

he proceeded with his vessel and remainder of cargo thereon to the nearest dock, Christian Island, from which point he despatched a message to the defendants informing them of the loss (which however did not reach defendants till after plaintiff's arrival at Midland), and plaintiff proceeded to unload and pump out the scow. Having done this, he reloaded and proceeded to Midland, and there delivered about 30,000 ft. of the cargo he had taken on at Byng Inlet. On his arrival at Midland the master at once notified defendants of the loss, and aided them in procuring assistance to collect and rescue the lumber, and at this time plaintiff promised defendants he would deliver the part of the cargo which had slid off when collected, the defendants to load the lumber on the vessel, plaintiff to charge only the freight as per bill of lading, and he then repudiated any liability for the loss.

Plaintiff claims to recover the whole freight, \$161.91, being at the rate of \$1 per M for 161,914 feet taken on board at Byng Inlet, \$15 money paid for unloading and pumping out vessel at Christian Island, \$20 money paid for wages of men reloading, and \$3 for horse hire, telephones, etc.

Defendants contend that there was an express contract, without any exceptions, to deliver the lumber, and that nothing is due until the whole lumber received is delivered; that the loss was occasioned by the negligence of plaintiff and his servants in not having battened down and covered the hatches of the vessel; and that therefore plaintiff is not entitled to his freight, and defendants are entitled to recover damages by way of counterclaim from plaintiff.

It seems to me that what took place between plaintiff and defendants over the telephone, and what is to be found in the correspondence referred to, only fixed the rate or price for carrying the lumber; there is nothing that would estop plaintiff from afterwards requiring the delivery to him of the usual bill of lading at the port of shipment before clearing with his cargo. This usual bill of lading he did require and obtain, and it contains a provision "excepting dangers of navigation." There was also evidence given tending to shew that it is the custom on these waters to furnish such a bill of lading, and that dangers of navigation are, as such custom, always excepted. Apart from this, I think plaintiff is a carrier by water within the meaning of R. S. C. ch. 82, sec. 2, and that, as to this lumber carried by him, by the terms of the statute, sub-sec. 4 (a) of sec. 2, dangers of