

Case No. 4,195.

[1 Wkly. Notes Cas. 204.]

DURKEE V. WORKMAN ET AL.

District Court, E. D. Pennsylvania.

Dec. 24, 1874.¹

CHARTER PARTY—CONSTRUCTION OF CLAUSE IN.

[A vessel was chartered for a cargo of empty oil barrels, with the stipulation, "Only half freight to be paid for all barrels delivered in a broken state." *Held*, that the half rate applied to barrels received by the ship in a broken condition as well as barrels broken during the voyage.]

[This was a libel by A. R. Durkee, master of the ship Tancook, against Workman & Co., to recover freight under a charter party.]

R. S. Carr, of Hamburg, Germany, chartered of libellant the ship Tancook, for a voyage thence to Philadelphia, with a cargo of empty refined petroleum barrels. The charter party stipulated that on delivery of the cargo, according to bills of lading signed by him, libellant was "to be paid freight one shilling three pence British sterling in full for every barrel delivered, and only half freight to be paid for all barrels delivered in a broken state." Libellant received on board said vessel, at Hamburg, five thousand and seventy-one empty refined petroleum barrels, and gave bills of lading therefor, setting forth that the said barrels were "shipped in good order and well conditioned by the said R. S. Carr, and were to be delivered in the like good order and well conditioned at Philadelphia unto order, he or they paying freight" at the rate aforesaid "for every barrel delivered in good condition, half freight for broken barrels." The vessel, having performed the voyage, was discharged at Philadelphia, and her cargo delivered to respondents as consignees. The vessel delivered all the barrels, one thousand seven hundred and ninety-five being broken when landed. No evidence was given to show what part were broken on shipboard, and what part were broken when shipped. Libellant claimed to receive his full freight, averring that "broken barrels" in the charter party meant "barrels which might become broken in course of transshipment;" and that these barrels were not so broken, but were shipped in a broken condition, at Hamburg. Respondents paid full freight on the barrels which were unbroken, and half freight on the barrels delivered in a broken condition, claiming that the stipulation of "half freight for broken barrels" applied to all broken barrels received by the consignees, whether shipped in that condition or broken on the voyage.

Mr. Gornley, for libellant.

Morton P. Henry, for respondents.

CADWALADER, District Judge. "It appearing that all except the disputed part of the libellant's demand has been paid since the libel was filed, it is dismissed as to the residue thereof. Half costs are allowed to the libellant."

[NOTE. The libellant took an appeal to the circuit court, where the decree was affirmed (McKenna, Circuit Judge). See Case No. 4,194.]

¹ [Affirmed in Case No. 4,194.]