

per ton. But as to the cost of discharging at Annapolis the plaintiff's agent testifies that it was stipulated that it was to be a free discharge, while the defendant testifies that nothing was said about it; in which case both sides admit that the expense of discharging would be included in the freight and would be borne by the ship. The plaintiffs chartered the vessel at "\$1 and free discharging" and so the defendant had to pay the sum I have mentioned in order to get the coal.

The defendant has this circumstance in addition to his verbal testimony. He asked the plaintiff's agent at Annapolis just after the oral contract, to give him a memo of it. On the back of an envelope the agent wrote, "Vessel of about 250 tons" (Then the different kinds of coal with the amount of each) "90cts. rate of freight. Lehigh Valley Coal Co., 141 Milk St., Boston."

The price of the coal was not inserted and it was not in itself a complete contract, but apparently the defendant relied upon the mentioning of the rate of freight without mentioning the cost of discharging.

On the other hand the plaintiff's agent informing his principal of the contract the same day wrote, "Pay 90c. freight free discharge."

That is not really very convincing that it was so stipulated in the conversation.

But I think the memo I have mentioned does add weight to the defendant's testimony. He had, I think, a right to rely on it and that the 90c. included the discharging. Possibly he would not afterwards have consented to the variation from 90c. to \$1 in the rate of freight if he had known that it was to be free discharge. I must adopt the defendant's version. I find for the defendant. The action will be dismissed with costs on the lower scale, the sum being under \$80.