

7, 1939

82-1-1938

In the Privy Council.

ON APPEAL FROM THE SUPREME COURT OF NOVA SCOTIA EN BANC.

IN THE MATTER OF THE COMPANIES WINDING UP ACT,
being Chapter 198, R. S. N. S., 1923

—AND—

IN THE MATTER OF THE WINDING UP OF UNUS SHIPPING COMPANY,
LIMITED

—AND—

IN THE MATTER of a Certain Claim filed by VITA FOOD PRODUCTS INC.,
a Body Corporate (Claimant)
Appellant.

—AGAINST—

UNUS SHIPPING COMPANY, LIMITED, IN LIQUIDATION *Respondent.*

APPENDIX

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MINUTES OF EVIDENCE

HALIFAX, MONDAY, MARCH 16th, 1936. 2.30 p.m.
Before THE CHIEF JUSTICE.

*In The
Supreme
Court of
Nova Scotia.*

G. McL. DALEY, K.C., for the Claimants.
W. N. WICKWIRE, for the Unus Shipping Co., Ltd.
W. M. ROGERS, holds watching brief for Protection & Indemnity Insurers.

MR. DALEY: I move for the order drawn on Your Lordship's decision; I have shewn copies to Mr. Wickwire.

MR. WICKWIRE: I received a copy just now; the order is all right.

10

No. 1

Evidence of John T. Cruickshanks

Claimant's
Evidence.

No. 1
John T.
Cruickshanks,
Examination.

JOHN T. CRUICKSHANKS, being called and duly sworn, testified as follows:

Examined by MR. DALEY:

- Q. What is your occupation? A. Master mariner.
Q. Where do you reside? A. Dartmouth, 125 Prince Albert Road.
Q. How long residing there? A. About one and a half years.
Q. Where did you reside before that? A. Halifax, Oakland Road.
Q. You are a master mariner—how many years have you been a
20 master mariner? A. Ten.
Q. Did you ever hear of the Unus Shipping Company, Limited? A.
Yes.
Q. When did you first hear of that company? A. About two years
ago.
Q. How and in what connection did you hear of it? A. In the organ-
ization of it, and manager over a year.
Q. You were manager for over a year? A. Yes.
Q. When did you first become manager? A. When the company was
organized.
30 Q. When was that? A. About two years ago.
Q. How long did you continue as manager? A. A little over a year.
Q. When did you cease to be manager, approximately? A. About
June last year, 1935.
Q. You were manager of the Unus Shipping Company, Limited, in De-
cember, 1934, and January, 1935? A. Yes.
Q. What was the business of the Unus Shipping Company, Limited?
A. Trading on the Great Lakes and Maritime Provinces, general cargo.

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Claimant's
Evidence.

No. 1
John T.
Cruikshanks,
Examination.
—continued

- Q. What kind of business? A. Hauling general freight.
- Q. Hauling how? A. With the ship HURRY ON, by water.
- Q. Did the Unus Shipping Company own any ships? A. The HURRY ON.
- Q. What kind of ship was that? A. One of the best.
- Q. How was it powered? A. Motor; Diesel motor.
- Q. Where was it registered? A. Halifax.
- Q. British ship? A. Yes; she was not a British ship first.
- Q. Duty was paid on it? A. Yes.
- Q. How many shares of the HURRY ON did the Unus Shipping Com- 10
pany own? A. 375 shares.
- Q. How many shares of the ship? A. The whole, sixty-four shares.
- Q. What trade was the HURRY ON engaged in, in the summer of
1934? A. She was trading on the Great Lakes, Maritime Provinces, under
the agency of the Newfoundland Canada Steamships Ltd.,
- Q. Who are they? A. Newfoundland Canada Steamship Company.
- Q. What kind of cargo was she carrying? A. Canned goods, flour,
general cargo.
- Q. Any one that offered the ship cargo? A. Yes.
- Q. It continued in that trade until what time? A. Until handy De- 20
cember 1st, 1934.
- Q. And then what did it do? A. She went under repairs under class,
re-classed.
- Q. Where was she re-classed? A. Shipyards, Dartmouth.
- Q. That was in December, 1934? A. Yes.
- Q. After December, 1934, what did she do? A. She left Halifax for
Bay of Islands for a load of herring.
- Q. Who sent her? A. I did.
- Q. In what capacity? A. Manager of the Unus Shipping Company.
- Q. Who paid the bills for outfitting her for the trip to Newfoundland? 30
A. Unus Shipping Company.
- Q. Who paid for the fuel? A. Unus Shipping Company.
- Q. Who employed the crew? A. Unus Shipping Company.
- Q. She went to Newfoundland for a cargo of herring—what port of
Newfoundland? A. Bay of Islands; we moved around to the different
ports in the Bay.
- Q. Where was the herring to be taken from Bay of Islands? A.
New York.
- Q. Who was it carried for? A. There was a number of consignees,
shippers. 40
- Q. It was consigned to whom? A. To different consignees in New
York.
- Q. What was the freight? A. \$1.60 a barrel, less commissions.
- Q. What were the commissions that were paid? A. Commission paid
to Mr. W. A. Shaw, 10c.

- Q. What was that for? A. For his agency, as broker, or whatever you like to call it.
- Q. How did you secure that cargo of herring? A. Mr. Shaw acted as agent.
- Q. What was the 10c for? A. Commissions.
- Q. For securing the cargo? A. Yes; Mr. Barry got 20c
- Q. What was he? A. Newfoundland shipper, Bay of Islands.
- Q. Who was your agent in Newfoundland? A. Mr. Barry.
- Q. Did he make arrangements in Newfoundland on behalf of the Unus Shipping Company? A. Yes.
- Q. Who was master of this ship? A. Captain Carter.
- Q. That was for this particular trip? A. Yes.
- Q. Who was the super-cargo? A. J. Poole.
- Q. Will you tell us the circumstances under which Mr. Poole became super-cargo of the HURRY ON? A. He was down on one of Mr. Shaw's ships at Newfoundland at the time.
- Q. What was the name of the ship? A. I forget. I asked Mr. Shaw, wired him to turn him over to the HURRY ON to look after the cargo until she got back to Halifax and then we would take him off here.
- 20 Q. Who was to pay Mr. Poole while he was on the HURRY ON? A. Unus Shipping Company.
- Q. Did Mr. Poole go on the HURRY ON? A. Yes.
- Q. When did he go on her? A. When she arrived down there.
- Q. How long did he stay on? A. Until she was wrecked at Guysboro a few days after that; it was so rough he could not get ashore for a couple of days.
- Q. How did he happen to leave her? A. He was through when she was wrecked.
- Q. Did anyone send instructions for him to leave? A. Yes, I did, to go home.
- 30 Q. When was this trip undertaken? A. Handy the first of January, first or second, 1935.
- Q. Do you remember the date when she stranded? A. Some time in January.
- Q. Where did she strand? A. Guysboro—up in Guysboro Bay.
- Q. After the HURRY ON stranded what did you do with the cargo on her? A. The underwriters took it over; we abandoned the ship to the underwriters, and they took it over, and they let a contract to the Saint John dry dock, and they took the cargo out and landed it in Guysboro.
- 40 Q. Was any work done on the cargo after that time? A. Yes; it was all retained in Guysboro on instructions from the insurance company to me, and through the London Salvage, Mr. Glenn, and myself, and Mr. McCaughin of Pickford & Black's representing Lloyds, and Mr. Mowatt of a firm in Montreal.
- Q. Did you employ anyone to retain the cargo? A. Yes, we sent Jacob Poole.

