

Case No. 4,602. FABER ET AL. V. THE NEWARK.
[4 Betts, D. C. MS. 52.]

District Court, S. D. New York.

Feb. 21, 1844.¹

CARRIERS—LIABILITY FOR DAMAGE TO CARGO—“DANGERS OF THE SEAS”—COSTS.

[1. The leaking of a vessel through stress of weather, and consequent injury to the cargo, is a danger of the sea, within an exception against liability for damages caused thereby in an agreement for transportation and delivery by a vessel.]

[Cited in *Baxter v. Leland*, Case No. 1,124.]

[2. On dismissal of a libel against a vessel for damages to the cargo libellants should be charged with costs, in the absence of fraudulent deception or concealment of facts on the part of the claimants, where the contestation was as to faulty stowage and lading only.]

[This was a libel in rem by Conrad W. Faber and Leopold Bierwith against the ship Newark, Thomas Dunham & Co., claimants, for damages sustained from injury to cargo.]

BETTS, District Judge. This cause having been heard upon the proofs and allegations of the parties, and due deliberation being had, and it appearing to the court upon the proof that the tobacco of the libellant shipped on board the said ship was injured on the voyage in the pleadings mentioned by grease, oil or lard stowed in barrels or casks on board the said ship and transported on said voyage together with the tobacco aforesaid: and it further appearing to the court, upon the proof, that the said hogsheads of tobacco and the said casks or barrels of lard or oil were well,; properly and securely stowed on board said vessel for the voyage aforesaid and that the injury received by the tobacco thereon was not occasioned by any faulty or insufficient stowage of the said hogsheads, or barrels or casks: and it further appearing to the court upon the proofs that the said casks or barrels of oil or lard were well secured and coopered when laden on board said ship: and it further appearing to the court upon the proofs that the injury to the said tobacco was not occasioned by the leaking, dripping or passage of the said oil or grease directly from the barrels on to the hogsheads: and it further appearing to the court upon the proofs, that the said ship on her said voyage was by stress of weather caused to leak and take in water so as to require at times pumping at the rate of 90 strokes the hour, to free her of such leaking: and it further appearing to the court that the tobacco aforesaid was injured by occasion of such stress of weather and such leaking of the ship: It is considered by the court that the damage and injury sustained by the said tobacco and by the libellants thereby accrued and was occasioned by the dangers of the seas. And it further appearing to the court, that the undertaking of the master of the said ship, was to transport and deliver the said tobacco at the port of New York in good order and condition, the dangers of the seas excepted: wherefore it is considered by the court that the said

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ship is not liable and responsible for the damages aforesaid demanded by this action: It is therefore ordered, adjudged and decreed, that the said libel in this behalf be dismissed with costs to be taxed.

Sept 9, 1844. A motion being made on the part of the libellants to modify the decree in respect to costs, so that they be relieved from the payment of costs, and counsel on both sides having been heard, and it being considered by the court that no fraudulent deception or concealment of facts, was made by the claimants, and that the contestation of the case upon the pleadings and proofs was as to the faulty stowage and lading of the cargo of said vessel: Wherefore it is ordered and adjudged that the motion be denied and that the decree stand as originally rendered.

¹ [Reversed in Case No. 10,141.]