlement in trade. This paper reviews the different expressions and variations of the bill of lading in relevant conventions and different domestic laws and analyzing the provisions or presumed meanings of the document of title. Based on the various functions of the bill of lading in transportation and trade, it further emphasizes that the dual legal nature of the document of title is mainly for delivery requests and constructive possession of goods. The correction of deviation regarding the implication of document of title in the Chinese context, especially the controversy about the bill of lading as a document of property and the document of debt, and the further clarification of legal nature of a different bill of lading in particular application stage could be obtained.

Keywords: Bill of Lading, Legal Nature, Document of Title, Document of Property, Document of Debt

1. Introduction

The bill of lading is a primary transport document generally signed by or on behalf of the carrier by sea. One of the essential legal natures of a bill of lading is the document of title, which is early recognized by the common law in *Lickbarrow v. Mason* [1]. But there is no clear and uniform regulation of its specific meaning [2]. Scholars' opinions on the attribute of the bill of lading are pretty controversial.

Some scholars consider the bill of lading to be a document of property as a means of delivering and representing the goods. According to international conventions and the Chinese Maritime Code, the carrier should deliver the goods against the presentation of a bill of lading. The goods are in the custody or possession of the carrier until they are delivered. Secondly, the bill of lading can be transferred like other marketable securities, except for straight bills of lading. It fully proves that the bill of lading is a document of property. [3].

Yang (2006) argues that a bill of lading represents an indirect right to possess the goods. Negotiation of the bill of lading means transferring the ownership of goods if it is in the carrier's possession or if the carrier claims to return possession of the goods. [4]

Linnan (2002) deems that in the international sale of goods involving the marine transportation, the buyer aims to obtain the bill of lading and the rights evidenced by the bill of lading. The holder of the bill of lading can dispose of the goods on his own only if he gets full ownership. Therefore, the bill of lading should be identified as a document of ownership. Otherwise, the bill of lading will not be used as the subject of the sale. The bill of lading transactions will also lose legal protection, which does not comply with the original intention of the bill of lading as a document of title. [5]

Some scholars focus on the role of bills of lading in transport, especially the bills of lading delivery are out of sync with the cargo ownership transfer. They think that the bill of lading

originates in the carriage of goods, related legal issues should be discussed mainly in maritime law. But most of the domestic maritime law or relevant international conventions have never defined the bill of lading, or no provisions of the bill of lading as a document of property could be found. The transfer of the bill of lading only means to transfer the goods presumed possession instead of the ownership of the goods. [5]

Some scholars are more aware of the nature of the bill of lading on various occasions. They believe that the bill of lading is a document of credit security. The holder can claim from the carrier to deliver the goods, compensate damage to the goods, etc. Also, it is a property right, which is a kind of property document representing the possession of goods. [7]

2. Identification of the Bill of Lading as a Document of Title in Different Applications

The right to apply the bill of lading arises from three primary situations: transport, cargo transaction and bill of lading transaction.

2.1. Bill of Lading in Transportation

The carrier possesses goods upon acceptance from the shipper or consignor, as determined by the business of transport, without any legal stipulation. There is not any provision for such possession in existing transport law. Under transport law, to possess goods, the carrier issues a bill of lading to the shipper as a receipt. However, while the shipper holds the bill of lading, or after the settlement, other people have the bill of lading, are the carrier or other people entitled to own or possess the goods? Some scholars recognize these two kinds of rights from the existing transport law provisions on the "document of title". However, the author's opinion is that no such direct stipulations could be found in transport law.

