

calculating the weight or measurement of the cargo is indicated by the contract itself or the usage of the particular trade, it seems that freight will be payable according to the mode of computation at the port of loading." He cites the case from which I proceed to quote.

Bowen, L.J., in *Spaight v. Farnsworth*, 5 Q. B. D. 225: "Inconvenience in practice must obviously often arise unless some one measurement of the quantity delivered is agreed upon for the purpose of the calculation of freight. . . . There is nothing accordingly unnatural that the ship and the charterer should agree that freight is to be paid on the measurement figures arrived at at the port of loading." This language indicates, to my mind, that it is quite within the competence of the master to accept the freight on the footing of a 34 pounds-to-the-bushel standard of measurement, and, failing all other evidence, that his signature to that effect binds his principals, the present defendants. Thus reading the prior agreement and the completion of its unmentioned but necessary terms in the bill of lading, I do not need to resort to any consideration as to the cases cited to us on the conflict in private international law. This complete contract is governed and is to be interpreted by its own terms, which, upon all the evidence given, entitle the plaintiffs to succeed.

The first defence set up, that the contract was for payment of freight at the rate of 32 lbs. to the bushel, is, I think, negatived. The second defence, that the overpayment was made voluntarily and cannot be recovered, is amply answered by the decision in *Shand v. Grant*, 15 C. B. N. S. 234, which in the facts as to the payment is on all fours with the present. The same point as to the recovery of unpaid freight was long ago decided in *Geraldine v. Donaldson*, Holt R. 246.

The judgment should be affirmed and the appeal dismissed with costs.

BRITTON, J., agreed that the appeal should be dismissed with costs, for reasons stated in writing, in the course of which he referred to *Moller v. Living*, 4 Taunt. 102; *Spurrier v. La Cloche*, [1902] A. C. 446; *Rodocanachi v. Milburn*, 18 Q. B. D. 67; *Lloyd v. Guibort*, L. R. 1 Q. B. 115; *The "Skandinev,"* 50 L. J. N. S. Adm. 46, 51 L. J. N. S. Adm. 93; *North-West Transportation Co. v. McKenzie*, 25 S. C.