

Case No. 1,588.

[6 Sawy. 146.]¹

THE BOBOLINK.

District Court, D. California.

Dec. 9, 1879.

CARRIERS' LIABILITY—GOODS DAMAGED BY SEA PERILS—REFUSAL OF
CONSIGNEES TO ACCEPT.

Where wool arrived damaged, and in a perishing condition, from causes for which the carrier was not responsible, and the consignees declined to receive it, and it was subsequently sold by the carrier to prevent its perishing on his hands: *Held*, that the carrier's duty and liability terminated on the discharge of the wool, and reasonable notice and opportunity given to the consignees to take it away. He thenceforth became a compulsory bailee of the goods, bound only to such reasonable care as a prudent and honest man would take of property of which he has become the involuntary custodian.

In admiralty.

Taylor & Haight, for libelants. James C. Perkins, for claimants.

HOFFMAN, District Judge. I see no ground on which the libel in this case can be supported. The wool in question was shipped "to be carried on deck at the owner's risk." It was injured during the voyage by reason of its exposed situation, and by one of the perils of which the shipper took the risk. The stowage was as careful and safe as under the circumstances was practicable. The vessel on her arrival was hauled into a slip, and the discharge commenced and prosecuted with reasonable and customary diligence. The wool was discharged on Thursday afternoon, and the libelants were notified of the fact on the next morning. They were already aware of the vessel's arrival, but had neither presented their bill of lading, tendered the freight, nor demanded their goods. They seem to have been notified as soon as in the usual course of business was practicable, and as soon as the fact was known that the marks on the packages ("M. & F.") indicated that they were the consignees. They refused to receive the wool, on the ground that the liability to them of the insurers was in dispute. As the wool was rapidly deteriorating in value, the agents of the vessel became alarmed lest it should utterly perish on their hands. They therefore endeavored to have it scoured, which it seems was indispensable to arrest the destructive processes which were going on. They found great reluctance on the part of persons engaged in the business of scouring, to undertake the operation, and a price was asked which seemed to the expert whom they employed to be exorbitant. The latter therefore concluded to accept an offer to purchase it from a party who owned a scouring mill. This disposition of the wool was made in perfect good faith, and under the conviction that it was the most advantageous arrangement that could be made for the interest of all concerned. The sale was made on Saturday. To save the wool it was necessary to keep steam up in the mill during Saturday night and Sunday, and to employ workmen at extra wages to conduct the operation. Its condition admitted, or was supposed to admit, of no delay.

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Had it been left unattended to until the succeeding Monday or Tuesday, its value would have been greatly impaired, perhaps wholly destroyed.

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The ship's agents make no pretension to be experts in the wool business. Their duties and liability as carriers terminated on the discharge of the wool, and reasonable notice of the fact and opportunity to take it away given to the consignees. From that moment they became compulsory bailees of the goods; not at liberty, of course, to let them perish by their negligence, but only bound to take reasonable care, such as a prudent and honest man would take of property of which he has involuntarily become the custodian.

I am by no means sure that, under the circumstances, they were bound to incur the trouble and expense of resorting to extraordinary methods to arrest the progress of the damage caused by a sea peril for which they were not responsible. Whether this be so or not, they acted to the best of their judgment and in good faith. The price they obtained was the full value of the wool in its then condition. They are willing to pay, and have offered to the libelants, the amount received by them, less freight and other charges. They have thus discharged their whole duty under the law.

¹ [Reported by L. S. B. Sawyer, Esq., and here reprinted by permission.]