

Case No. 4,768. FIELD ET AL. V. THE LOVETT PEACOCK.
[N. Y. Times, April 12, 1863.]

District Court, S. D. New York.

CARRIERS—DELIVERY OF CARGO TO CONSIGNEE—USAGE OF PORT.

- [1. Delivery of cargo according to the usage of the port is equivalent to delivery to the consignee personally or at his warehouse.] [Distinguished in *The Ben Adams*, Case No. 1,289.]
- [2. A vessel is not responsible in rem for cargo lost from the pier through negligence of her officers, but after delivery to the consignee.]

In admiralty.

Before BETTS, District Judge.

This was a libel upon a bill of lading for alleged non-delivery of cargo. The bill of lading was given by the master at New Orleans, for 32 hogsheads of sugar, to be delivered to the libelants [Barnum W. Field and others] at New York, and the libelants claimed that one of them had never been delivered.

HELD BY THE COURT: That the contract of the vessel was to transport and deliver the goods laden on board according to the terms of the affreightment. She assumed no further obligation, and no further one can be imposed upon her in relation to that undertaking after it has been fulfilled. That a delivery according to the usage of the port is equivalent to one to the consignee personally or at his warehouse. That the testimony is clear that the usage in the port of New York in the foreign and coasting trade is to deliver goods on proper wharves within the harbor upon reasonable previous notice of the time of unloading, and that the mode of delivery in this case conformed to that rule. That the weighmaster and porter of the libelant, when they came on Saturday to remove the sugars from the pier, did object that all the thirty-two hogsheads had not been fully unladen for the consignee, but they did state that one hogshead was not found in the number landed, Having the requisite marks upon it. The officers of the ship insisted that it had been discharged, and would be found upon the pier. Probable proof is furnished that one of two hogsheads, which were not removed from the wharf on Saturday, was purloined in charge of the persons taking it away. If such loss is owing to misconduct or negligence on the part of officers of the ship as bailees of the property, the blame is imputable to them personally, because of acts or omissions, after the sugar was out of the charge of the vessel, and cannot be attached to her, and a remedy therefor pursued in this form of action. The sugars were by law in possession of the consignees the moment they were lawfully out of the vessel and free of her custody and control, and neither the omission of the master or mate, or their positive misfeasance in respect to the cargo, could be longer charged upon the vessel.

Libel dismissed with costs.

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