

and agrees to all its stipulations, exceptions and conditions, whether written or printed." In the case of Head the shipment was 86 head of cattle and 100 pigs.

The vessel sailed about the 27th September, 1878, by the Straits of Belle Isle, and passed through the Straits on the Sunday following. On the afternoon of that day a gale of wind commenced from the northeast, with snow and sleet, and the following day a heavy sea was shipped, smashing a portion of the cattle pens and stalls, and washing overboard a portion of the cattle. When the stalls were broken up, the animals were swept together in a confused mass backwards and forwards, without there being any means of securing them. The gangways were subsequently opened and the cattle swept overboard into the sea. The gale continued several days, and on Thursday the steamer shipped a heavy sea, and the remaining stalls and pens were crushed to pieces. The cattle that remained on deck were tumbled together in a confused mass and swept from one side of the deck to the other. The animals could not be fed during the storm, and were starving; their fodder had been swept overboard; their hoofs were torn, their heads cut by the ropes by which they been tied, and the tails of many rubbed off. The working of the ship was impeded by the wreck, and as it was considered useless to try to save them, the gangways were opened and they were in part washed and in part pushed overboard, and the deck cleared.

To the action of the master the appellant pleaded first that the cattle had been thrown overboard under such circumstances as should give rise to a general contribution. The appellant also pleaded a general denegation.

The Court below held that the right arising from the jettison of the cattle did not deprive the master of his right to recover freight.

*Kerr, Q.C.*, for the appellant, submitted, first, that the two letters set out above constituted a charter of the upper deck of the steamship, and was a binding contract between the owners of the vessel, represented by the ship's agents Messrs. Reford & Co., and Mr. Bickerdike; and that the contract for carriage and the bill of lading being both signed by Messrs. Reford & Co., the master of the vessel had no right to institute the action in the Court below under the contract and bill of lading. The master of the

ship is merely the agent of the owners; he has no interest in the freight; it does not in any way belong to him; consequently, being a mandatory, he has no right to sue for it, except when he has signed the charter party or the bill of lading. Here the master did not sign, but Reford & Co., the agents of the ship-owners. The next point contended for by the appellant was that the letter exchanged constituted the contract between the parties. Now, the letter did not contain the stipulation found in the bill of lading, viz., that freight should be paid on the number of animals shipped, without regard to the number landed. It was submitted that the appellant was not bound by the unusual stipulations inserted in the bill of lading, and which were printed in very small type, and not pointed out to the shipper. Lastly, the animals had not been swept overboard, but were pushed into the sea, because they incommoded the seamen in working the vessel. It either was a case of jettison, which, under the general circumstances, should give rise to general contribution, or it was a wanton act on the part of the master. If it were a case of jettison the freight should be deducted from the general contribution by the respondent: and if the act was wanton no freight was due. The opinion of Lush, J., in *Crookes v. Allen* (49 L. J. Q. B., 202) was referred to:—"A bill of lading is not the contract, but only the evidence of the contract. It does not follow that a person who accepts the bill of lading which the shipowner hands him, necessarily and without regard to the circumstances, binds himself to abide by all its stipulations. If a shipper of goods is not aware when he ships them, or is not informed in the course of the shipment, that the bill of lading which will be tendered to him will contain such a clause, he has a right to suppose that his goods are received on the usual terms and to require a bill of lading which shall express those terms."

In the course of an extended argument, *Abbott, Q.C.*, for the respondent, contended that the master's right of action for freight was well established. It is not necessary that the bill of lading should be signed by the master; it may be signed by the agent, or by the clerk or the purser. They sign for the ship. In the next place the action for freight could not be opposed on the ground that the animals had not been carried to their destination, because the bill of