lading contained a special clause by which the freight was due on the number of animals shipped, without regard to the number landed. The authorities show that the shippers are bound by a special condition of this nature. The shippers accepted the bill of lading without objection as it stood, and raised money on the security of it at the Consolidated Bank. But even if this clause had not been contained in the bill of lading, under the common law the master was entitled to the freight under the circumstances of the case. Lastly, it was contended that the animals were so injured by the storm that they had become worthless before they were pushed overboard; it was simply anticipating by a few hours their death on shipboard. The loss occurred by the perils of the seas, and the owner had no right to contribution.

RAMSAY, J. This is an action brought by the master of a ship, for freight.

The first question raised is whether the action is properly brought in the name of the master. It is possible that this question might have given rise to some difficulty had it been pleaded, but it is evidently an afterthought. Defendant pleaded over and met the master, holder of the bill of lading, on the merits. I think, therefore, he is too late to raise the objection even if well founded.

The next point at issue between the parties is as to whether the contract is evidenced by the letters of the 11th September between the appellant and the agents, Messrs. Reford & Co. The appellant's contention is that the letters contain a contract complete in itself, and that the bill of lading is merely a receipt to establish the fact that a certain number of cattle and sheep had actually been received on board, and that every addition, not an absolute condition of the law, is valueless and does not bind the appellant. The argument of the respondent is, that the letters were only a general proposition, and that the usual bill of lading was understood to follow containing the ordinary clauses of a bill of lading, and that the bill of lading in question contained no clause that was unusual or incompatible with the letters of 11th of September.

Next comes a question of fact—was it a case of jettison giving rise to average, or was it merely the throwing of the useless remains of destroyed goods into the sea? Appellant has pleaded that it was jettison, that he has an action against the owners for contribution, and that, moreover, the cattle and sheep not being delivered at Glasgow, owing to this jettison, no freight was due, because the contract was not fulfilled. This plea gives rise to confused and even contradictory pretensions. It is one thing for defendant to say, "I have not to pay freight at all because my goods were not delivered according to contract;" and quite another, to say that the freight was compensated by contribution which has never been adjusted. It may not, however, be very important whether we can look at this last pretension or not. If we do, I think the balance of evidence shows that the cattle and sheep were not jettisoned in the conditions to give rise to contribution, even if the jettison of a deck load of this kind could give rise to average under the special exception of our Code. Jettison must be to lighten the ship, and for the common good, or it gives rise to no contribution. Abbott 1280, p. 499. C.C., Art. 2402. As to the justification of the captain for throwing the animals overboard, the weight of evidence seems to be in favor of the respondent; but if doubtful, the presumption is in favor of the captain. "*Quia pro non culpa capitanei præsumendum sit.*" Casaregis, Dis. XLV 31. Secondly, the exception of Art. 2557 is not pleaded; and thirdly, no usage is proved. But, on the other hand, if the deckload, jettisoned, is not to be paid for by contribution, freight is not due unless otherwise provided for. That is to say, it is the contribution that gives a fictitious delivery of the articles jettisoned. V. O. M., Liv. III, Tit. III, Art. XIII and commentary. The doctrine is fully recognized in Art. 2558 C.C.

We are therefore forced back on the former question—that is as to the contract. If the bill of lading be the evidence of the contract, there can be no doubt appellant must fail, for it expressly stipulates that the freight is earned whether the animals arrive or not. I cannot concur with the learned counsel for the respondent in the general proposition that notices on tickets or unsigned papers form part of a contract to limit the common law responsibility of the person giving the ticket, simply by their reception. There must be some proof of acquiescence. That this is our law is undoubted. C.C. 1676. It seems, however, that when there has been a signature by the shipper, without reserve, on a bill of lading it will be held sufficient proof of a deliberate contract. Our law being so precise on the subject, it becomes necessary to examine very critically the opinions of the learned Judges in the English