*In The
Supreme
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Claimant's
Evidence.

No. 1
John T.
Cruickshanks,
Examination.
—continued

*In The
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Claimant's
Evidence.

No. 1
John T.
Cruickshanks,
Examination.
—continued

Q. Mr. Poole, the super-cargo before? A. And Ned Morse; they went down and any barrels that were loose they coopered and made some pickle and filled them up.

Q. Was the cargo ultimately delivered to New York? A. Mr. Glenn also sent two fisheries inspectors besides them to see that the fish were good before they left.

Q. Was the cargo ultimately delivered in New York? A. Yes, by the underwriters giving instructions to deliver it in New York; I hired Warren's boat, the DELIA, I think.

Q. Who collected the freight? A. Unus Shipping Company. 10

Q. The freight from the carriage from Bay of Islands to New York was collected by them? A. Yes; of course there was \$1.00 a barrel which was agreed to pay over to Warren for his carriage, and then the insurance paid us.

Q. The Unus Shipping Company collected the freight? A. Yes.

Q. Did the Unus Shipping Company have any insurance; did you as manager insure the cargo? A. The freight was insured.

Q. What other coverage had you? A. Hull and disbursements.

Q. With Protection and Indemnity Insurance? A. Yes.

Q. All this was taken for that particular voyage? A. It was on her 20 anyway.

Q. It was continued for that voyage? A. Yes.

Q. Did you have a full cargo of herring from Bay of Islands to New York? A. No, she was not full.

Q. Would you have taken any other cargo if it was offering; would you have taken any more herring if it was offered? A. Yes.

Q. You would have taken any fish that would not be insured by the contract? A. Yes.

Q. Did the HURRY ON call at more than one port to get this fish? A. I would not say; I was not there. 30

Q. Did the Unus Shipping Company have any form of bill of lading which was used in its conduct of the business of common carrier? A. No.

Q. What did you do for bills of lading when you required them? A. During the summer the Newfoundland Canada, with a stamp on it, Unus Shipping Company.

Q. On this trip to Bay of Islands give any instructions with regard to any bill of lading? A. No.

Q. To Mr. Poole, the super-cargo? A. No, I didn't think of it.

Q. Do you know whether or not any bills of lading were issued by Mr. Poole, the super-cargo? A. Yes. 40

Q. I shew you exhibit E/1 to E/15 inclusive, also E/16 and E/17; what are those exhibits? A. They are bills of lading.

Q. Did you ever see them before? A. Well, now, that I could not—I seen them in a bunch, but I don't know I ever saw them before.

Q. Did you see bills of lading like those? A. Yes.

Q. Where did they come from? A. From Bay of Islands, Newfoundland.

Q. When did you get those bills of lading? A. Shortly after the ship sailed from Newfoundland.

MR. WICKWIRE: I don't know how he would know they came from Bay of Islands.

MR. DALEY: You can cross examine him on that.

Q. Where did you get the bills of lading? A. They came by mail from Mr. Shaw, and they turned them over to me.

10 Q. When was that you got them? A. It was in January, I could not say the date, 1935.

Q. Have you had them ever since? A. Unus Shipping Company.

Q. You left them with the records of the shipping company? A. I turned them over to Mr. Zink, who was secretary at that time.

Q. Did you give any authority to Mr. Poole to sign those bills of lading on behalf of the Unus Shipping Company? A. No.

Q. Do you know the duties of a super-cargo on a ship? A. I did.

20 Q. What are his duties? A. It is to take in cargo and look after the cargo, see it is taken in right, and checked, and look after the interests of of the company, in other words.

Q. Does he ever issue bills of lading? A. Yes.

Q. Is that part of his duty when shippers demand bills of lading? A. If you don't give orders to any one else to do it. The captain is supposed to sign them; super-cargo or agent; but that is one reason we took him over, to look after that part.

30 Q. How did you happen to hear about this cargo of herring at Bay of Islands that was offering? A. I knew it was offering, and I was after Mr. Shaw for about a month to get it; he promised to give to me when the boat was ready, so I kept chasing him to get it; the day before I sailed they let me know I could have it; I got ready and got out as soon as we could.

Q. Do you know if any other herring was moving from Bay of Islands in the season 1934-1935? A. Yes.

Q. How many loads moved? A. Two loads; two steamers I heard of; I could not swear to that; I just heard of them.

Q. Know who they were operated by? A. I could not say.

Cross Examined by MR. WICKWIRE:

Q. As far as you are concerned this herring was all W. A. Shaw's? A. I would not say that; the Newfoundland Canada had it for years.

40 Q. Was it Mr. Shaw's and the Newfoundland Canada Steamship, Ltd. herring? A. It was nobody's herring, only whoever carried it.

Q. You say you were after Mr. Shaw, he had the herring and you were after him to get it? A. Yes, he had it as agent and I was after him to make contact with Mr. Barry in Newfoundland for me to carry it.

*In The
Supreme
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Nova Scotia.*

Claimant's
Evidence.

No. 1
John T.
Cruikshanks,
Examination.
—continued

Cross-
examination.

*In The
Supreme
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Claimant's
Evidence.

No. 1
John T.
Cruikshanks,
Cross-
examination.
—continued

Q. Who was Mr. Poole? A. He is the man that generally went as super-cargo around here on different boats; he was born in Newfoundland but is living here in Dartmouth; he is in court today.

