

HEWAT *v.* HAVEMYER.

District Court, E. D. New York. —, 1880.

DAMAGES TO CARGO—DRAINAGE OF SUGAR—FREIGHT.—Where a cargo of sugar was brought from Havana to New York in bags, and the consignees refused to pay the freight, alleging damage to the sugar by reason of bad storage, and careless delivery, to the amount of \$1,100, whereupon the master brought suit to recover his freight, *held* that upon the evidence the ship was not liable for any damage to the sugar which arose from unusual drainage, and not by fault of the ship, and therefore the master is entitled to his freight.

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Butler, Stillman & Hubbard, for Hewat.

Man & Parsons, for Havemyer.

BENEDICT, J. The weight of evidence is that the damage to the sugar in question arose from drainage of the sugar itself, for which the ship is not liable. But if the opinion of the claimant's witnesses, that the appearance of the sugar in the stained bags is indisputable evidence of contact with water, be taken to be correct, then the positive evidence in regard to the storage of the sugar, the dry condition of the ship, and the place where the stained bags were found, as to all which there is no dispute, warrants the inference that any contact with water, if it occurred, must have taken place before the bags were shipped, and was not disclosed on their outward appearance when shipped, in which case, also, the ship would not be liable.

There is a small charge of \$5.75 for sugar lost that is covered by the allegations in the answer, but I think the testimony that all the sugar received was delivered is an answer to this demand, in the absence of any evidence that any was lost overboard during the delivery.

The claim of a damage of four cents a pound on the "sweepings" can hardly be held to be covered by

the pleadings, but if it were, the proofs do not sustain it. The evidence is that the bags were handled with ordinary care, and in the method then usually pursued, and that the proportion of sweepings, though large, was not excessive. Whatever excess of sweepings there was, is fairly attributable to the condition of the bags and the description of sugar they contained, and is not chargeable to the ship. It is no part of the carrier's contract that sugar, which in handling necessarily runs out because the bags are not strong enough to endure ordinary handling, and must therefore be swept up from the hold, shall be delivered clean.

The libellants are entitled to a decree for the balance of freight unpaid, with interest and costs.

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