

STANDARD SUGAR REFINERY *v.* THE
SCHOONER CENTENNIAL.

District Court, D. Massachusetts. May 8, 1880.

VESSEL—UNSEAWORTHINESS OF—DEFECTIVE
LIMBERS.—A vessel sent upon a voyage with her limbers
in such defective condition as to prevent the water coming
in at a leak, opened during the voyage, from passing to the
pumps, until a large quantity of water had collected in the
hold, is unseaworthy, and liable for the damage caused to
the cargo by the presence of such water.

SAME—PAYMENT OF LOSS BY
UNDERWRITERS—NOT AN ADMISSION THAT
LOSS WAS NOT CAUSED BY VESSEL'S
UNSEAWORTHINESS.—Payment of a loss by the
underwriters in such case is no admission by them that
such loss was not caused by the unseaworthiness of the
vessel.

Henry M. Rogers, for libelians.

C. T. and *T. H. Russell*, for claimants.

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NELSON, D. J. This is a libel *in rem* against vessel
and freight for failure to deliver goods according to
the terms of a bill of lading. It appears by the bill of
lading and indorsements thereon that in May, 1879,
the schooner Centennial, then lying in the port of
Cardenas, in the island of Cuba, bound for Boston,
received on board, in good order and well conditioned,
500 hogsheads of sugar, to be delivered in like good
order and condition (the dangers of the seas only
excepted) to the libellants, at Boston, they paying
freight for the same. On her voyage to Boston she
sprung a leak, and a considerable portion of the sugar
was destroyed by the action of sea water. The question
in the case is whether the loss arose from dangers of
the seas, within the exception in the bill of lading, or
from the unseaworthiness of the vessel.

The Centennial is a three-masted, two-decked,
center-board schooner, of 554 tons register. Her length

is 135 feet on her keel, her breadth of beam 35 feet, and her draft of water when loaded is 13½ feet. She sailed from Cardenas May 27th. In her passage through the straits of Florida she encountered the cross seas usually met with in that region, which caused her to labor heavily, owing to her great length and breadth of beam as compared with her light draft, a peculiarity common to center-board vessels of her class. Her after-pumps were regularly tried or sounded once in four hours, from the time she left Cardenas until she arrived off Cape Hatteras, June 3d, without disclosing the presence of water, when all at once it was discovered that she had seven and a half feet of water in her hold. As soon as this was known her course was immediately changed, and she proceeded to Philadelphia, her home port, where she was pumped out and her cargo discharged. She was then placed in a dry-dock and examined, and it was ascertained that she had suffered no strain in her timbers and planking, but that her seams were generally slack, and a space seven inches long was found in the seam next the garboard streak, at about the center of the hull, where the oakum was entirely gone. She was then newly caulked throughout, her cargo reloaded, and she proceeded to Boston with what was left of her sugar.

I have no doubt the schooner was light when she left Cardenas, and that the leak was caused by her heavy laboring in the straits of Florida. The quantity of water in the hold would indicate that the leak had existed for several days before it was discovered. It was proved, from what occurred afterwards, that had its existence been known in season the vessel could easily have been kept clear by pumping; for after the leak became known the crew were able, by pumping all hands at both forward and after pumps for 11 hours, to lower the water in the hold two feet, and afterwards the water was kept at that level by the use

of the forward pumps alone until the vessel reached Philadelphia. So it appears that the damage to the sugar was caused not merely by the leak, but by the failure to discover it until the injury was done.

It seems to me if this vessel sailed from Cardenas in a condition by which water could enter and accumulate in her hold by leaking to a depth of seven and a half feet, without showing itself in the pump well, she was not fit to undertake the voyage; and it is certain she did leave Cardenas in that condition, unless the theory put forward by the claimants to account for what took place can be established. They have attempted to account for it upon the theory that the drainage of the sugar leaking through the hogsheads and the ceiling of the vessel and settling about the bottom of the timbers stopped up the limber-holes, and thus prevented the water from passing to the pumps.

Very little evidence was offered to sustain this theory. It does not seem to me probable, in the short space of time which elapsed between the loading of the vessel and the springing of the leak, the drainage could have accumulated in such quantities, or could have become sufficiently solid, to produce the result claimed. That the limber-holes were stopped there can be no doubt, but that it was by the molasses draining from the sugar casks seems to me impossible. But it does appear that the Centennial's voyage to Cardenas was from an English port, with a cargo of coal, and that the limber-holes were not examined or cleared out at

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Cardenas, after the discharge of the coal, and before the loading of the sugar. It is much more probable that the limbers were stopped by coal than by sugar or molasses. At all events, I do not think they are shown to have been stopped by the latter.

I must, therefore, hold that the schooner was not fit for the voyage, and was unseaworthy, on account

of the defective condition of her limbers, and that this caused or contributed to the damage to the sugar.

It appears that the loss on this sugar has been paid by the underwriters, and this suit is prosecuted for their benefit; and it is argued on the part of the claimants that the payment is an admission that the loss was not caused by the unseaworthiness of the vessel. But all the authorities are opposed to this claim, and it cannot be sustained. *Monticello v. Mollison*, 17 How. 152; *Insurance Co. v. The C. D. Jr.* 1 Wood, 72; *The Amazon Ins. Co. v. The Steamboat Iron Mountain*, 4 Cent. L. J. 103.

The entry is to be: Interlocutory decree for libellants.

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