

Case No. 5,043.
[7 Ben. 380.]¹

THE FRANCIS KING.

District Court, E. D. New York.

July, 1874.

TUGBOAT AND TOW—DAMAGES—CARRIER—MASTER—INJURY TO CARGO.

1. The master of a vessel may recover damages for injuries inflicted upon cargo on board of his vessel as a common carrier.
2. A tug was held liable for the sinking of a canal-boat loaded with coal, which she was towing. On a reference to ascertain the damages, it appeared that part of the cargo was raised. There was evidence that the consignees of the cargo had released the owners, of the tug, but not the libellant, who was master of the canal-boat, from any claim for damages arising out of the sinking of the cargo. *Held*, that the libellant must have a decree for the cost of raising the cargo, as well as his other damages, but that the respondents might have that item stricken from the decree on filing satisfactory proof that the libellant also had been released from such claim.

This was a libel by the master and owner of a canal-boat to recover damages for the sinking his boat while in tow of the Francis King. The court held the tug responsible, and ordered a reference to ascertain the damages. [See Case No. 5,042.] The proofs were completed before the commissioner, but before he made his report he died. Thereupon, the court ordered the question of damages to be heard before the court on the evidence taken before the commissioner. It appeared on the evidence that the boat was a total loss; that part of the cargo was raised for certain salvage, and that the consignees of the cargo had released the tugboat and her owners from all claim for damages by the injury to the cargo.

Benedict, Taft & Benedict, for libellant

Platt, Gerard & Buckley, for respondents.

BENEDICT, District Judge. The proofs show the amount of damages caused by the accident in the pleadings mentioned to be as follows: The value of the boat, as a total loss, \$2,000; the value of personal effects lost, \$200; the amount of freight, \$205, and the costs of raising the cargo, \$640. As to this latter item, although no doubt exists as to the general rule that the master of a vessel, entrusted with cargo for transportation, may recover for damages received by that cargo while in his custody, in the present case the evidence indicates that the consignees of the cargo may have relinquished all claims for such damages.

As to this item, therefore, I shall permit the claimants to insert a provision in the decree that the item shall be stricken from the decree when they file satisfactory proof that the libellant is released from liability by reason of injury to said cargo. Let a decree be entered in accordance with this opinion.

The FRANCIS KING.

FRANCIS KING, The. See Case No. 17,355.

¹ [Reported by Robert D. Benedict, Esq., and Lincoln Benedict, Esq., and here reprinted by permission.]