

was thus briefly expressed: "Charter for one compartment for about 90,000 oats to Buffalo at $21\frac{1}{2}$ per bushel." If anything should turn upon it, this contract was completed at Toronto, and is to be treated as a contract made in Canada. The cases are cited by my brother Magee.

The oats were delivered on board the steamer at Fort William, and bills of lading given and signed by the master of the ship, also the agent of the defendants, which accepted the cargo as measured by weight on the Canadian standard of 34 lbs. to the bushel. That is indicated by the figures giving quantities upon the face of the bills, and it is, to my mind, the turning point of the appeal. On these bills it is also said, "Rate of freight as per agreement." The documents are thus to be read together, one is incorporated with the other, and there is no inconsistency or discrepancy between them. The agreement specifies the rate of freight to be paid on each bushel; but that term "bushel" is vague and ambiguous so far as weight is concerned; that is to say, there is an American bushel of oats equalling 32 lbs., and there is a Canadian bushel equalling 34 lbs. This is a Canadian contract, and *prima facie*, I should say, the parties contracted as to the Canadian standard of measurement being applied to the Canadian (Manitoba) product shipped from the Canadian port. The silence of the contract as to the method of measurement may be made intelligible by evidence of usage or custom or other evidence not contradictory of what is expressed therein. See *Russian Co. v. Silver*, 136 B. N. S. 610. The bill of lading may, therefore, be properly used for the purpose. No evidence is given by the defendants or by the master of the ship or by the agents of the ship-owners who mediated the terms at Chicago. In general the powers of the master as agent are as given by Lord Chelmsford in *McLean v. Fleming*, L. R. 2 Sc. App. 130: "The bills of lading signed by the master are *prima facie* evidence that the quantities mentioned in them have been received on board. The master is agent of the ship-owner in every contract made in the usual course of the employment of the ship. . . . As it is not to be presumed that he has exceeded his duty, his signature to the bills of lading is sufficient evidence of the truth of their contents to throw upon the ship-owner the onus of falsifying them."

In the last edition of *Smith's Mercantile Law*, 11th ed. (1905), vol. 1, p. 426, it is stated: "Unless the mode of