

THE WILEY SMITH.

Case No. 17,657.  
[6 Ben. 195.]<sup>1</sup>

District Court, S. D. New York.

Oct., 1872.

BILL OF LADING—SALE OF CARGO—GENERAL AVERAGE.

1. The master of a vessel, which had been driven ashore by a peril of the sea, and got off, being unable to raise money to pay the salvage claims, sold a portion of the cargo for that purpose. *Held*, that the vessel was not liable for non-delivery of such cargo, under the bill of lading.
2. As the owners of the vessel offered to pay the amount of their contribution in general average, the holders of the bill of lading might recover such amount in this action, on the bill of lading.

This was an action by the consignees of a quantity of satin wood and mahogany, to recover for the failure of the brig to deliver part of it, in accordance with the bill of lading which she had given therefor. The owners of the brig set up, that, after the cargo was received on board, the brig was driven ashore by a peril of the sea, and was got off again, but, in doing so, part of the cargo in question was lost, and the vessel and cargo became liable for salvage, which the master was unable to pay, and, being unable to raise it on bottomry, he was compelled to sell the rest of the cargo in question, and that the vessel was, therefore, not liable for the non-delivery of the cargo; and they offered to pay to the libellants their contribution in general average.

T. Scudder, for libelants.

W. W. Goodrich, for claimants.

BLATCHFORD, District Judge. The evidence satisfactorily shows, that the vessel was driven ashore by a peril of the sea, within the exception in the bill of lading, and that, in taking the measures he did to save vessel and cargo, including the throwing overboard of such cargo as was lost thereby, and in selling what was saved from the cargo, the master acted in good faith, and under a sufficient necessity, for the best interests of all concerned, and with reasonable discretion. The libellants must, therefore, fail in their claim on the bill of lading, but they are entitled to avail themselves of the offer in the answer, made by the claimants, to pay their contribution in general average.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]