Q. He has been in the employ of the Newfoundland Canada Steamships? A. Yes, and Shaw Steamships.

Q. At the time the HURRY ON went to Bay of Islands Mr. Poole was at Bay of Islands at that time? A. Yes.

Q. As far as you knew in the employ of the Newfoundland Canada Steamships? A. W. A. Shaw.

Q. Was there not some dispute at that time about who was to pay Mr. Poole? A. No. 10

Q. No dispute? A. No.

Q. At any time? A. No; without it was the Unus Shipping Company; it was not myself—clear of me.

Q. You were the manager? A. Yes.

Q. In the ordinary course you had knowledge of any dispute? A. Yes.

Q. What were you to pay him? A. I was to pay him half of what he was getting from Mr. Shaw; I was to take him over from Mr. Shaw and pay him whatever he was paying. 20

Q. And Mr. Poole agreed to come for that? A. Mr. Shaw agreed to give him to me; that was the understanding when I took him.

Q. And he was to get his passage back? A. Yes.

Q. To where? A. Halifax. From Bay of Islands if the boat called in Halifax we were to take him off here.

Q. Would the HURRY ON call in at Halifax with her cargo of herring or proceed directly to New York? A. We didn't know, we were not sure.

Q. Had she any cargo to discharge here? A. No.

Q. Were not her instructions to go to New York direct? A. Yes. sure.

Q. And if she called in here it would only be for the purpose of letting Poole off? A. She might call for anything; she called at Guysboro and she was not instructed to go there. 30

Q. Was the passage back of Poole some part of the consideration for his services? A. Yes, we were to bring him back and pay him until the time he got back, or we could ship him back; it didn't make any difference when we were through with him.

Q. In addition to paying him half the amount he was getting while in Shaw's employ? A. Yes.

Q. And you wired no instructions, or communicated no instructions to Mr. Poole about signing bills of lading? A. No; I understood he looked after the bills of lading when I took him over, but I didn't give him any instructions; I never thought of it, as to what name to put there.

Q. As far as your position as manager of the Unus Shipping Company is concerned, he had no authority to do so? A. No, no authority to sign W. A. Shaw's name; he had authority to make bills of lading; he was to carry on the same as under Shaw.

Q. You told my learned friend that he had no authority—Mr. Poole—to sign bills of lading? A. Not to sign W. A. Shaw's name. I didn't give instructions to sign anyone's name; I took him over to look after the bills of lading; we were running under Newfoundland Canada bills of lading all the year and we had none of our own. I didn't figure she was going to be wrecked.

Q. Is it your usual practice to wire full instructions to your super-cargo? A. When we carry one.

Q. This then is a definite exception to your usual practice—the procedure in this case? A. Yes, we have to tell them what to do.

Q. You cannot say that you have seen these particular bills of lading, marked exhibits E/1 to E/15 inclusive, and E/16 and E/17? A. I could not say I saw them particular bills of lading, but I saw one like that.

Q. Are you familiar with Mr. Poole's signature? A. No.

Q. You don't know that is his signature? A. I don't how how to put that—Mr. Poole is here to swear to his own signature.

Q. You cannot say if that is his signature?

MR. DALEY: We will prove that.

Q. Did Mr. Poole later go to New York from Guysboro as super-cargo? A. No.

Q. He was through with the cargo at Guysboro? A. He was through when the ship went ashore.

By MR. DALEY:

Q. Do you know how many barrels of herring were carried in all on that trip? A. I could not say.

AND THEN THE WITNESS WITHDREW.

No. 2

Evidence of Jacob Poole

JACOB POOLE, being called and duly sworn, testified as follows:

30 Examined by MR. DALEY:

Q. What is your occupation? A. Super-cargo.

Q. How old are you? A. 47.

Q. How long going to sea? A. In different capacities, about 25 or 28 years.

Q. Where do you live? A. Dartmouth.

Q. Where were you in the month of January, 1935—, where were you in the month of December, 1934? A. Bay of Islands.

*In The
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Claimant's
Evidence.

No. 1
John T.
Cruickshanks,
Cross-
examination.
—continued

Claimant's
Evidence.

No. 2
Jacob Poole,
Examination.

*In The
Supreme
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Claimant's
Evidence.

No. 2
Jacob Poole,
Examination.
—continued

- Q. How did you get to Bay of Islands? A. By the MAGNHILD.
- Q. What is that? A. Steamship.
- Q. On what errand did you go down there? A. Went down for W. A. Shaw as super-cargo on that ship.
- Q. Did you remain on her while in Bay of Islands? A. Yes.
- Q. What did she do while there? A. Loaded herring.
- Q. Where for? A. New York.
- Q. Before you went did you receive any instructions from Mr. Shaw regarding bills of lading to be issued for carriage of herring on the MAGNHILD? A. Yes. 10
- Q. What did he tell you? A. To use the bills of lading that I used, that he had no others with his own heading.
- Q. I shew you exhibit E/1, was that the form of bill of lading which Mr. Shaw gave you and instructed you to use on the MAGNHILD? A. Yes.
- Q. I notice that that form E/1 is the form of the Newfoundland Canada Steamships, Ltd.? A. Yes.
- Q. Did Mr. Shaw give you any instructions with regard to changing the name Newfoundland Canada? A. Yes, and to put his name over.
- Q. On top of the bill of lading and at the bottom? A. Yes. 20
- Q. And to sign your name as super-cargo? A. Yes.
- Q. Did you do that with all herring that was shipped on the MAGNHILD? A. Yes.
- Q. When you left Halifax how were you to come back to Halifax?
- A. I didn't know; I had no instructions that way.
- Q. The MAGNHILD went from Bay of Islands to where? A. New York.
- Q. Had you ever made trips of this kind before in this trade as super-cargo? A. Yes.
- Q. How many times had you made such trips? A. Quite a number, 30 I could not say.
- Q. What are your duties as super-cargo? A. Checking all cargo and looking after stowage and signing bills of lading.
- Q. What do you do with the bills of lading after they are signed? A. Give them to the different shippers and send duplicates to the head office.
- Q. Did you follow that practice on the MAGNHILD? A. Yes.
- Q. When you were through with loading herring on the MAGNHILD did you have any of these forms of bill of lading like E/1 left over? A. Yes.
- Q. When the MAGNHILD sailed from Bay of Islands did you sail 40 with her? A. No.
- Q. What did you do? A. I got off at Bay of Islands.
- Q. Why? A. By instructions from Mr. Barry.
- Q. What did you do when you got off at Bay of Islands? A. Waited for the HURRY ON.

