

Case No. 3,401.
[10 Hunt, Her. Mag. 378.]

CROCKET V. BROWER.

District Court, D. New York.

Jan. Term, 1843.

STOWAGE—EVIDENCE.

- [1. Conflicting certificates of surveys by port-wardens and marine surveyors appointed by the chamber of commerce and board of underwriters, are not within themselves evidence as to the manner in which a cargo was stowed. That must be proved by witnesses whose testimony is entitled to such weight as their knowledge, character, and experience deserve, and no more.]
- [2. It is bad stowage to place hogsheads of sugar on barrels of whiskey, without dunnage and beds at the bottom.]

This was a suit by [Jonathan Crocket, Jr.] the master against [John H. Brower] the consignee for freight of goods from New Orleans to New York. The usual bills of lading were signed for the goods, which were found to be damaged on their arrival here. There were two surveys, one on the part of the master, by the port-wardens, which certified that the goods were well stowed, and injured by the perils of the sea; the other on the part of the consignee, by the marine surveyors appointed by the chamber of commerce and board of underwriters, which certified that the goods were badly and improperly stowed. The certificates of surveyors were objected to as evidence, and the court decided they were not evidence in themselves; that the state of the cargo must be proved, like other facts, by witnesses; and that the persons making the survey would be entitled to such weight as their knowledge, character, and experience deserved, and no more.

Moffat and Kittle, two of the port-wardens, testified they made a survey of the whiskey in question, and found it well stowed, so far as they examined; that they saw no sugar stowed on the whiskey. Hogsheads of sugar on barrels of whiskey would be bad stowage. Captains Drinkwater and Hopkins, shipmasters, testified that they would stow sugar on whiskey; considered it good stowage. Barrels of whiskey are stronger than hogsheads of sugar. Messrs. Candler and Tinkham, two of the marine surveyors, testified that they made a survey of the whiskey, and the same was very badly stowed. Hogsheads of sugar were stowed on barrels of whiskey, without being dunnaged and bedded; the barrels were pressed down or crushed, so that the liquor ran out. Hogsheads on barrels is bad stowage. Messrs. Spear, Kennedy, Bergen, coopers, testified that they coopered twenty nine casks, which were in very bad order. The bilges were flattened from bad stowage, so as to leak; they were well made casks; appeared to have been stowed under sugar. Mr. Dick, a carman, saw the whiskey in the vessel and on the dock; sugar, lard, and lead were stowed atop of it; the bilges were very much flattened. The barrels had no dunnage under them at all. Mr. Dunlap, a clerk of consignee, testified the casks were so much flattened that you could run your hand under the quarter hoops. The whiskey which the

CROCKET v. BROWER.

coopers worked at was the lot in question. The whiskey was stowed with heavy weight on it. Mr. "Waring, inspector of the Atlantic Company, Mr. Ricketson, inspector of the Sun Company, and Mr. Thompson, inspector of the Alliance, testified that they had had thirty, thirty five, and forty years" experience; such stowage is decidedly bad. Hogs-heads on barrels, and barrels on the bottom, without beds and dunnage, is very bad stowage.

THE COURT. The point submitted by the parties is, whether the goods were properly stowed. It appears to the court that the goods were negligently and insufficiently stowed in the vessel, and that the libelant sustained damage in the goods by bad stowage, and is not, accordingly, entitled to recover freight. The libel must be dismissed with costs.