

## THE SOPHIA HANSON.\*

(District Court, E. D. New York. March 24, 1883.)

1. TOWAGE—UNCONSCIONABLE AGREEMENT.

The court will not enforce an agreement to pay an unconscionable sum as towage made between the master of a schooner aground and the tug that pulled her off.

2. SALVAGE—AGREEMENT TO PAY.

An agreement by such master to pay such sum for a salvage service is not conclusive, and is to be considered in connection with the other facts bearing upon the question as to the nature and value of the service.

3. SAME—AMOUNT.

Five hundred dollars was awarded as a salvage compensation to a tug for pulling a schooner, valued at \$10,000, off a bank in the harbor of New York, where she had grounded, on an ebb-tide, in fine weather, there being no danger to the tug, and the service taking only a few hours.

In Admiralty.

*Beebe, Wilcox & Hobbs*, for libellant.

*Hall & Harvey*, for claimant.

BENEDICT, J. If this action was based upon a contract made between the master of the schooner that grounded on the west bank, and the tug that pulled her off, as a contract for towage, the libellant could not recover, for the reason that the court would not enforce an agreement to pay \$1,000 for a few hours of ordinary towage service, such an agreement being clearly unconscionable. But the action is not based upon contract. The claim rests upon a salvage service performed. In such an action the agreement of the master to pay \$1,000 for the service is by no means conclusive on the question of the amount of salvage to be awarded. The agreement made is to be considered in connection with the other facts bearing upon the question as to the nature and value of the service, and that is all.

Looking at all the circumstances, I am of the opinion that the master of the schooner was too liberal in his views of the value of the service rendered to his vessel. That service consisted simply in pulling the schooner off the west bank, where she had grounded on an ebb-tide, having missed stays. No danger was incurred by the tug in performing the service, nor any damage sustained. The weather was fine, and the damage to the schooner was not great. The value of the schooner and her cargo was about \$10,000. I con-

\*Reported by R. D. & Wyllys Benedict.

sider \$500 to be a liberal salvage compensation to be paid by the schooner and the cargo, in proportion to their respective values.

As no tender of any sum was made, the libelant must recover his costs.

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TURNBULL and others v. CITIZENS' BANK OF LOUISIANA.

(Circuit Court, E. D. Louisiana. February, 1883.

1. USAGE—CHARTER-PARTY.

Evidence of usage is admissible to explain what is ambiguous in a charter-party, but is inadmissible to vary or contradict what is plain.

2. CHARTER-PARTY—DELIVERY OF CARGO.

Where the contract declares that the consignees are to take the cargo "from along-side," that means that it is to be taken from where the ordinary appliances of the ship would leave it in discharging,—“at the end of the ship's tackle," on a wharf, if the ship was discharging at a wharf; on a lighter, if the ship could not reach a wharf and was discharging in the stream.

3. SAME—IMPOSSIBLE CONDITION.

Where the liability of the vessel is limited by a condition impossible of execution, such condition becomes nugatory, the same as not written, and the general liability of carriers for the non-delivery of freight attaches.

See *Turnbull v. Blocks of Marble*, 9 FED. REP. 320.

Admiralty Appeal.

*E. W. Huntington* and *Horace L. Dufour*, for libelants.

*M. M. Cohen* and *A. Pitot*, for defendants.

PARDEE, J. Libel *in personam* for balance of freight and for charges. Cross-libel for short delivery. Bill of lading on the *Fife-shire*, from Glasgow to New Orleans, for 117 tons of pig iron in the usual form, with the following added:

“The said master hereby acknowledging having received the full weight of iron herein specified, the same having been weighed along-side at shipment, and holding himself and the said vessel bound to deliver the same weight of iron, provided it be weighed along-side at discharging. No iron to be retained by the vessel. The pig iron to be taken from along-side and discharged at the rate of 250 tons per running day, (Sundays excepted,) or demurrage to be paid at the rate of 25 pounds sterling per day.”

At this port (New Orleans) the iron could not be unloaded and piled on the wharf on account of wharf regulations prohibiting it, so that the ship was obliged to have it trucked across the wharf to *terra*

\*Reported by Joseph P. Hornor, Esq., of the New Orleans bar.