(1) The Hague Rules and the bill of lading as a document of title

In transportation law, the bill of lading originated in the Hague Rules, which referred to it twice as a document of title. Article 1 (b) of the Rules refers to the nature of a bill of lading as a document of title: "' Contract of carriage' applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or according to a charter party from the moment at which such bill of lading or equivalent document of title regulates the relations between a carrier and a holder of the same." A document of title is also included in article 3, paragraph 7: " After the goods are loaded the bill of lading to be issued by the carrier, master, or agent of the carrier, to the shipper shall, if the shipper so demands, be a 'shipped' bill of lading, provided that if the shipper has previously taken up any document of title to such goods, he shall surrender the same as against the issue of the 'shipped' bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master,

or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted if it shows the particulars mentioned in paragraph 3 of Article 3, shall for this Article be deemed to constitute a 'shipped' bill of lading."

The Hague Rules' provisions indicate that it neither defines the document of title nor directly characterizes the bill of lading as a document of property [8]. This concept had existed before the Hague Rules but was used by the Hague Rules on certain occasions.

However, article 3, paragraph 7 of the Hague Rules shows the shipper's control of the goods after being handed over to the carrier and the relationship between this kind of control and the bill of lading. From the provisions of the Hague Rules, it can also be seen this control does not directly relate to the ownership of the goods, which further confirms the characterization of the term "document of title".

(2) The Hamburg Rules and the bill of lading as a document of title

Suppose the Hague Rules as the first international convention to bind the bill of lading is not intended to characterize the nature of the bill of lading as a document of title. In that case, the publication of the Hamburg Rules confirms this point. Concerning the way defining the contract of carriage, the Hamburg Rules takes quite a different way to the Hague rules, without any content about the bill of lading to prove the existence of the contract of carriage. Regarding issuing bills of lading under the charter party, the Hamburg Rules also remove the expression "similar to a document of title". Therefore, the Hamburg Rules leave only refer to the document of title in article 15, paragraph 2: "After the goods have been loaded on board, if the shipper so demands, the carrier must issue to the shipper..... If the carrier has previously issued a bill of lading or other documents of title concerning any of such goods, on request of the carrier, the shipper must surrender such document in exchange for a 'shipped' bill of lading. The carrier may amend any previously issued document to meet the shipper's demand for a 'shipped' bill of lading if, as amended, such document includes all the information required to be contained in a 'shipped' bill of lading." Do the Hamburg Rules consciously avoid expressing the bill of lading as a document of title? There seem to be signs of this.

First, the bill of lading is defined in article 1, paragraph 7: "'Bill of lading' means a document which evidences a contract of carriage by sea and the taking over or loading of the goods by the carrier, and by which the carrier undertakes to deliver the goods against surrender of the document." It is argued that this characteristic means that the bill of lading is a document of title. However, the term "document of title" is removed in the Hamburg Rules, replaced by the expression "undertakes to deliver the goods against surrender of the document". It accurately shows the function of the bill of lading. Whether this is the nature of the document of title is the question of academic research.

Secondly, in article 2, paragraph 3, the Hamburg Rules provides that "the provisions of this Convention do not apply to charter parties. However, where a bill of lading is issued

according to a charter party, the provisions of the convention apply to such a bill of lading if it governs the relationship between the carrier and the holder of the bill of lading, not being the charterer." Obviously, it is only the bill of lading issued under the charter party and no longer includes similar documents of title.

Thirdly, under the Hamburg Rules, Article 15, paragraph 2, the expression "document of title" is unnecessary. If the carrier has issued a similar document of title instead of a bill of lading before the goods are loaded on board, what kind of document would it be? Article 18 of the Hamburg Rules, titled "documents other than bills of lading", seems to refer to such a document. "Where a carrier issues a document other than a bill of lading to evidence the receipt of the goods to be carried, such a document is prima facie evidence of the conclusion of the contract of carriage by sea and the taking over by the carrier of the goods as therein described." Comparing the complete definition of the bill of lading with this Article, the "documents other than bills of lading" referred do not contain the characteristics of "undertake to deliver the goods against surrender of the document". One opinion is that such a document is not a property document. However, this viewpoint is debatable. As mentioned in the previous section, the legal nature of the bill of lading as a receipt for the goods should be included in the character as a property document. When the textual formulation shows that these two legal natures are separated, insisting on this statement is more significant.

