

possible to have weighed the iron along-side. It was so weighed, and therefore that clause became no more the same as not written,—and the general liability of carriers for delivery of freight attached.

Under the evidence there can be no doubt of the short delivery of the 117 tons of iron. Whether it was not all put aboard, whether it was lost on the voyage, whether it was all discharged, whether it was lost after discharging and before delivery on the earth-work, or whether the ship has some other valid excuse, it is incumbent on the owners to show. Non-delivery of the goods shipped by a carrier makes a *prima facie* case of liability against the carrier, and liability is not avoided by the evidence in this case.

The libelants should recover the balance due for freight, \$11.70, and the charges for trucking the iron, \$11.70, but from this amount should be deducted the agreed value of the iron not delivered, \$269.80, and this leaves a judgment for libelants of \$11.70 cents on the whole case. The libelants should pay the costs of this court, and the respondents those of the district court. So ordered

---

#### THE EXCELLENT.\*

(Circuit Court, E. D. Louisiana. April, 1883.)

##### STOWAGE.

Where the great bulk of the cargo of a vessel consisted of iron rails, steel, and tin in boxes, and that is stowed in the bottom of the vessel, the iron rails being stowed first and in block, fore and aft, and locked together, such storage was bad, and increased the labor and strain of the vessel in heavy weather, and the vessel is liable for damages resulting therefrom to other cargo.

##### Admiralty Appeal.

*Joseph P. Hornor* and *Francis W. Baker*, for libelants.

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

PARDEE, J. The evidence in this case shows that libelants' goods were damaged to the extent claimed in the libel while in the possession of the respondent as carrier. The evidence is equally certain that the damage resulted from the shifting of part of the cargo and water. The shifting of the cargo and the water was caused by the excessive straining and laboring of the ship, though it would seem that the shifting of the boxes of tin plate was directly attributable to bad

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

stowage. The libelants' evidence shows that the straining and laboring was due largely to the wrong stowage of railroad iron in block in the bottom of the ship. The claimant's evidence tends to show that the cargo was stowed in the usual way for miscellaneous cargo, and that the straining and laboring of the ship was caused by the extremely heavy weather she encountered on the voyage to this port. An analysis of the evidence is not necessary; the preponderance is in favor of the libelants. There is no dispute that the great bulk of the Excellent's cargo was iron and steel and tin, some 1,220 tons, and that this was all stored in the bottom of the ship; the iron rails (some 730 tons) being stowed first in block, fore and aft, and locked together. And there can be no doubt that such storage increased the labor and strain of the ship in the heavy weather encountered during the voyage. The very best claim that can be made from the evidence in favor of claimant is that the whole evidence leaves the matter in doubt as to the real cause of the damage. The loss or damage in this case being established,—and the evidence is clear on that,—the presumption of the law is that it was occasioned by the fault of the carrier, and the burden is on him to show that it was occasioned by a cause for which he is not responsible. The carrier has not shown that the damage was caused solely by the heavy weather, as he claims, or that he was excusable.

A decree should go for the libelants to the same effect as that rendered in the district court, with interest from judicial demand.

In this case I have consulted Stevens on Stowage to advantage.

---

### THE FRANCONIA, her Tackle, etc.

(Circuit Court, S. D. New York. March 13, 1883.)

#### 1. COLLISION — BOTH VESSELS IN FAULT—SUIT BY STRANGER — PROCEEDING JOINTLY OR SEVERALLY—APPORTIONMENT OF DAMAGES.

Where a tow attached to a tug is sunk by a collision brought about by the concurrent negligent acts of the tug and another vessel, the owner of the innocent tow or its cargo may proceed against the two vessels jointly, or either one of them severally, to recover his entire damages, and no apportionment of the loss between the offending vessels will be made, but the owner of the tow or its cargo may resort to either or both of the offenders for his whole loss.

#### 2. SAME—EVIDENCE.

As the evidence in this case shows that while the tug was *grossly in fault* the other vessel contributed to the injury by her conduct she is liable to the owner of the tow and its cargo for his loss.