Q. Did Mr. Barry tell you you were to go on the HURRY ON?
A. Yes.

Q. Did he tell you who for? A. No.

Q. When the HURRY ON arrived what did you do? A. I joined her.

Q. What did the HURRY ON do at Bay of Islands? A. Loaded herring for New York.

Q. Where? A. Middle Arm.

Q. Any other place? A. North Arm.

Q. Any other place? A. No.

10 Q. Did the herring that was loaded belong to more than one shipper?
A. No, different shippers.

Q. And consigned to different consignees? A. Yes.

Q. Did any shippers demand from you bills of lading? A. Yes.

Q. All, or how many? A. All of them.

Q. What did you do—give them bills of lading? A. Gave them the original.

Q. I shew you E/1 to E/15 inclusive, and look at all those Bills of Lading—or all those exhibits; I am also shewing you exhibits E/16 and
20 E/17? A. Yes.

Q. Who signed those bills of lading, those exhibits E/1 to E/17 inclusive? A. I did.

Q. I notice that the bills of lading E/1 to E/17 inclusive all purport to be signed by W. A. Shaw; they all seem to be signed by W. A. Shaw, that is printed on the bottom? A. Yes.

Q. Who printed the name W. A. Shaw on the bottom? A. I did.

Q. Did Mr. Shaw tell you to use those bills of lading E/1 to E/17?
A. Yes.

Q. On the HURRY ON? A. Yes,—no, not on the HURRY ON, no;
30 on the MAGNHILD, not on the HURRY ON.

Q. Why use those bills of lading on the HURRY ON? A. I thought that—I had no other instructions and I went by my own judgment, I thought she was still under W. A. Shaw.

MR. WICKWIRE: That is a written document.

HIS LORDSHIP: He is speaking of the authority to sign.

Q. Did Mr. Shaw instruct you to use this form of bill of lading on the HURRY ON? A. No.

Q. Did Mr. Barry instruct you to use it on the HURRY ON? A. No.

Q. I want you to look at these bills of lading carefully again and to
40 tell me if the herring—if the goods mentioned in that bill of lading—various bills of lading, E/1 to E/17 inclusive, were received on board the HURRY ON? A. Yes.

Q. Did you personally check them on? A. Yes.

Q. And were the persons named in the bills of lading E/1 to E/17

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Claimant's
Evidence.

No. 2
Jacob Poole,
Examination.
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Claimant's
Evidence.

No. 2
Jacob Poole,
Examination.
—continued.

inclusive the shippers of the goods mentioned in the respective bills of lading? A. Yes.

Q. And were the persons named in these several bills of lading E/1 to E/17 inclusive as consignees the persons to whom the bills of lading were directed? A. Yes.

Q. Did the barrels of herring have individual marks? A. Each shipper had his own individual mark.

Q. Did you stay on the HURRY ON after she left Bay of Islands? A. Yes.

Q. What day did you sail from Bay of Islands? A. I don't just 10 remember.

Q. When did you leave the HURRY ON and under what circumstances? A. When she was stranded at St. Francis harbour.

Q. Remember when it was she stranded? A. Some time in January.

Q. 18th? A. Around about.

Q. Did you stay on after she stranded? A. I don't just know, about two days I think.

Q. Then where did you go? A. I had orders to come to Halifax.

Q. Did you go back again? A. After, yes.

Q. What did you do when you went back; where did you go when you went back? A. Back to Guysboro. 20

Q. What did you do back there? A. We loaded the DELIA with herring.

Q. The same herring? A. Yes.

Q. Was the HURRY ON full when she left Bay of Islands? A. No.

Q. How much space did she have left? A. Between two and three hundred barrels.

Q. Was there any further cargo offering at the time? A. No.

Q. Was she available to take all the herring that was offering? A. Yes.

Cross-
examination.

Cross Examined by MR. WICKWIRE: 30

Q. In whose employ are you now? A. Nobody's employ now.

Q. How long since you have been in W. A. Shaw's employ? A. Since last spring; that is the Shaw Steamship Ltd.,

Q. Since that was formed? A. Yes.

Q. Then you were previous to that time in the employ of the Newfoundland Canada Steamships Ltd.? A. Yes.

Q. And you were in the employ of the Newfoundland Canada Steamship Ltd., when you signed exhibits E/1 to E/17? A. Yes, as far as I knew.

Q. And you have received no instructions from Captain Cruickshanks, the previous witness, who said he was manager of the Unus Shipping Company? A. No. 40

Q. And although you were on the HURRY ON you were still looking to W. A. Shaw for your pay? A. Yes.

Q. And in fact received it from him? A. Yes.

AND THEN THE WITNESS WITHDREW.

Evidence of William A. Shaw

*In The
Supreme
Court of
Nova Scotia*

WILLIAM A. SHAW, being called and duly sworn, testified as follows:

Claimant's
Evidence.

Examined by MR. DALEY:

No. 3
William
A. Shaw,
Examination.

Q. What is your occupation? A. Steamship operator and broker.

Q. What was your occupation in 1934? A. The same.

Q. How were you employed in 1934, early part? A. I was employed by the Newfoundland Canada Steamships until about the end of November, if I remember right,—about that time.

10 Q. And you resigned from them? A. Yes.

Q. And what did you do? A. I started in for myself.

Q. Do you know anything about the herring business out of Bay of Islands, Newfoundland? A. Yes, I have been mixed up in that business the last 18 or 20 years.

Q. Tell us how. There is a movement of herring in the fall? A. There is an annual movement from Bay of Islands; sometimes two cargoes, sometimes three; approximately anywhere from four to eight thousand barrels of cargo, principally for New York, some for mid-west points in the States, and sometimes a thousand or two thousand for Halifax.

20 Q. Who does that herring come from? Who are the shippers—are there a number? A. There is probably 12 or 14 shippers there.

Q. Did the Newfoundland Canada Steamships move it in 1933? A. Yes.

Q. In 1934 how many cargoes, season 1934-35, fall of 1934, early winter 1935, how many cargoes of herring were moved from Bay of Islands? A. Three, one to Halifax and two to New York.

Q. Who made arrangements in Bay of Islands for ships to go there to move cargo? A. Ned Barry, a merchant, is actually the agent for the shippers.

30 Q. Do you know him? A. Personally.

Q. Ever have business dealings with him? A. For about 12 or 14 years.

Q. In the fall of 1934 did you make arrangements with Barry about certain ships to Bay of Islands? A. Yes.

Q. And in pursuance of that arrangement what happened—how many ships went there? A. The MAGNHILD went twice; three ships.