If the carrier has taken over the goods, a document other than a bill of lading would have the function of proving that the carrier is in possession of the goods. Once this function of the document is determined, then the indirect possession of some goods of the document holder could be simultaneously ascertained. Otherwise, the document has no need to be issued and no condition to exist. This conclusion will continue to elaborate in later sections. Here the concept of possession should be discussed. Even if the bill of lading is a receipt for goods, it is still functioning as a property or credit document. Therefore, if the bill of lading is treated as a property document, such a document would also be the same. But its specific function may be different, such as the characteristics of "by which the carrier undertakes to deliver the goods against surrender of the document".

Go back to the question. If the "similar documents of title" in Article 15, paragraph 2 of the Hamburg Rules are the "documents other than bills of lading" referred to in Article 18, then this Article is redundant; if "similar document of title" is not that "document other than a bill of lading", there is no need to mention so, because, in article 2, paragraph 3 of the Hamburg Rules, concerning the issuance of bills of lading under a charter party, "similar document of title" and other words are deleted. Therefore, it can be said that the Hamburg Rules is in a careless situation, re-enter the trap of this issue.

(3) The Rotterdam Rules and the bill of lading as a document of title

When drafting the Rotterdam Rules, the dispute between the theory of bill of lading as a document of property and as a

document of credit had already fully erupted. It makes the legislators more conscious to recognize that the two doctrinal schools are engaged in a legal dispute. What the legislation should do is not only to remain uninvolved but also to further delineate with it. Therefore, the term "document of title" does not exist in the Rotterdam Rules. This Rule even removes the term "bill of lading" from the text and replaces the terms "bill of lading", "documents other than bills of lading", and "similar documents of title" with the broader concept of "transport document". In addition, the Rules defines a transport document as: "transport document" means a document issued under a contract of carriage by the carrier that (a) evidences the carrier's or a performing party's receipt of goods under a contract of carriage; or (b) evidence or contains a contract of carriage."

It puts the bill of lading's function of "to ensure delivery of the goods" in the Goods Delivery section. It sets this function based on different categories and the nature of the bill of lading. For example, when using a non-transferable transport document, it is unnecessary to present the transport document on delivery.

The legislative intent of the Rotterdam Rules is to establish legal provisions according to the needs of the transport of goods and leave the nature identification required in the legal theory to scholars. From the Hague Rules inadvertently using the concept of "document of title", and the Hamburg Rules to reduce such expressions, to the complete elimination of "document of title", and cancelling the term "bill of lading" finally, it shows the academic community's pressure on the legislative level. [9]

(4) The China Maritime Code and the bill of lading as a document of title

The basic model of the CMC is derived from the Hamburg Rules and adopts part of wordings but does not mention the "document of title". For example, Article 74 of the CMC: "If the carrier has issued, on demand of the shipper, a received-for-shipment bill of lading or other similar documents before the goods are loaded on board, the shipper may surrender the same to the carrier as against a shipped bill of lading when the goods have been loaded on board;....." The wording and the expression order of this provision is nearly complete compliance with the Hague Rules, Article 3, paragraph 7 and the Hamburg Rules, Article 15, paragraph 2. However, the wording "similar documents of title" was deliberately deleted in this provision. One reason is that in civil law countries, property right is a specialized concept. If the word "property rights" appears in Chinese legislation, the debate about translating "document of title" in Chinese and whether the bill of lading is a document of property or credit would no longer exist. Another reason is that when the CMC was formulated, China has not yet reached the stage of property law legislation. The lower law should avoid this problem. It is worth mentioning that the expression of "other documents" in the Article is more in line with the transportation reality than "similar documents of title", and also with the "documents other than bills of lading" mentioned in article 80".

