bill of lading conclusive evidence of shipment in the hands of a consignee, or endorsee for valuable consideration as against the master signing it, but as between the shipper and owner it is not conclusive evidence in respect of quantity: *Allen* v. *Chisholm*, 33 U. C. R. at page 244—it is, however, *prima facie* evidence against the owner: *McLean* v. *Fleming*, L. R. 2 App. 128 cited in *Merton* v. *Kingston and Montreal T. C.*, 32 C. P. at page 373.

In the present case the coal was received on the vessel at Cleveland through shoots from railway cars. The captain swears it was not weighed at the time of loading. He swears that none of it was removed on the voyage (and he is corroborated on this point by one of the crew who was called) and that it was delivered in the same condition as he received it except a small quantity of the deck coal which was washed off by the waves. There is nothing to contradict this evidence except the bill of lading, and I do not see any reason for disbelieving it. The plaintiffs endeavoured to prove a custom that ship-owners were not held responsible for shortage in cargoes of coal, but that freight was only payable in respect of the quantity delivered. I do not think the evidence established the existence of the custom claimed as to the non-liability for shortage, nor do I think such a custom could be established by law. The simple question is: What quantity of coal was shipped? That quantity must be accounted for unless the loss is excused by reason of something excepted on the bill of lading. The freight is only paid (as a general rule) on the quantity delivered because that is the quantity carried.

In the present case any loss that is admitted was of part of the deck load, The bill of lading provides "all property on deck at the risk of the vessel and owners." The words "owners" in a bill of lading stating "deck-load at risk of owners" means the owners of the goods, not the owners of the vessel: *Merrit* v. *Ives et al.*, M. T. 4 Vict. The phrase used in the present bill can only mean at the joint risk of the owners of the vessel and of the goods, per Harrison, C. J., in *Spooner* v. *Western Assurance Co.*, 38 U. C. R. page 72. Under such a provison, in case of a jettison of the deck load, such jettison is replaced by contribution between the owner of the deck-load and the owner of the vessel (same case at page 70), but I do not see that it affects the liability for loss as between those parties from the ordinary work of the waves. It was said by one of the defendants' witnesses that where shortage happened to a deck load it was at the owner's risk and the ship-owner would lose his freight. I think a loss of this kind must be within the clause as to danger of navigation and that the vessel owner is not responsible.

My judgment, therefore, is that the plaintiffs are entitled on their statement of claim, the same being amended as already indicated, to damages to the amount of $140, being $100 more than the amount paid into court, and I direct that judgment be entered for the plaintiffs for the sum of $100 with full costs, and I direct that on the counter claim judgment be entered for the defendants thereon (the plaintiffs in the original suit), with full costs, but I stay the entry of such judgment until the 9th January next.

RECENT ENGLISH PRACTICE CASES.

HILL V. HART-DAVIS.

Imp. (1883) *O.* 38, *r.* 11—*O.* 65, *r.* 27, *ss.* 20—*Ont. Rule* 435—*Chy. Ord.* 69.

Affidavits—Prolixity—Costs.

Although there is no rule of Court specially giving power to the Court to take pleadings or affidavits off the file for prolixity, yet the Court has an inherent power to do so in order to prevent its records from being made the instrument of oppression. Where, however, an affidavit was of oppressive length, but it appeared to the Court that delay and expense would be caused by filing a fresh one, the Court permitted it to remain on the file, but ordered the party filing to pay the costs of it.

[L. R. 26 Ch. D. 470, C. A.

The affidavit in question was an affidavit on production, in which the documents, instead of being referred to in bundles, and scheduled and numbered, were set out in detail.

It was stated in the course of the argument that when a document is ordered to be taken off the file, the practice is not to return it to the party who placed it there, but to destroy it by burning.

COTTON, L.J.—"Although the rules contain no provision for taking a document off the files for prolixity, yet it is the duty of the Court to see that its files are not made the instruments of oppression, and that without any provision in the rules the Court has power, and it is its duty to order oppressive documents to be taken off the file, even though this should result in their being burnt."

COLES V. CIVIL SERVICE SUPPLY ASSOCT'N.

Imp. (1883), *O.* 16, *rr.* 48, 52—*Ont. Rules* 107, 108, 110, 111.

Third party procedure—Indemnity over—Form of order.

[L. R. 26 Ch. D. 529.

Where in an action for damages in respect of alleged injury to the plaintiff's premises, the de-