Q. What was the first one? A. The MAGNHILD, which I arranged for Newfoundland Canada Steamships.

40 Q. Who operated her on the first trip? A. Newfoundland Canada; they collected the freight.

Q. Did you have anything personally to do with the first trip? A. Except as managing director of that company.

Q. The second trip—were you managing director of the company at

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the time of the first trip, first herring trip? A. If I was not, I had made arrangement previous to the trip.

Q. The second trip, who operated that? A. I did.

Q. Personally? A. Yes.

Q. What ship? A. MAGNHILD.

Q. You had her under charter? A. I chartered her from the owners in Norway.

Q. Who took the third trip? A. The HURRY ON.

Q. Who was she owned by? A. Unus Shipping Company, represented by Captain John T. Cruickshanks. 10

Q. Will you tell me how she happened to take the third trip? A. Yes, I had discussed the matter with Captain Cruickshanks in the early part of 1934; Cruickshanks knew I had something to do with these herring trips, and in the ordinary course of conversation I mentioned to him that I could possibly let the HURRY ON have one of these trips. Then later when the HURRY ON discontinued her trading, and while I had the MAGNHILD in Bay of Islands on trip 2, Cruickshanks had the HURRY ON available. He approached me and reminded me of my promise, and at the time I gave him no decision; the following day I approached Cruickshanks and told him I would live up to my promise, but he had to pay me a commission of 10c per barrel for all herring got by the HURRY ON; John agreed to this, and the HURRY ON was dispatched. 20

Q. Who is John? A. John T. Cruickshanks.

Q. Did you and Captain Cruickshanks have any conversation about Jacob Poole? A. Yes.

Q. Tell us what it was, and how it arose? A. About the time the MAGNHILD was loaded, I knew she was going direct to New York, and I mentioned to Captain Cruickshanks that it had always been customary to have a super-cargo at Bay of Islands on these trips, because of the various shippers and marks on the herring, and I suggested to him that instead of me bringing Poole home after he finished my work, that he take over Poole from the time he left the MAGNHILD, and pay his salary from that on. This Captain Cruickshanks agreed to. 30

Q. As a result did you notify Bay of Islands? A. I wired Mr. Barry at Bay of Islands and told him the HURRY ON was on owners' account and Poole should join the HURRY ON.

Q. I shew you exhibits E/1 to E/17 inclusive; look at them all. Did you instruct Mr. Poole to sign those bills of lading, or any of them, on your behalf? A. I did on the MAGNHILD.

Q. These bills of lading I have shewn you—? A. I didn't look at the boat name, I looked at the signatures. 30

Q. Look at the boat name. Did you instruct Mr. Poole, Jacob Poole, to sign exhibits E/1 to E/17 inclusive? A. No.

Q. Or any of them on your behalf? A. No.

Q. Did you instruct him to sign any other bills of lading? A. I did on the MAGNHILD, which was on my personal trip.

Q. Did you instruct him to sign any bills of lading on the HURRY ON? A. No.

Q. Mr. Poole has told us that he was in possession of this form of bill of lading, form shewn E/1 to E/17 inclusive; how did he happen—do you know how he happened to get in possession of those form? A. Yes, when I left Newfoundland Canada Steamships and started this MAGNHILD voyage myself, I had no bills of lading in my own name, so I asked the Newfoundland Canada Steamships office for a few pads, which I would alter

10 —scratch out Newfoundland Canada Steamships and insert my own name.
Q. How did Poole get in possession? A. Then I passed them over to Poole to be used on the MAGNHILD; it is perfectly proper to use someone else's form provided you make them correspond with what you use them for.

Q. That is done in the steamship business? A. Yes.

Q. Did you receive any return on this cargo of herring that was shipped on the HURRY ON other than 10c brokerage? A. I didn't get all my 10c.

Q. Have you rendered an account for that? A. I have.

20 Q. To Unus Shipping Company, Limited? A. Yes.

Q. For how much? A. Between four and five hundred dollars; I forget the exact amount.

Q. Has it ever been disputed? A. No.

Q. You told us that the Unus Shipping Company was to pay Poole's salary while on the HURRY ON? A. Yes.

Q. Who paid Poole actually? A. I paid Poole's wife for the two weeks he was working for me, that is cheque number one; and Captain Cruickshanks requested me to pay for the balance, which was about another two weeks, and if I remember right, both cheques were \$37.50 each; neither was mixed up with the other; mine was paid, and the other for the Unus

30 Shipping Company.

Q. Was it charged to the Unus Shipping Company? A. Yes.

Q. Have they ever disputed that account? A. No.

Q. An account has been rendered to the Unus Shipping Company?
A. Yes.

Q. Did you have any interest whatever in this trip of the HURRY ON except brokerage? A. No interest whatever.

Q. Have any insurance covering her? A. No.

Q. When the HURRY ON grounded, did you have anything to do—did you arrange for forwarding the cargo to New York? A. No.

40 Q. Did you collect any freight from the HURRY ON? A. Not to collect,—Barry sent me a cheque for a few hundred dollars after he had deducted his commission, and the loading charges, and the pilotage, which cheque I applied towards my 10c and Poole's salary and other expenses, telegraphic expenses.

Q. Was the proceeds of that cheque credited to the Unus Shipping Company on the account you rendered them? A. Yes.

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Q. What about expenses for telegraphing etc., in connection with the voyage, who paid them? A. Unus Shipping Company.

Q. Charged to them? A. Yes, on this account.

Q. Would your account be \$464.62? A. I would say roughly that; I don't know the exact amount.

Q. Did you personally ever make any agreement, or did you personally make any agreement with any of these shippers or consignees mentioned in these bills of lading to carry any of that cargo described in the bills of lading on the HURRY ON, E/1 to E/17 inclusive? A. No.

Q. Either orally or in writing? A. No.

Q. When did you first become aware that these bills of lading had been issued in your name? A. I don't know exactly; it was some time in the late summer of 1935, might be July or September.

Q. How did you happen to find it out? A. Some one had been here from New York who had seen Captain Cruickshanks, and he mentioned the subject to me, and then I mentioned to him I had no connections with the boat, and he said, but you have your name on the bills of lading; that was the first intimation I had.

Q. Had you looked at the bills of lading—I suppose you handed them to Captain Cruickshanks? A. I don't remember whether I handed them personally or my office; I went away about that time or a few days afterwards; when they were handling this I was not here at all.

Q. And then you were ill? A. I was ill for two months after I came back, so I could not know anything from February to June inclusive anyway.

Cross Examined by Mr. WICKWIRE:

Q. The bills of lading, namely exhibits E/1 to E/17 inclusive, were sent by Mr. Poole to your office? A. I would not say sent by Mr. Poole, probably by Mr. Barry.

