

In the present case the bond executed by Crowley for the return of the vessel, or the deposit of money in the registry sufficient to cover Hawkins' claim, supersedes all questions relating to a sale.

The schooner having been lost since her delivery by the marshal to Crowley on his bond for her re-delivery if ordered, she cannot now be returned to the possession of the marshal or of Hawkins according to the stipulation given by Crowley; and the sureties in his bond, Crowley being dead, must therefore deposit in the registry the amount found due to Hawkins, with interest and costs. This deposit, it was ordered, should stand "subject to the same claim or lien which Hawkins then had, if any, against the vessel." It was to be a security for his lien, if he was adjudged to have any. The court has adjudged that he had a lien on the schooner; and the amount required to be deposited to cover his claim, when that amount is ascertained, must, after its deposit, be delivered to Hawkins, as the vessel itself would have been delivered had she been still in custody.

If the amount due to Hawkins is not agreed on, an order of reference may be taken to ascertain the amount.

THE POLYNESIA.*

(*District Court, E. D. New York. March 31, 1883.*)

BILL OF LADING—PERIL OF THE SEA—BURDEN OF PROOF.

The burden of proof is on a ship to show that damage to a cask, which formed part of its cargo, arose from a peril of the sea; and in the absence of testimony that the cask got loose during the voyage owing to heavy weather, or was stowed where it could have been injured by cargo that did get loose, or that it was not injured in discharging, the ship was held liable.

In Admiralty.

This was an action brought by Cohn, Lazarus & Co., of New York, against the steam-ship *Polynesia*, to recover damages alleged to have been caused to a cask of hair-bridles, shipped on said steam-ship at Hamburg, Germany, and transported to New York, arising from bad stowage and want of proper care on the part of those in charge of the steam-ship. The claimants alleged that if any such damage occurred it was due to a peril of the sea, and within the exceptions of the bill

*Reported by R. D. & Wyllys Benedict.

of lading. The stovedore who discharged the cask at New York was not produced as a witness.

Abbett & Fuller, for libelant.

Ullo & Davison, for claimant.

BENEDICT, J. The bill of lading, stating as it does that the cask therein described was in good order when shipped, coupled with proof that when the cask was delivered the head had been out and replaced, and some of the contents of the cask were missing, casts upon the ship the burden of showing that the bursting out of the head and consequent loss of contents from the cask arose from a peril of the sea. The only evidence tending to show this is testimony to the effect that heavy weather was experienced during the voyage, and that some barrels and boxes of the cargo got loose. There is no direct evidence that the cask in question got loose, or that it was stowed where it could have been injured by other cargo that did get loose, nor is there any testimony from which it can be properly inferred that such was the fact. For all that is proved, the injury to the cask may have been caused by a fall from the slings in discharging. In this state of the proofs, the right of the libelant to recover the damage caused by the breaking of the cask and loss of contents is clear.

Let a decree be entered for libelant, with an order of reference.

THE GEORGE L. GARLICK. (Two Cases.)*

District Court, E. D. New York. April 26, 1883.

LOSS OF BOATS IN TOW IN A SQUALL—MASTER'S PREVIOUS ERROR OF JUDGMENT AS TO WEATHER.

A tug was held not liable for the loss of boats in its tow in a squall, where the evidence failed to prove the state of the weather a short time before, the time the master determined to proceed on the voyage, to have been such as to make such determination an omission to exercise due care in the management of the tow, instead of an error of judgment.

In Admiralty.

J. A. Hyland, for libelants.

Owen & Gray, for claimants.

BENEDICT, J. After a careful examination of the evidence in the two cases above named, that of O'Rourke and that of Buckley, I

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