2.2. *Bill of Lading in Cargo Transactions*

Whether the bill of lading is a document of property is more prominent in cargo transactions. Since the bill of lading was issued, it has always been negotiated in cargo transactions except for delivery. Only when the goods transaction is in problems, for example, the consignee or place of delivery, need to be altered because the buyer refuses to pay for the goods, etc., the bill of lading would return to the transport process.

(1) United Nations Convention on Contracts for the International Sale of Goods (CISG) and the nature of the bill of lading as a document of title

Article 30 of the CISG states: "The seller must deliver the goods, hand over any documents relating to them and transfer the property in the goods, as required by the contract and this Convention." Article 31 of the Convention further provides that if the contract of sale involves the carriage of the goods, the seller shall hand over the goods to the first carrier for carriage to the buyer. Under a letter of credit or documentary collection, trade settlement shall be based on the goods document. Therefore, it is the primary obligation of the seller under the sale contract to hand over the relevant documents after the shipment of the goods. In shipping practice, the so-called documents related to the goods include the bill of lading.

The above provision also refers to the transfer of ownership of the goods, but CISG does not provide further. Therefore, it can be assumed that the requirements are concerned with the transfer of ownership of the goods under the contract of sale. In general, the time and conditions for the transfer of ownership of the goods rarely emerge in the contract of sale, and the relevant issues are more regulated by the applicable law. For example, Chinese law provides that their delivery to the carrier indicates the transfer of ownership of the goods.

From above, delivering the goods to the carrier and delivering the document for trade settlement would not simultaneously happen, and the basis of these two actions is the contract of sale. Therefore, according to the CISG, it is objectively impossible to conclude the delivery of the bill of lading is a transfer of ownership of the goods, and the bill of lading is a document of title.

(2) Uniform Commercial Code of US (UCC) and the nature of the bill of lading as a document of title

The UCC very clearly characterizes a bill of lading as a document of title. §1-201 (16) of the Act defines it as follow: "'Document of title' includes the bill of lading, dock warrant, dock receipt, warehouse receipt or order for the delivery of goods, and also any other document which, in the regular course of business or financing, serves as adequate evidence that the person in possession of it is entitled to receive, hold, and dispose of the document and the goods it covers."

This provision is different from the Hague Rules and the Hamburg Rules. The UCC includes the bill of lading as a document of title and specifies the right of property represented by the bill of lading, i.e., the holder of the document is entitled to receive, dispose of the document itself

and the goods it covers.

If the bill of lading is a document of property, representing the goods listed on the bill of lading, then, when the time of transfer of the document is different from the time of actual delivery of the goods, how to determine the time of transferring the ownership?

The Uniform Commercial Code (UCC) has a specific provision on the transfer of title to goods. §2-401 (2) provides: "Unless otherwise explicitly agreed title passes to the buyer at the time and place at which the seller completes his performance regarding the physical delivery of the goods, despite any reservation of a security interest and even though a document of title is to be delivered at a different time or place and despite any reservation of a security interest by the bill of lading. (a) if the contract requires or authorizes the seller to send the goods to the buyer but does not require him to deliver them at the destination, title passes to the buyer at the time and place of shipment; but (b) if the contract requires delivery at the destination, title passes on tender there." §2-401 (3) provides: "Unless otherwise explicitly agreed where delivery is to be made without moving the goods, (a) if the sellers to deliver a document of title, title passes at the time when and the place where he delivers such documents; or (b) if the goods are at the time of contracting already identified and no documents are to be delivered, title passes at the time and place of contracting." Under UCC, the transfer time of ownership of the goods is the actual delivery time of the goods by the seller. The delivery time of the document can be determined as the transfer time of ownership of the goods only if no movement of the goods is required and only the delivery of the document is required.

The "security interest by the bill of lading" mentioned above is protected in the UCC Article 9 Secured Transactions. According to the general rules of civil law, security interests are generally within the scope of property rights. From this point of view, the bill of lading is still valid as a document of property.