Q. They came to your office? A. I didn't see the bills of lading; all I can remember is that the accounts came to my office; I don't remember turning the bills of lading or manifest over to Captain Cruickshanks myself.

Q. It was Mr. Poole's practice to send the bills of lading or copies of them to his home office? A. No, it was Mr. Poole's practice to turn those over to Mr. Barry.

Q. It was Mr. Barry's practice to send them to his head office? A. Yes.

Q. Which would be your office? A. If they came we would turn them over to Cruickshanks.

Q. Poole said, I think, that he mailed one copy, or gave the original to the shipper and mailed a copy to his home office? A. It might be; this present year I took notice some of Mr. Poole's bills of lading came addressed to me at Halifax, so it might be he did that before.

Q. So whether or not Poole had authority these exhibits were signed on your behalf? A. Without my knowledge or authority.

MR. DALEY: That is not a fair question; it is a question of law whether signed on his behalf or not.

Q. Signed in your name?

MR. DALEY: I thought the Unus Shipping Company would adopt the bills of lading, but they have denied them and say they are Mr. Shaw's, saying Mr. Shaw carried the goods, but I don't see much evidence of it to date.

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10 Q. In whose employ is Captain Cruickshanks now? A. I don't think he has been working the past few months.

Q. He has been in your employ recently? A. He has never been in my employ.

Q. As far as Mr. Barry is concerned he was your agent down there, too? A. We have no agency arrangements, but at every port you send a vessel you must have an agent, and he acted for me, and for the shippers, and in the HURRY ON's case for the Unus Shipping Co.

20 Q. He never returned the bills of lading to the Unus Shipping Company? A. No; in that particular case he would send them to me and I would turn them over to the Unus Shipping Company.

Q. When did you instruct Mr. Poole to sign the bills of lading for the MAGNHILD? A. Before the vessel sailed from here I produced the bills of lading, and turned them over to him, and told him how to sign them. You would not catch me signing my name to Newfoundland Canada Co.; even if Captain Cruickshanks failed to tell his, I protected myself, and Captain Cruickshanks should have protected the Unus Shipping Company.

Q. That was the first time Poole had made a voyage as super-cargo for you? A. Personally.

Q. Yes? A. The only voyage.

30 Q. Had he with you as managing director of Newfoundland Canada Co.? A. Yes, he had made some voyages for them.

Q. You always instructed him how to sign the bills of lading? A. Not necessarily; Poole has been going to sea long enough to know, but this year he goes to change someone else's bills of lading to my needs, is why I instructed him in this case.

40 Q. Why not give him any instructions about changing the Unus Shipping Co. for the HURRY ON? A. I notified Mr. Barry the boat was on owner's account, and that Poole was to join the HURRY ON, therefore I felt that Barry would tell Poole that I had nothing to do with the boat and Poole would carry out his work for the Unus Shipping Company.

Q. I am not quite clear on the pay Poole received; you say for two weeks you paid him or his wife \$37.50? A. I think it was \$37.50, I am not sure of the amount.

Q. It was paid by W. A. Shaw? A. Yes, it was paid by me.

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Q. He was working approximately that on the HURRY ON? A. About that; I think we paid him for a month, figuring about two weeks for them and two for me.

Q. You paid him for that, too? A. I paid him the second period, too; knowing we had money coming from Barry from which we could disburse this; at John's request.

Q. Was there ever any dispute over his wages? A. No.

Q. With Cruickshanks or other officers? A. No, the first I heard was this trouble.

Q. You heard previous to coming to court? A. John mentioned in 10 some way they were trying to throw Poole over on me, to say he worked for me during that period.

Q. That is only within the last few days? A. Say the last month or so,—recently.

Q. You don't know why Captain Cruickshanks would come and tell you that? A. Well, naturally, we have had a few words one way or other over this happening; a man from New York started it; somebody from New York was mentioning that I operated the HURRY ON; naturally I heard of things; that was all.

Q. And you didn't find out until 1935? A. No, to the best of my 20 knowledge it might have been anywhere from July to September, 1935, the first I heard of it.

Q. Notwithstanding these bills of lading, Exhibits E/1 to E/17, went through your office? A. I could handle these bills of lading and might not have noticed they were signed in my name.

Re-
examination.

Re-Examined by Mr. DALEY:

Q. You handed them over directly to Captain Cruickshanks? A. To the best of my knowledge, knowing that they came from the HURRY ON, and naturally I would hand them over to Cruickshanks.

Q. I suppose there is a considerable volume of business goes through 30 your office? A. Yes, there was considerable about that time; I had at least four ships myself; I never see the bills of lading myself.

Q. Who paid the cost of loading the HURRY ON at Bay of Islands?
A. The Unus Shipping Company through Barry.

AND THEN THE WITNESS WITHDREW.

MR. DALEY TENDERS EXHIBITS MARKED.

THE CARRIAGE OF GOODS BY SEA ACT, 1932.
Being Chapter 18 of The Newfoundland Statutes of 1932.

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CHAPTER 18

AN ACT TO AMEND THE LAW WITH RESPECT TO THE
CARRIAGE OF GOODS BY SEA.

(Passed April 30, 1932)

SECTION

1. Application of Rules in Schedule.
- 10 2. Absolute warranty of seaworthiness not to be implied in contracts to which Rules apply.
3. Statement as to application of Rules to be included in Bills of Lading.
4. Modification of Article VI. of Rules in relation to coasting trade and trade to Canada.
5. Modification of Rules 4 and 5 of Act III in relation to bulk cargoes.
6. Short Title, saving and operation.
7. Newfoundland Courts to have jurisdiction.
- 20 8. Repeal.
Schedule.

WHEREAS at the International Conference on Maritime Law held at Brussels in October, 1922 the delegates at the Conference, including the delegates representing His Majesty, agreed unanimously to recommend their respective Governments to adopt as the basis of a convention a draft convention for the unification of certain rules relating to bills of lading:

AND WHEREAS at a meeting held at Brussels in October, 1923, the rules contained in the said draft convention were amended by the Committee appointed by the said Conference:

30 AND WHEREAS it is expedient that the said rules as so amended and as set out with modifications in the Schedule to this Act (in this Act referred to as "the Rules") should, subject to the provisions of this Act be given the force of law with a view to establishing the responsibilities, liabilities, rights and immunities attaching to carriers under bills of lading:

Be it Therefore Enacted by the Governor, the Legislative Council and House of Assembly, in Legislative Session Convened, as follows:

1. Subject to the provisions of this Act, the Rules shall have effect in relation to and in connection with the carriage of goods by sea in ships carrying goods from any port in this Dominion to any other port whether in or outside this Dominion.

