

may be found by the court, or, if the parties consent, by a jury. But I think the provisions regarding trials by jury in the seventh amendment apply only to common-law juries, and that upon appeal the case stands for trial here precisely as if tried by the court. The introductory words of the amendment, "in suits, at common law," indicate very clearly that the jury spoken of in the amendment is a common-law jury.

In *Parsons v. Bedford*, 3 Pet. 433, it was held that suits at common law, within the meaning of this amendment, include not merely modes of proceeding known to the common law, but all suits not of equity or admiralty jurisdiction in which legal rights are settled and determined. In delivering the opinion Mr. Justice Story remarked that "it is well known that in civil causes in courts of equity and admiralty juries do not intervene, and that courts of equity use the trial by jury only in extraordinary cases to inform the conscience of the court. * * * In a just sense, the amendment, then, may be well construed to embrace all suits which are not of equity or admiralty jurisdiction, whatever may be the peculiar form which they may assume to settle legal rights." So, in the *Justices v. Murray*, 9 Wall. 274, where it was decided that the amendment prohibiting the facts tried by a jury to be otherwise re-examined than according to the rules of the common law applied to facts tried by a jury in a case in a state court, there was no hint that the clause applied to any other than common-law cases. Whether the jury allowed in this class of admiralty cases is anything more than advisory to the district court, as are juries in chancery cases, I do not deem it necessary to express an opinion.

THE C. B. SANFORD.

(District Court, D. Massachusetts. October 26 1882.)

TUG—NEGLIGENCE—Loss of Tow.

A tug having two tows on long hawsers, in rounding a dangerous island, for not going further to the eastward, and for allowing her hawsers to slacken so that she lost all control over her tow, was in fault and should be condemned for the loss of the tow, which drifted on a reef and sunk.

C. T. Russell and *C. T. Russell, Jr.*, for libelants,
J. C. Dodge and *E. S. Dodge*, for claimants.

NELSON, D. J. Libel filed against the steam-tug *C. B. Sanford* for alleged unskillful towage of the barge *Metropolis*. It appeared that

the tug was engaged by the master of the *Metropolis*, at New York, on the fourteenth of June, 1881, to tow her from Jersey City to Providence. The tug started on the voyage on the afternoon of the same day, with another barge called the *Dunderberg*, destined for Fall River, first in tow, and the *Metropolis*, having on board a cargo of 700 tons of coal, second in tow. The hawser of each barge was 90 fathoms in length. On the afternoon of the 15th, the tug with her two tows entered Mount Hope bay, intending to leave the *Metropolis* at anchor in Bristol harbor while she proceeded with the *Dunderberg* to Fall River, and afterwards, to return and take the *Metropolis* up to Providence. In rounding Hog island, which forms the west side of the entrance to Mount Hope bay, the *Metropolis* struck on a submerged rock known as Hog island reef, which extends out from the south-easterly point of Hog island, and immediately filled and sunk.

The evidence was clear that the effect of making the circuit round the point of Hog island, after passing the light-ship, was to lessen the headway of the tug in the direction in which the tows were proceeding. The hawsers were thus slackened and the control of the tug over the tows lost. The consequence was that the *Metropolis*, being left without the support of the tug, was driven by the strong ebb-tide which was then running down from Mount Hope bay and Bristol harbor directly upon the shoal. This is the evidence of the master and mate of the *Metropolis*; and in this they are supported by the master of the *Dunderberg*, who saw the whole transaction and was called as a witness by the claimants.

The accident would have been avoided if the tug had kept further on her course after passing the light-ship before turning to the northward; or if she had passed the light-ship further to the eastward, where there was plenty of room, and the depth of water was ample; or if she had shortened the hawsers of the tows before making the turn. The tug was bound under the circumstances to take one or the other of these precautions against this accident, and for failing to do so she was in fault and should be condemned.

Interlocutory decree for the libelants.

HUBERT and others v. RECKNAGEL and others.

(District Court, S. D. New York. August 26, 1882.)

1. CHARTER-PARTY—SEAWORTHINESS.

Under the usual covenants of a charter-party that the vessel is "tight, staunch, and strong," the owners are answerable for *latent* as well as visible defects whereby the cargo is damaged.

2. SAME—LATENT DEFECTS—DAMAGE TO CARGO.

Where a cargo of coffee was damaged through a leak in the deck of a brig 13 years old on a voyage from Rio, and the evidence showed a "middling passage," with rough seas, but no extraordinary perils for the season, and the vessel on arrival exhibited no signs of general strain, or any material loss of spars or sails, and probable causes of imperfection in the deck appearing, the leakage should be ascribed to the latter causes, and the owners held answerable for the damage, notwithstanding general evidence of thorough repair at the port of departure.

In Admiralty.

This libel was filed to recover \$1,274 freight alleged to be due under a contract of affreightment for the carriage of 5,000 bags of coffee on the brig Magnet from Rio de Janeiro to New York. The answer alleged damage by water to 839 bags of coffee, to the amount of \$1,300, through the unseaworthiness of the vessel in not being tight, staunch, and strong, as warranted by the charter.

Hill, Wing & Shoudy, for libelants.

Blatchford, Seward, Griswold & Da Costa, and *S. A. Blatchford*, for respondents.

BROWN, D. J. The evidence shows clearly that the damage to the coffee came from leakage through the deck; and the only question is whether this leakage arose from extraordinary perils of the sea after leaving Rio, or from a defective condition of the deck at the time of her departure. The Magnet was a single-decked brig of 283 tons, built in Germany in 1867. In January and February, 1879, she was thoroughly overhauled and repaired at Hamburg, and received a first-class certificate (33 A 11) for six years. It does not appear that her deck was renewed. On her voyage from Liverpool to Rio, immediately preceding the present charter, she met with very heavy weather, during which her maintop-mast was broken off, carrying away all her main yards, and the royal yard in its fall injured the deck. At Rio she was undergoing repairs for six weeks, and her decks were there repaired and recaulked throughout. She sailed from Rio on the fourteenth of December, 1879, and arrived at Hampton Roads on January 30, 1880, where she awaited orders, and thence proceeded