2.3. *Bill of Lading in Its Transactions*

After the trade settlement, the bill of lading is transferred to the buyer. According to the traditional concept, the bill of lading stands for the goods, so, in form, the sale of goods is also the disposal of the bill of lading.

The legal significance of the bill of lading transactions and goods transactions are not the same. When the bill of lading is in the transaction, the goods delivered for transport has been completed. Therefore the transfer of ownership following its legal mode is the delivery of documents.

(1) Transaction of order bill of lading

Under the provisions of CMC Article 79, the order bill of lading may be negotiated with the order endorsement or blank endorsement. The United States Federal Bills of Lading Act and the UCC also provide the same provisions as the Chinese law. The Hague Rules and Hamburg Rules do not mention the above conditions, but the endorsement on the bill of lading is the custom in shipping practice and is the requirement of the bill of lading itself.

In order bill of lading transactions, does transfer of the bill of lading by both parties means the transfer of ownership of the goods? The affirmative answer comes from the doctrine that the bill of lading acts as a document of property. Yet another theory thinks that it is an act of transfer of credit [10]. However, under the UCC, the conclusion seems to have been reached. The transfer of ownership in the sale of goods in transit qualifies as delivery without moving the goods in the meaning of UCC § 2-401 (3), and ownership of goods transfers at the time of delivery of the document. The word "title" in the clause may be interpreted as "ownership". The term "credit" is not explicitly used in the Act but is divided into rights under specific contracts of sale, contract of carriage, etc., which are uniformly expressed as "right". §7-503 of UCC provides the holder of a document of title with four rights: a) Title to the document. b) Title to the goods. c) All rights conferred by the law of agency and estoppel, including rights arising from the goods handed over to the bailee after document issuance. d) The right to require the issuer of the document to keep or deliver the goods. So, in UCC, the terms "right" and "title"(means ownership) are strictly distinguished.

In order bill of lading transactions, the bill of lading represents the goods traded. The seller directly obtains the payment of goods by disposing of the bill of lading. For the nature of the bill of lading in the transaction, the bill of lading identified as a document of property is reasonable. However, in the contract of carriage, only in the case of reaching the goods transaction, the former holder transfers the right to the latter to request delivery of the bill of lading. The bill of lading is still a document of credit. However, the transfer of the bill of lading reflects a change in the relationship of possession to the goods relates to the bill of lading [11].

(2) Transaction of blank bill of lading

The transaction pattern of a blank bill of lading is essentially the same as that of an order bill of lading. According to the law, the blank bill of lading can be transferred without endorsement, which is the difference between it and the order bill of lading and the essential characteristic of these two transactions.

As to the research on the right of the bill of lading, the nature of the blank bill of lading is more apparent than other bills of lading. The former hands over the bill of lading, the latter accepts. Then the transfer of rights is complete, without other disposition. However, as with the order bill of lading, the blank bill of lading in the transaction and transport also embodies different rights properties.

(3) Transaction of the straight bill of lading

Article 79 of CMC provides that a straight bill of lading is not transferable. However, the Hamburg Rules do not provide for this. Article §80103 of the United States Federal Bills of Lading Act provides that endorsement on a non-negotiable bill of lading does not make it negotiable and does not give the additional rights to the transferee. Article §7-104 of UCC further provides that delivery of the goods by instruction of the consignee does not change the non-negotiable nature if provided for in the straight bill of lading. Once a non-negotiable document has been issued, it may not be made

negotiable by any form of endorsement.

According to the law mentioned above, a transaction of goods cannot be completed by disposing of a straight bill of lading, for example, by endorsement or delivery. Under a straight bill of lading, such a sale of goods requires a separate contract, which should involve the transfer of ownership of the goods, seller's assistance to the buyer in collecting the goods, etc.