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2. There shall not be implied in any contract for the carriage of goods by sea to which the Rules apply any absolute undertaking by the carrier of the goods to provide a seaworthy ship.

3. Every bill of lading, or similar document of title, issued in this Dominion which contains or is evidence of any contract to which the Rules apply shall contain an express statement that it is to have effect subject to the provisions of the said Rules as applied by this Act.

4. Article VI. of the Rule shall, in relation to the carriage of goods by sea in ships carrying goods from any port in this Dominion to any other port in this Dominion or from Channel or Port aux Basques to any port in the Island of Cape Breton have effect as though the said Article referred to goods of any class instead of to particular goods and as though the proviso to the second paragraph of the said Article were omitted. 10

5. Where under the custom of any trade the weight of any bulk cargo inserted in the bill of lading is a weight ascertained or accepted by a third party other than the carrier or the shipper and the fact that the weight is so ascertained or accepted is stated in the bill of lading, then notwithstanding anything in the Rules, the bill of lading shall not be deemed to be *prima facie* evidence against the carrier of the receipt of goods of the weight so inserted in the bill of lading, and the accuracy thereof at the time of shipment shall not be deemed to have been guaranteed by the shipper. 20

6. (1) This Act may be cited as the Carriage of Goods by Sea Act, 1932.

(2) Nothing in this Act shall affect the operation of sections four hundred and forty-six to four hundred and fifty, both inclusive, five hundred and two, and five hundred and three of the Merchant Shipping Act, 1894, as amended by any subsequent enactment or the operation of any other enactment for the time being in force limiting the liability of the owners of seagoing vessels. 30

(3) The Rules shall not by virtue of this Act apply to any contract for the carriage of goods by sea made before the 30th day of June, 1932, nor to any bill of lading or similar document of title issued, whether before or after such day as aforesaid, in pursuance of any such contract as aforesaid.

7. Any Court in Newfoundland having jurisdiction to the amount claimed shall have power to try any action for loss of or damage to goods carried by sea to or from this Dominion, and such action may be commenced and continued to judgment and execution, anything in any Bill of Lading, receipt or other similar document to the contrary notwithstanding. 40

8. Chapter 187 of the Consolidated Statutes, (Third Series), entitled "Of the Liability of Carriers by Water," is hereby repealed in respect to any contract for the carriage of goods by sea made after the 30th day of June, 1932, and to any Bill of Lading, or similar document of title issued in pursuance of any such contract.

SCHEDULE
Rules Relating to Bills of Lading

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ARTICLE I

Definitions.

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In these Rules the following expressions have the meanings hereby assigned to them respectively, that is to say—

- (a) “Carrier” includes the owner or the charterer who enters into a contract of carriage with a shipper.
- 10 (b) “Contract of carriage” applies only to contracts of carriage covered by a bill of lading or any similar document of title, in so far as such document relates to the carriage of goods by sea, including any bill of lading or any similar document as aforesaid issued under or pursuant to a charterparty from the moment at which such bill of lading or similar document of title regulates the relations between a carrier and a holder of the same:
- (c) “Goods” includes goods, wares, merchandises, and articles of every kind whatsoever, except live animals and cargo which by the contract of carriage is stated as being carried on deck and is so carried:
- 20 (d) “Ship” means any vessel used for the carriage of goods by sea:
- (e) “Carriage of goods” covers the period from the time when the goods are loaded on to the time when they are discharged from the ship.

ARTICLE II.

Risks.

Subject to the provisions of Article VI., under every contract of carriage of goods by sea the carrier, in relation to the loading, handling, stowage, 30 carriage, custody, care, and discharge of such goods, shall be subject to the responsibilities and liabilities, and entitled to the rights and immunities hereinafter set forth.

ARTICLE III

Responsibilities and Liabilities.

1. The carrier shall be bound, before and at the beginning of the voyage, to exercise due diligence to—

- (a) Make the ship seaworthy:
(b) Properly man, equip, and supply the ship:

- (c) Make the holds, refrigerating, and cool chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage and preservation.

2. Subject to the provisions of Article IV., the carrier shall properly and carefully load, handle, stow, carry, keep, care for and discharge the goods carried.

3. After receiving the goods into his charge, the carrier, or the master or agent of the carrier, shall, on demand of the shipper, issue to the shipper a bill of lading showing among other things—

- (a) The leading marks necessary for identification of the goods as the same are furnished in writing by the shipper before the loading of such goods starts, provided such marks are stamped or otherwise shown clearly upon the goods if uncovered, or on the cases or coverings in which such goods are contained, in such a manner as should ordinarily remain legible until the end of the voyage;
- (b) Either the number of packages or pieces, or the quantity, or weight, as the case may be, as furnished in writing by the shipper;
- (c) The apparent order and condition of the goods: 20

Provided that no carrier, master or agent of the carrier, shall be bound to state or show in the bill of lading any marks, number, quantity, or weight which he has reasonable grounds for suspecting not accurately to represent the goods actually received, or which he has had no reasonable means of checking.

4. Such a bill of lading shall be *prima facie* evidence of the receipt by the carrier of the goods as therein described in accordance with paragraph 3 (a), (b), and (c).

5. The shipper shall be deemed to have guaranteed to the carrier the accuracy at the time of shipment of the marks, number, quantity, and weight, as furnished by him, and the shipper shall indemnify the carrier against all loss, damages, and expenses arising or resulting from inaccuracies in such particulars. The right of the carrier to such indemnity shall in no way limit his responsibility and liability under the contract of carriage to any person other than the shipper. 30

6. Unless notice of loss or damage and the general nature of such loss or damage be given in writing to the carrier or his agent at the port of discharge before or at the time of the removal of the goods into the custody of the person entitled to delivery thereof under the contract of carriage, or, if the loss or damage be not apparent, within three days, such removal shall be *prima facie* evidence of the delivery by the carrier of the goods as described in the bill of lading. 40

The notice in writing need not be given if the state of the goods has at the time of their receipt been the subject of joint survey or inspection.

In any event the carrier and the ship shall be discharged from all liability in respect of loss or damage unless suit is brought within one year after delivery of the goods or the date when the goods should have been delivered.

In the case of any actual or apprehended loss or damage the carrier and the receiver shall give all reasonable facilities to each other for inspecting and tallying the goods.

