

Case No. 13,552.

STRUVER V. THE RODERICK DHU.

[N. Y. Times, Nov. 29, 1854.]

District Court, D. New York.

Nov. 28, 1854.

BILL OF LADING—SHORTAGE OF
CARGO—EVIDENCE.

{The wharf being the place of delivery, evidence that 38 hogsheads of sugar, the full number called for by the bill of lading, were placed thereon, will exonerate the ship, as against evidence that only 37 hogsheads were received at the consignee's storehouse, whither his own cartmen conveyed them.}

{This was a libel by Charles Struver against the bark Roderick Dhu to recover the alleged shortage of cargo.}

Wright & Lane, for libellant.

Benedict, Scoville & Benedict, for claimant.

BY THE COURT. This suit is brought to recover the value of a hogshead of sugar alleged to have been shipped on board of the bark, but not delivered to the plaintiff. This was one of a parcel of thirty-eight hogsheads. It is admitted that thirty-seven of them were safely delivered, as also another parcel of seventeen, and the question is only as to the one remaining. This depends upon the question, where was the place of delivery? It is very evident that the wharf was the place. The parcel of seventeen was delivered there, and sold by the consignee to be taken from thence, and the consignee sent his own cartmen to the wharf to get the thirty-eight, and if they were safely delivered there, even if a loss occurred between the time when they were landed and the time when they were taken away, yet the carrier is discharged. The libellant's clerk says that only thirty-seven were received by the consignee, and that he was on the wharf and counted only thirty-seven. But two witnesses are brought who say that six days after the

arrival of the bark, and after all the other sugar had been taken away, and only a short time before the libellant's cartmen came for them, they counted the thirty-eight hogsheads on the wharf. I think that as the wharf was the place of delivery,—as the consignee sent there to receive the sugar,—the evidence is sufficient to show that they were all landed, that the libellant had notice that they were there, and that they were all there when the cartmen went down. If all the cartmen had been introduced, and had said that they had only carted away thirty-seven, it might go to show that these two witnesses were mistaken; but only one is brought up, and he says that only thirty-seven were receipted for at the storehouse; and that is not inconsistent with their testimony. As the evidence before me is very satisfactory that all the hogsheads were on the wharf just before the cartmen were sent “to take them away, it is sufficient to satisfy me that the 270 contract in the bill of lading was performed on the part of the bark. Libel dismissed with costs.

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