Now that there is no straight bill of lading transaction, it is impossible to discuss its rights properties. However, it doesn't mean that the straight bill of lading is not a document of title. The straight bill of lading doesn't have the legal nature as a document of delivery compared to other bills of lading, which is a defect as a document of title [12]. However, combined with its different legal nature, a straight bill of lading is still a document of property or credit.

A dilemma had arisen in a UK case where a straight bill of lading would be trapped in the inapplicability of the Hague Rules if it were not treated as a document of title in this Rules. [13] The case focused on whether a straight bill of lading was within the scope of the Hague Rules. Article 1 (b) of the Hague Rules provides that "contract of carriage applies only covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or according to a charter party from the moment at which such bill of lading or equivalent document of title regulates the relations between a carrier and a holder of the same." Sale of Goods Act 1971 of England did not make any modification about this. The focus of dispute then appears to be a words game. The wording "or a similar document of title", as used in the Hague Rules, determines the bill of lading is a document of title within the meaning of the Rules. A straight bill of lading is not a document of title and is therefore outside the scope. For a long time, there has been an academic view that, since the straight bill of lading is not transferable, it does not have the essential nature of the document of title. Thus, the goods can be delivered without a straight bill of lading. That was the view of one party and the judge at the case's first trial. However, the judges of the Court of Appeal and the House of Lords held various reasons why a straight bill of lading is a document of title and that the carrier was still required to release the goods against it. Reasons given by the judge were not only the terms of the bill of lading regarding the release of the goods against the bill of lading, for example, "After one bill of lading has been drawn on the goods, the rest of the bill of lading shall be void" on the front of the bill of lading, but, more importantly, the judge noted the seller's intention to control the final transfer of ownership of the goods based on the bill of lading. The case was decided at the first trial in favour of the view that a straight bill of lading is not a document of title, while the second and final trials favoured the opposite view.

Even under the UCC and Federal Bills of Lading Act of the US, the courts cannot rule that a straight bill of lading isn't a document of title. Otherwise, the Hague Rules would not

apply to the straight bill of lading, which is not the original purpose of the Convention.

3. The Dual Legal Nature of Bills of Lading

The bill of lading, which is essential in business, finance and transportation, is regulated by transport law and commercial law. The bill of lading has the legal nature of both a document of credit and a document of property. This duality is reflected in the different stages of the business flow.

3.1. Documents Requested for Delivery

The bill of lading is a document requesting delivery, which embodies its role as a document of credit and is the first consideration in understanding the nature of a bill of lading. The shipper will hand over the goods to the carrier for transport. Therefore, the carrier's delivery of the goods is inevitable. The bill of lading is to prompt the carrier to do so as a document. In the normal trade flow, the shipper (seller) does not request the carrier to deliver the goods to himself but passes the bill of lading to the consignee (buyer) to exercise that right of delivery. This feature makes the transfer of bills of lading possible. [14]

When the shipper needs to dispose of or request the goods' return because of the trade interruption, the nature of the bill of lading as a document requesting delivery demonstrates more superficially. In such cases, the shipper will request a variation of the contract of carriage or delivery directly from the carrier based on the bill of lading. In practice, if the goods need to be returned and handed over to the shipper, the carrier usually issues a return bill of lading and withdraws the original bill of lading after an agreement has been reached with the shipper on matters such as back freight and other charges. The contract and issuing the return bill of lading are based on the claiming character of the original bill of lading held by the shipper.

Due to the different applicable laws, the function of requesting delivery of a straight bill of lading may vary. According to the CMC, the consignee (buyer) still must request the carrier to deliver the goods against the straight bill of lading. Thus, when the goods need to be returned, although the bill of lading records the consignee, the shipper can still be given the right to change the contract of carriage or direct request for delivery with the bill of lading. It confirms that the right to request the delivery is given to the person concerned by the bill of lading itself after being agreed by the parties to the contract of carriage. The record in the bill of lading regarding the delivery of the goods to the named consignee merely proves the result of such an agreement. If the agreement cannot be fulfilled, the parties to the contract of carriage may agree again. They may be changed several times until the carrier completes the delivery obligations.

