ENGLISH v. OCEAN STEAM NAV. CO.

Case No. 4,490.

{2 Blatchf. 425.}[1]

Circuit Court, S. D. New York.

Oct. 1, 1852.[2]

CARRIERS—DELIVERY OF DAMAGED GOODS—PRESUMPTION.

1. Where goods in cases are shipped by sea, and, on being opened, after delivery, are found to be injured, it will, in an action by the owner of the goods against the carrier, to recover damages for the injury, be presumed that they were properly packed, in a fit state for transportation, by the manufacturer or shipper, unless there is something in their appearance or condition to afford ground for a contrary inference, or unless some evidence to that effect is given.

{Cited in Harp v. The Grand Era, Case No. 6,084.}

2. And this will be the presumption, although the bill of lading contains the clause, "weight, contents and value unknown."

{Appeal from the district court of the United States for the southern district of New York.}

In admiralty. George B. English filed a libel in personam, in the district court, against the Ocean Steam Navigation Company, to recover for damage done to gloves, ribbons, &c., in cases, shipped by one of their steamers, on a voyage from Havre to New York. The principal question in the case, both in the court below and here, was one of fact—whether the injury to the goods was caused by dampness and heat in the hold of the vessel, occasioned by rough weather and severe storms in the course of the voyage, and was thus within the exception, "accidents of the seas," in the bill of lading, or whether it was caused by the excessive heat of the boiler, and want of sufficient ventilation of portions of the lower part of the vessel occupied by the cargo. The bill of lading contained a memorandum at the foot, "weight, contents and value unknown." The district court decreed in favor of the libellant {Case No. 4,490a}, and the respondents appealed to this court.

Daniel Lord, for libellant.

Thomas W. Tucker, for respondents.

NELSON, Circuit Justice. It is insisted, on the part of the respondents that, as the bill of lading contains the usual clause, "weight, contents and value unknown," the burden lies upon the libellant to show, in the first instance, that the goods were put up in the cases, by the manufacturer or shipper, in good order and condition; and that, in the absence of such proof, the court are bound

to presume that the injury to the goods arose from defects existing when they were packed for shipment, or which occurred previous to the shipment. The law is otherwise. Unless there is something in the appearance or condition of the goods, on their being opened after delivery, affording ground for reasonable inference that they were improperly packed, or packed in an unfit state for transportation, or unless some evidence to that effect is given, the contrary will be presumed. Cowen & Hill's Notes to Phil. Ev. 1439; Price v. Powell, 3 Comst. [3 N. Y.] 322; Barrett v. Rogers, 7 Mass. 297; Clark v. Barnwell, 12 How. [53 U. S.] 272.

The main question in the case is one of fact, namely, whether or not the damage was occasioned in the course of the voyage, by one of the perils of the navigation within the bill of lading; and I am quite satisfied with the conclusion arrived at upon the proofs by the court below. Decree affirmed.

[1] [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]

[2] [Affirming Case No. 4,490a.]