Case No. 12,231.

THE ST. LAURENT.

{7 Ben. 7.}[1]

District Court, E. D. New York. July, 1873.

SHIPPING—DELIVERY OF CARGO—PRIVATE WHARF—NOTICE TO CONSIGNEE—NEGLIGENCE OF CARRIER.

1. Certain cases of goods were brought to New York on a steamship under an ordinary bill of lading. The owners of the steamship were the occupants of the wharf at which she discharged her cargo, and which they had in closed. It was their mode of doing business that goods which were to be sent to the custom house under a general order, because their consignees had not obtained custom house permits for their landing, were deposited in a certain place of deposit on the wharf. One of the cases of the goods, after being marked for general order, was seen by a clerk of the steamship company standing in another part of the wharf with the goods of a passenger. They stood there for nearly a day, hut the clerk gave no order and did nothing with reference to them. The consignee filed a libel against the steam ship to recover for non-delivery of one of the cases. It did not appear that the missing case had ever been put in the place of deposit for general order goods. *Held,* that under the mode of delivery adopted by the ship, it was her duty to deposit the case in the part of the wharf designated for general order goods, and there to watch and preserve it for a reasonable time to enable the proper person to remove it; and the liability of the ship as carrier continued until the expiration of such reasonable time.

{Cited in Unnevehr v. The Hindoo, 1 Fed. 630.}

2. The delivery of the case in question upon the wharf, was not such a delivery of it upon a public wharf with notice to the consignee, as would discharge the ship from liability.

3. There was negligence in the clerk of the steamship in failing to remove the case marked "general order" to the proper deposit.

4. The ship was liable for the loss of the case.

In admiralty.

BENEDICT. District Judge. The question to be decided in this case is whether the evidence shows

a constructive delivery to the libellant of a case of merchandise shipped at Havre, on board the steamship St. Laurent, to be transported to New York, and there delivered to the libellant.

One ground taken by the defence is, that the evidence shows a delivery of the missing case to the custom house authorities, who, as it is claimed, were the only persons by law entitled to receive the case, inasmuch as at the time of the landing of the case the libellant had failed to enter it at the custom house and pay the duties.

I am of the opinion that the evidence fails to show such a delivery of the case to the possession of the custom house authorities as would release the ship.

The case, not being permitted, was to be 179 taken from the wharf to the general order store by the custom house cartmen. For merchandise of that class there was a place of deposit on the wharf, which had been designated for that purpose by the steamship company. The wharf was their own wharf, which they had inclosed, and where they placed the cargoes of their steamers as they arrived, in accordance with a system which is disclosed in the evidence.

The duty of the ship in respect to this case was to deposit it in that portion of the inclosure, designated for general order goods, and there to watch and preserve it for a reasonable time, to enable the proper person to remove it; and the liability of the ship, as carrier, continued until the expiration of such reasonable time.

The evidence in this case fails to show that the missing case was ever so deposited. It is shown to have come out of the ship, and to have been taken upon a truck by an employee of the ship, and marked for deposit with general order goods; but there is no evidence that it was ever so deposited. It was at least incumbent on the carrier to show the case to have been placed in the place upon the wharf where the

carman was to take it. Assuming, then, that there may be a delivery to the custom house authorities, which would release the ship in a case like this, it must, nevertheless, be held, that such a delivery was not accomplished by what was done here.

Another ground taken is, that, in as much as the evidence shows the case to have been landed from the ship upon the wharf, in the day time, with notice to the consignee of the discharge of the steamship, and inasmuch as the consignee failed to apply for the case within a reasonable time, the carrier is discharged, unless there be proof of negligence in the care and custody of the goods upon the wharf. But it is entirely plain that this mode of delivery was not attempted by the ship. Here was no delivery upon a public wharf. The steamship landed her cargo at a wharf owned by the steamship company, over which they maintained control, and where they had established a well known method of delivering cargoes. The wharf was inclosed, and in the inclosure was a place designated by the steamship company, and well known as the place, and the only proper place, for the deposit of all general order goods, in which place the employees of the steamship deposited all general order goods, and from which place they were taken by the government cartmen.

The case in question, which should have been deposited in this place, never could be found there, and there is no evidence that it ever went there. It was only after the lapse of a reasonable time after the deposit of the case in the proper place upon the wharf—if then even, under the method of delivery adopted by this steamship—that the liability of the carrier would terminate. No other place upon the wharf than the general order division of the wharf was the wharf within the meaning of the rule which makes landing upon a wharf, and the lapse of reasonable time to take the goods, equivalent to actual delivery.

A third ground of defence is based upon the phraseology of the bills of lading, but this is answered by the conceded fact that the ship obtained a general order for the cargo, and elected to deliver the cargo according to the system established on that pier.

These views make it unnecessary to consider whether, under the method of delivery adopted by this vessel, her liability as carrier for general order goods did not continue until the goods passed the gate leading from their inclosed wharf, where they had stationed a clerk who examined the loads as the carts passed out, took receipts if the goods were found correct, and turned back all goods not entitled to be taken by the cartman who was removing them. Nor is it necessary to discuss what lapse of time should be considered sufficient to terminate the ship's custody of goods, which she elects to deliver under a general order, when not the owner of the goods, but officials have the sole power to determine with what dispatch they will remove goods from the wharf.

In addition to these features of this case presented by counsel, there appears to me to be the further feature that the evidence affirmatively shows negligence on the part of the steamship in the care and custody of this case, after it was landed from the ship.

The evidence of the clerk of the steamship who had charge of the landing of this cargo is that he knew that the cases called for by this bill of lading were to be deposited in the general order division of the wharf, and that they were so marked while yet in the custody of the employees of the ship; and he also says that he saw one of the cases mentioned in this bill of lading, and which was believed by the employees of the vessel to be, and which doubtless was, the one now missing, in a place other than the general order division of the wharf, remaining out of any designated portion of the wharf, and standing with some goods of a passenger which were waiting for examination on the pier. There

the case remained nearly all day, and yet the clerk did nothing, and said nothing, and knows nothing of what became of it. In my opinion, considering the method pursued in landing this, cargo, the allowing such a case as this, after being marked for general order, to remain in such an irregular place for nearly a day, without calling attention to it, or directing its removal to its proper place, was negligence sufficient to render the ship liable upon that ground alone.

In either aspect of the case the decree must be for the libellant, with an order of reference.

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