

navigation are excepted. Neither this provision of the statute nor the inclusion of it in the bill of lading or contract would protect or relieve plaintiff from liability for damages if his vessel was not seaworthy when it left Byng Inlet, or if the loss arose or was occasioned by the act, default, or negligence of the master or his servants.

The evidence shews that the vessel was seaworthy when she left Byng Inlet; that she had been properly and carefully loaded. The hatches were not battened down or covered with tarpaulin, but the short lumber was built up solidly through the hatches, and the hatches were covered over with the lumber. There was also evidence given and not contradicted shewing that on vessels of this character the hatches were never battened down or covered with tarpaulin, though on much larger vessels loaded with lumber it is the practice to do so.

I find that the loss was occasioned by storm and tempest, during which the water rolling over the vessel and the working of the lumber on the deck let in water that caused the listing and upsetting of the cargo and consequent loss, and I am unable to say that there was any want of skill or any neglect or default on the part of the master or his servants that occasioned the loss.

It is pointed out in Mr. Lewis's *Work on Shipping*, p. 32, citing *Haradon v. Practor*, 9 Q. B. 592, that where "loss by dangers of navigation is excepted in a bill of lading and the vessel is lost in a storm, the master must prove the loss by the storm, and it then lies on the merchant's part to prove want of skill or negligence on those in charge of the vessel." This onus defendants have not satisfied.

I find therefore that plaintiff is entitled to recover his freight, but only for the quantity of lumber actually delivered. The evidence shews that there was taken on board 161,914 feet, and of this 4,303 ft. deals and 2,658 ft. of Norway was lost, leaving 155,620 ft. delivered, which includes the lumber collected and gathered, said to be 125,620 ft.: see *Lewis on Shipping*, p. 52. This at \$1 per M amounts to \$155.62. Plaintiff is not entitled to the \$15 paid out for unloading and reloading scow at Christian Island, but is entitled to \$1 expended by him as shewn by his bill as first