As mentioned earlier, under the UCC, the carrier may deliver the goods without recovering the bill of lading. However, he is still obligated to confirm that the named person is entitled to receive the goods. Questions may arise from these provisions

when the shipper notifies the carrier with the straight bill of lading in his possession, requests the goods' disposal or return, and gets the goods directly. Although the carrier knows that the shipper still holds the bill of lading, it is still uncertain whether the named consignee never obtained or has lost its right to claim delivery under the straight bill of lading. In this case, if the claim is still determined by the possession of the bill of lading, it may lead to the consequences of violating the legitimate rights and interests of the named consignee. And it is impossible to ask the shipper to prove that there is no actual transfer of ownership, and the carrier cannot find out the truth about the trade. This result is that in abnormal situations, the straight bill of lading isn't the document requested for delivery. So, the problem can't be solved in the scope of the bill of lading relationship. In the context of the contract of carriage, this claim can only be pre-agreed after the named consignee's right to delivery has been excluded.

3.2. Evidence of Constructive Possession of Goods

The delivery of the goods by the shipper as the seller is an act of transferring possession of the goods and is even considered to be an act of transferring ownership of the goods. However, the significance of determining that delivering the goods for carriage is the act of transferring ownership of the goods is not to determine the actual transfer of ownership, but rather the time of that transfer when ownership is finally transmitted. The final transfer of ownership is subject to the fulfilment of other conditions, in particular the settlement conditions. However, whether the ownership is transferred at that point, for the contract of carriage, the shipper needs some form of continued possession of the goods after the shipper has delivered them, while the carrier is in the actual control and the consignee has not accepted them. Under this possession, the shipper may exercise the right to vary the carriage contract, including the right to stop the carriage during the contract performance. [15]

According to the general theory of possession, it can be divided into actual possession and indirect possession. Holding the bill of lading, the shipper's possession of the goods is indirect. The shipper's indirect possession is a documentary possession. The so-called documentary possession, which refers to possession expressed by a control certificate or document, is based on modern commerce. In current commercial activities, ownership changes often require faster means and accurate timing, making it possible to replace physical goods with documentary transactions.

So, is possession of a bill of lading within the scope of a right of property or credit? Possession under property law is closely related to ownership of possession unless the owner's legal rights and interests are violated or obstructed by others. There are different situations regarding whether the shipper (seller) continues to hold the ownership of the goods after handing them over to the carrier: a) Under specific applicable laws, ownership of the goods has transferred, and therefore, the shipper (seller) no longer has ownership. b) Under other applicable law or the contract of sale, ownership of the goods has not yet been transferred after delivery for carriage, so that

shipper (seller) remains entitled. c) As the applicable law was unclear at delivery, it is impossible to determine whether and when ownership was transferred. The third situation mentioned above may often cover the first, where it is not wise to deprive the shipper (seller) of ownership of the goods because the circumstances of the transfer of ownership of the goods cannot be concluded (nor is it necessary to do so) at the time of delivery. Even if the law provides that delivery for carriage implies a transfer of ownership of the goods, it only sets the time for the actual transfer of ownership. It should be presumed that this shipper (seller) still has ownership after the goods have been delivered for carriage [16]. Therefore, in the above three cases, the shipper (seller) still has the ownership of the goods. So, the indirect possession under the bill of lading is a kind of possession in rem, and the bill of lading is a document of property rights.

Possession with the nature of credit is subject to legal relationships. The owner of the possessed property loses its direct possession due to a specific legal relationship, such as transport. Likewise, the counterparty to that legal relationship thereby acquires direct possession of the property. In this matter, the issuance of a bill of lading by the carrier would give the impression that such a bill of lading is a document of credit of the shipper to indirect possession of the goods [17]. However, under the above general principles of the law of credit, both direct and indirect possession with the nature of credit arising from the legal relationship of the credit which modifies such possession, and therefore the bill of lading is not the only representation of such possession. In other words, identifying the bill of lading as a document of credit by the indirect possession of the shipper should not be the logical outcome of such a study.

