

13FED.CAS.—41

Case No. 7,325.

THE J. L. HASBROUCK.

{6 Ben. 272.}¹

District Court, S. D. New York.

Dec., 1872.²

TUG-BOAT AND TOW—DAMAGES.

1. A propeller having a canal-boat in tow, which had sprung a leak while being towed, cast her off in such a way that she failed to reach a dock, and drifted off into deep water, and sank. She had a cargo of wheat, part of which had been wet by the leak before the boat was cast off. How much was wet was in dispute. *Held*, that, as it appeared that the canal-boat could have been put into shoal water near the dock at the time she was cast off, the total loss of so much of the cargo as was then uninjured was occasioned by the negligence of the propeller.
2. On the evidence, 800 bushels of the wheat was then wet and worthless, and the loss was the value of the cargo, less 800 bushels.

This was a libel by the owners of a cargo of wheat on board of a canal-boat, against a steamboat, which had taken the canal-boat in tow to tow her from New York to Poughkeepsie, to recover for the loss of the grain, the canal-boat having been cast off from the steamboat in a leaky condition,

prelimt Fort Montgomery, and afterwards having sunk in deep water. The court held that, for all damages received by the cargo up to the time the canal-boat was cast off, the steam-boat was not liable, but was liable for the damages to the cargo occasioned by the sinking of the boat after she was cast off. [Case No. 7,324.] To show such damages, the libellants proved the number of bushels of sound wheat shipped at New York, and the master of the canal-boat testified, that, at the time the boat was cast off, there was three feet of water in her hold forward, and only three inches aft, and that a space three feet deep at the bow and three inches deep at the stern would be occupied by 800 bushels of wheat; and the libellants claimed, on this evidence, that only 800 bushels of wheat were wet when the boat was cast off. It had appeared, by the master's evidence on the trial, that, when the boat was cast off, she was about a foot deeper in the water at the bow than at the stern, and had been leaking more or less for several hours. The claimants insisted, on this evidence, that, if the water was three feet deep in the hold at the bow, it must necessarily have been two feet deep at the stern; and that, on such a calculation, nearly half the cargo must have been wet. The commissioner reported that only 800 bushels were wet, and fixed the damages at the value of the whole cargo of sound wheat, less 800 bushels, and \$200 for the value of the 800 bushels of wet wheat. The claimants excepted to the allowance of each item.

C. Donohue, for libellants.

R. D. Benedict, for claimants.

BLATCHFORD, District Judge. It was proved on the trial, that the dock at Fort Montgomery is about 300 feet long in the line of the river, and runs out about 70 feet into the river; that, at low water, there is, at the dock, seven or eight feet depth of water; that, at its north end, the dock is out even with the edge of the flats, thus leaving 70 feet of flats between the outer edge of the flats and the land; and that, at the south end of the dock, the flats are sometimes bare. From this evidence, taken in connection with the other evidence given at the trial, it is quite apparent, that the bestowment by the propeller on the canal-boat of proper attention, when the latter was cast off, would have enabled the boat and her cargo to be put on the flats, so as to have prevented her sinking, as she did, out in deep water. The sinking of the cargo in deep water, and its consequent total loss, occasioned, therefore, such damages as there were to the cargo beyond the damage it had sustained, when the fault of the propeller was committed in casting the boat off, and leaving her without care or attention.

As to the damage which the cargo had sustained at that time, the commissioner reports all of it as undamaged, except 800. bushels of wheat, and that he reports as damaged to the extent of \$1 37 per bushel; its undamaged value having been \$1 62 per bushel. As to the quantity of wheat damaged at the time, the only testimony on either side, which specifies any number of bushels as damaged, is that of Atkins, master and part owner of

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the canal-boat, and who was on her at the time of the disaster. He gives the data from which he makes out that 800 bushels only were damaged, and no witness testifies that, from his data, his calculation was incorrect. No error in his data is pointed out, to my satisfaction, and his calculation therefrom is not so manifestly incorrect that the court can, without evidence, set it aside. I do not mean, by saying this, to suggest that it appears to be incorrect at all. I am not satisfied, however, that the 800 bushels of wheat are shown to have been worth anything at the time the boat was cast off. The weight of the evidence is that they were worth nothing. The sum of \$200 must, therefore, be deducted from the report, and the damages must stand at \$12,867 01, and the exceptions on both sides must, in all other respects, be overruled.

{From this decree both parties appealed to the circuit court, where the decision of the district court was affirmed. Case No. 7,326.}

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

² [Affirmed in Case No. 7,326.]