

STUART ET AL. V. BOYER.

[41 Hunt, Mer. Mag. 74.]

District Court, S. D. New York.

Jan. 25, 1859.

SHIPPING—LOSS OF CARGO—PROOF OF RECEIPT.

This was a libel filed [by Robert L. Stuart and others against Herman Boyer] to recover the value of 18 boxes of sugar belonging to the libellant, and alleged to have been put on board lighters belonging to the respondent, to be carried to Brooklyn from the ship Greenland, then lying at quarantine, but alleged not to have been delivered. The bills for landing the sugar called for 3,225 boxes. There were two lighters engaged in the transportation, and receipts for 3,225 boxes were produced on the part of the libellant, all of which were admitted by the respondent to be correct, except two, one for 510 boxes, and one for 408 boxes, which he claimed to have been altered after their signature by the master of the lighter; the first by the addition of the words "and ten," and the second, by the addition of the words "and eight." The mate of the Greenland was examined by deposition, and testified that those words were written before signature. The master of the lighter, who was examined in court, testified that they were not there when he signed them. The general character of both these witnesses for truth was not impeached. The master of the other lighter, who signed a receipt immediately under the receipt for the 510, testified that when he signed he examined the other receipt, and it was then but 500. As to the other receipt, it was in evidence that the lighterman was directed to bring only 400. The mate of the Greenland testified that after the 400 were put on board, and the receipt for that number drawn up, eight more, which had been used on deck as a staging, were put on the lighter, and the receipt altered in

this respect before signature. It was testified by several lightermen that the eight boxes were not so loaded as testified by the mate, but that they were put on the lighter to make up the 400, and before the boxes were counted by the mate and the lightermen. It was also testified by several witnesses, contradicting both the mates of the Greenland, that two boxes of sugar were lost overboard from the ship while being loaded on the lighter.

HELD BY THE COURT (BETTS, District Judge) that on the evidence the libellant has not shown that the respondent received on board of his lighters the 18 boxes claimed in the libel, and he is not, therefore, liable for their value.

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