How is the situation under a straight bill of lading? The relationship between indirect possession in rem and indirect possession by credit under a straight bill of lading is not different from that of other bills of lading. It should be noted that since there is no direct relationship between any possession by credit and a bill of lading, the basis for exploring this issue is lost.

4. Conclusion

Regarding the legal nature of the bill of lading as a document of title, international conventions and some national laws do not give the precise definition because such regulation of rights in rem is not within the scope of transport law. This situation does not affect further understand of what this right is from the practical and theoretical level. The function of a bill of lading requesting delivery and constructive possession of goods reflects the right of property, which is a combination of ownership, possession and credit. While considering a more precise definition of this right, the tendency to dilute this issue in transport conventions should also be aware. However, the term document of title in the Chinese context has some misunderstandings that should be corrected. Electronic bills of lading supported by new technologies such as blockchain

are being used more and more. From the perspective of legal theory and shipping practice, the relationship between the properties of the bill of lading and goods in trade can be further discussed.

Acknowledgements

The work is financially supported by Fujian Education Department (Grant number JAT210221).

References

- [1] G. H. Treitel, *The Legal Status of Straight Bills of lading*, *Law Quarterly Review*, vol. 119, p. 611.
- [2] Dong Luyu. *Discussing the legal nature of maritime bills of lading from the perspective of historical development*. *Journal of Southeast University (Philosophy and Social Science Edition)*, 2021, 23 (S1): 112-116.
- [3] Wu Huaning, *Maritime Law*, Law Press, 1996, p. 98.
- [4] Yang Daixiong, "On the Change of Property Rights in Movable Property under the Certificate of Property Rights", <http://article.chinalawinfo.com/article/index.asp>. 2006-4-19.
- [5] Linnan, "On the Property Attributes of Marine Bills of Lading", <http://www.law-walker.net>. 2002-12-30.
- [6] Li Hai. *Reflections on "Bill of Lading as a Document of Property"*, *Chinese Maritime Law Yearbook*, 2003 (7), pp. 41-52.
- [7] Si Yuzhuo, *A Study of Maritime Law Topics*, Dalian Maritime Publishing House, 2002, pp. 65-69.
- [8] Wang Ying. *Properties of bill of lading*. East China University of Political Science and Law, 2015. MA thesis.
- [9] Jiang Zhengxiong. *The Rotterdam Rules: an important milestone in the history of maritime law*. *Journal of East China University of Political Science and Law*, 2010 (06): 88-98.
- [10] Li Wenxiang. *The disadvantages of the bill of lading as a document of property rights*. *Hai Da Law Review*, 2017 (00): 124-148.
- [11] Aikens R, Lord R, Bools M, et al. *Bills of lading*. Informa Law from Routledge, 2020.
- [12] Song Li. *Risk prevention of using straight bill of lading under collection*. *China Foreign Exchange*, 2019 (09): 65.
- [13] The *Rafacla s*, [2005] 1 *Lloyd's Rep.* 347.
- [14] Li Hai. *Reflections on "bill of lading is a document of property right"--The legal nature of bill of lading*. *China Maritime Law Annual*, 1996 (00): 41-52.
- [15] Arun Kasi. *The Law of Carriage of Goods by Sea*, Springer Science and Business Media LLC, 2021.
- [16] Wang Xiaoping. *Exploration of the right attributes of bill of lading in business circulation*. *China Business Journal*, 2021 (01): 26-29.
- [17] Xie Li. *Discussion on whether the bill of lading belongs to the document of property rights*. *Shanghai Business*, 2020 (07): 46-48.