10 7. After the goods are loaded the bill of lading to be issued by the carrier, master or agent of the carrier, to the shipper shall, if the shipper so demands, be a "shipped" bill of lading, provided that if the shipper have previously taken up any document of title to such goods, he shall surrender the same as against the issue of the "shipped" bill of lading, but at the option of the carrier such document of title may be noted at the port of shipment by the carrier, master, or agent with the name or names of the ship or ships upon which the goods have been shipped and the date or dates of shipment, and when so noted the same shall for the purpose of this Article be deemed to constitute a "shipped" bill of lading.

20 8. Any clause, covenant or agreement in a contract of carriage relieving the carrier or the ship from liability for loss or damage to or in connection with goods arising from negligence, fault or failure in the duties and obligations provided in this Article or lessening such liability otherwise than as provided in these Rules, shall be null and void and of no effect.

A benefit of insurance or similar clause shall be deemed to be a clause relieving the carrier from liability.

ARTICLE IV

Rights and Immunities.

30 1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III.

Whenever loss or damage has resulted from unseaworthiness, the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this section.

40 2. Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from—

(a) Act, neglect, or default of the master, mariner, pilot or the

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servants of the carrier in the navigation or in the management of the ship;

- (b) Fire, unless caused by the actual fault or privity of the carrier;
- (c) Perils, dangers and accidents of the sea or other navigable waters;
- (d) Act of God;
- (e) Act of war;
- (f) Act of public enemies;
- (g) Arrest or restraint of princes, rulers or people, or seizure under legal process; 10
- (h) Quarantine restrictions;
- (i) Act or omission of the shipper or owner of the goods, his agent or representative;
- (j) Strikes or lock-outs or stoppage or restraint of labour from whatever cause, whether partial or general;
- (k) Riots and civil commotions;
- (l) Saving or attempting to save life or property at sea;
- (m) Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods;
- (n) Insufficiency of packing; 20
- (o) Insufficiency or inadequacy of marks;
- (p) Latent defects not discoverable by due diligence;
- (q) Any other cause arising without the actual fault or privity of the carrier, or without the fault or neglect of the agents or servants of the carrier but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

3. The shipper shall not be responsible for loss or damage sustained 30
by the carrier or the ship arising or resulting from any cause without the act, fault or neglect of the shipper, his agents or his servants.

4. Any deviation in saving or attempting to save life or property at sea, or any reasonable deviation shall not be deemed to be an infringement or breach of these Rules or of the contract of carriage, and the carrier shall not be liable for any loss or damage resulting therefrom.

5. Neither the carrier nor the ship shall in any event be or become liable for any loss or damage to or in connection with goods in an amount exceeding five hundred dollars per package or unit, or the equivalent of that sum in other currency, unless the nature and value of such goods have 40
been declared by the shipper before shipment and inserted in the bill of lading.

This declaration if embodied in the bill of lading shall be *prima facie* evidence, but shall not be binding or conclusive on the carrier.

By agreement between the carrier, master or agent of the carrier and the shipper another maximum amount than that mentioned in this paragraph may be fixed, provided that such maximum shall not be less than the figure above named.

Neither the carrier nor the ship shall be responsible in any event for loss or damage to or in connection with goods if the nature or value thereof has been knowingly misstated by the shipper in the bill of lading.

- 10 6. Goods of an inflammable, explosive or dangerous nature to the shipment whereof the carrier, master or agent of the carrier, has not consented, with knowledge of their nature and character, may at any time before discharge be landed at any place or destroyed or rendered innocuous by the carrier without compensation, and the shipper of such goods shall be liable for all damages and expenses directly or indirectly arising out of or resulting from such shipment.

If any such goods shipped with such knowledge and consent shall become a danger to the ship or cargo, they may in like manner be landed at any place or destroyed or rendered innocuous by the carrier without liability
20 on the part of the carrier except to general average, if any.

ARTICLE V

Surrender of Rights and Immunities, and Increase of Responsibilities and Liabilities.

A carrier shall be at liberty to surrender in whole or in part all or any of his rights and immunities or to increase any of his responsibilities and liabilities under the Rules contained in any of these Articles, provided such surrender or increase shall be embodied in the bill of lading issued to the shipper.

- 30 The provisions of these Rules shall not be applicable to charterparties, but if bills of lading are issued in the case of a ship under a charterparty they shall comply with the terms of these Rules. Nothing in these Rules shall be held to prevent the insertion in a bill of lading of any lawful provision regarding general average.

ARTICLE VI

Special Conditions.

- 40 Notwithstanding the provisions of the preceding Articles, a carrier, master or agent of the carrier, and a shipper shall in regard to any particular goods be at liberty to enter into any agreement in any terms as to the responsibility and liability of the carrier for such goods, and as to the rights and immunities of the carrier in respect of such goods, or his obligation as to seaworthiness, so far as this stipulation is not contrary to public policy, or the care or diligence of his servants or agents in regard

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to the loading, handling, stowage, carriage, custody, care, and discharge of the goods carried by sea, provided that in this case no bill of lading has been or shall be issued and that the terms agreed shall be embodied in a receipt which shall be a non-negotiable document and shall be marked as such.

Any agreement so entered into shall have full legal effect:

Provided that this Article shall not apply to ordinary commercial shipments made in the ordinary course of trade, but only to other shipments where the character or condition of the property to be carried or the circumstances, terms and conditions under which the carriage is to be performed, are such as reasonably to justify a special agreement. 10

ARTICLE VII

Limitations on the Application of the Rules.

Nothing herein contained shall prevent a carrier or a shipper from entering into any agreement, stipulation, condition, reservation or exemption as to the responsibility and liability of the carrier or the ship for the loss or damage to or in connection with the custody and care and handling of goods prior to the loading on and subsequent to the discharge from the ship on which the goods are carried by sea.

ARTICLE VIII

Limitation of Liability.

20

The provisions of these Rules shall not affect the rights and obligations of the carrier under any statute for the time being in force relating to the limitation of the liability of owners of sea-going vessels.

ARTICLE IX

The monetary units mentioned in these Rules are to be taken to be gold value.

In the Privy Council

*On Appeal From the Supreme Court
of Nova Scotia en Banc.*

IN THE MATTER OF THE COMPANIES WIND-
ING UP ACT, being Chapter 198, R.S.N.S.,
1923

—AND—

IN THE MATTER OF THE WINDING UP OF
UNUS SHIPPING COMPANY, LIMITED

—AND—

IN THE MATTER of a Certain Claim filed by
VITA FOOD PRODUCTS INC., a Body Cor-
porate (Claimant)
Appellant.

—AGAINST—

UNUS SHIPPING COMPANY, LIMITED, IN
LIQUIDATION *Respondent.*

APPENDIX