THE NEDERLAND.*

District Court, E. D. Pennsylvania. June 14, 1881.

1. COMMON CARRIER—INJURY TO PASSENGER—LATENT DEFECTS IN MACHINERY.

A steam-ship company is bound to observe the highest degree of care for a passenger's safety, but is not responsible for accidents resulting from latent defects in machinery and not avoidable by such care.

2. SAME.

A passenger on a steam-ship was injured by the fall of a boom caused by the drawing out of the shoulder of a swivel-hook from the band surrounding the block to which it was attached. It appeared that the accident must have resulted from a defect in the shoulder not discoverable by inspection of the block. *Held,* that the steamship was not liable.

Libel to recover damages for injuries suffered by libellant through an accident to the tackle of respondents' vessel. The facts were as follows:

During a voyage of the steam-ship Nederland, while the ship's crew were in the act of setting the fore try-sail, the shoulder of the swivel hook of the lower block, attached to an eyebolt in the deck, drew out from the iron strap surrounding the block, and caused the boom to fall to the deck. The libellant, who was a passenger, and who was rightfully on the deck at the time, was struck by the boom and injured. The libellant contended that the block had not been properly overhauled and examined; that the swivel was not kept oiled, but allowed to rust, and that the drawing out of the shoulder was due to this cause. The respondents alleged that the block was apparently in good condition, and that the accident could have resulted only through some defect in the shoulder not discoverable by inspection of the block. There was some evidence of a request to passengers before the accident to move from the position occupied by libellant, but it was not shown that he was warned of

any danger of accident, or that he heard or understood the request to move.

927

In Admiralty.

D. Cowan, M. Veale, and *J. Warren Coulston,* for libellant.

Henry G. Ward and *Morton P. Henry,* for respondents.

BUTLER, D. J. No debatable question of law is involved. The contract imposed on respondent an obligation to observe the highest degree of care for the passenger's safety. For accidents which could not be avoided by such care, (resulting from latent defects in machinery, or other similar cause,) he was not responsible. He was not an insurer. The law is well stated in *Meyer* v. *Railroad Co.* 14 P. F. Smith, 222.

Here the accident resulted from the "shoulder of the swivel drawing out of the block." So the witnesses testify, and so the libellant says in his "statement of facts." This could only occur by reason of some defect in the shoulder; and the shoulder being imbedded in wood, and covered by the iron strap, (which was permanently affixed thereto,) this defect could not be discovered. The impossibility of such discovery is shown not only by the testimony of the witnesses, but also by inspection of the block. It cannot be urged that the block was liable to such an occurrence, (as the shoulder drawing out,) because of its peculiar construction, and, therefore, an improper one; for the evidence shows that the drawing out of the swivel, in similar blocks, had never occurred before, to the witnesses' knowledge, and that the block is such as is in common use. It follows from what has been said that the respondent is not liable for the complainant's injury.

While the question of contributory negligence, which was discussed by counsel, is rendered unimportant by the conclusion reached, I, nevertheless,

deem it proper to say, (as the case may not rest here,) that I have found no evidence of negligence in the libellant, contributing to his injury. If his situation on deck, at the time rendered him liable to injury from such an accident as occurred, it was the respondent's duty to remove him, or distinctly warn him of his danger, before attempting to draw up the sail. It is clear, however, that no such danger was, or could be apprehended. The request made of passengers to move, was simply to save them from 928 possible inconvenience, from the moving ropes and sails, and to get them out of the way. If the libellant heard and understood the request, (which is very doubtful,) he took the risk of such inconvenience in remaining, but nothing more. If greater risk was involved, (such, for instance, as of the block giving way,) I incline to believe the respondent should be held liable for failing to remove the libellant, or to see that he distinctly understood the warning and the danger.

A decree will be entered dismissing the libel with costs.

I will add here what I had intended to say above,—that if there was failure, (as the libellant asserts,) to keep the swivel oiled, this could not, in my judgment, have contributed to the shoulder drawing out; and the question whether there was, or was not, such failure, is, therefore, unimportant. The testimony of the witnesses, who have spoken on the subject, however, is that the block appeared to be in good order in all respects.

* Reported by Frank P. Prichard, Esq., of the Philadelphia bar.