

It is further possible that English and Canadian courts would refuse to follow the above United States decisions, but the questions involved are not without difficulty and their solution will be awaited with interest.

The factor which might affect this question is that, in the United States, the innocent cargo owner may, in the event of collision, in which both ships are at fault, recover his full loss from either ship, the ship condemned recovering its proportion from the other.⁶⁸ Hence, should a cargo owner's recourse against the contracting ship be defeated by the latter's off-set, as permitted under the United States rule, the United States courts may have taken into consideration the fact that the cargo owner should nevertheless possess his recourse for the full amount against the owner of the other ship at fault, for its share.

On the other hand, the English rule is that, when both ships are at fault, the cargo owner can recover from the stranger ship or those responsible for her management, only one-half of the damage caused to the goods.⁶⁹

If, therefore, the United States rule be applied in Canada, in respect to the shipowner's off-set against the cargo owner's claim for general average contribution and the English rule be applied to the effect that a cargo owner can only recover one-half his loss from the stranger ship, the cargo owner, under a Canadian bill of lading, would be in the position of having his recourse against the contract shipowner defeated by the off-set of the latter and his recourse against the stranger ship limited to only one-half of his claim.

XIII. SUMMARY.

1. *Application and scope of Act*—The Act applies to all articles capable of carriage except live stock, and to all ships carrying goods from a Canadian port. The Merchant Shipping Act must be applied to British ships, not registered in Canada,

⁶⁸. *The North Star* (1882) 106 U.S. 17; *The Manitoba* (1895) 122 U.S. 97.

⁶⁹. Carver, sec. 70.