

by the negligence of the defendants or their servants. The proof, indeed, is that the libelants' goods were destroyed by fire which broke out upon the defendants' pier, where the goods were at the time stored. But proof of the occurrence of fire in goods upon the defendants' pier does not raise the presumption that the fire was caused by negligence either of the defendants or their servants, or any one else, (*Whitworth v. Erie Ry. Co.* 87 N. Y. 413,) and if, in the absence of any other ostensible cause, it is in this case to be presumed that the fire which broke out in the oakum on the defendants' pier was communicated to the oakum from a torch which the proof shows was being used at the time by the watchman of the pier for the purpose of lighting up the pier, still, proof of negligence on the part of the watchman is wanting. It was lawful and necessary for the watchman to light up the pier at the time he did, and to go near the oakum with the torch as he did, and fire might have been communicated from the torch to the oakum by a spark, or otherwise, without any negligence on the part of the person using the torch. In order, therefore, to find in the testimony proof that the fire was caused by negligence of the watchman, it is necessary to accept as true the narrative of the witness Rahman and his wife, called by the libelants to show the origin of the fire. But I am unable to accept that narrative as true, and rejecting that testimony leaves the libelants' charge of negligence to rest upon the inference that the cause of the fire was a negligent use of the torch by the watchman who was using it, drawn from the fact that the torch was being used at the time the fire broke out. Such an inference appears to me unwarrantable. I am unable, therefore, to find in the testimony proof that the loss of the libelants' goods was caused by negligence of the defendants or their servants.

For these reasons the libel is dismissed, and with costs.

See *Straus v. Wilson, infra*.

STRAUSS v. WILSON.¹

(*District Court, E. D. New York.* June 6, 1883.)

COMMON CARRIER—WAREHOUSEMAN—DESTRUCTION OF GOODS BY FIRE—NEGLIGENCE—BURDEN OF PROOF.

In an action brought to recover the value of goods destroyed under circumstances similar to those described in *De Grau v. Wilson, ante*, 698, except that on the Friday before the fire the libelants' truckman went to the pier, but did not take the goods because he was told by the delivery clerk that the whole cargo was not then discharged, but would be during the day, and no effort was made to remove the goods on that day or the next, although they were then on the pier ready to be removed, and could have been removed, held, that at

¹Reported by R. D. & Wyllys Benedict, of the New York bar.

the time of the destruction of the goods they were in the possession of the defendants as warehousemen and not as common carriers, and that, in the absence of proof that the fire was caused by the negligence of the defendants or their servants, the liability of the defendants had not been made to appear, and the libel was dismissed.

In Admiralty.

Anderson & Howland, for libelants.

Foster & Thomson, for respondents.

BENEDICT, J. This action is brought to recover of the owners of the steam-ship *Rialto* the value of 44 cases of chinaware, transported in that vessel from Hull to New York, and destroyed by fire at the time of the destruction of the *Eagle* pier, in November, 1881. The testimony in the case respecting the origin of the fire which destroyed the goods is the same as in the action of De Grau against the same defendants, (*ante*, p. 698.) The two cases having been tried together, what has been said, therefore, in deciding the case of De Grau upon the question of negligence is applicable in this case. There is, however, some difference between the two cases in the facts connected with the delivery of the goods. In the present case it appears that the goods could be removed in two truck-loads. They came out of the ship and were duly landed on the *Eagle* pier, on Thursday, November 3d, and were in all respects ready for delivery at the close of business on that day. On that day, also, the libelants entered their goods at the custom-house, and sent to the ship a permit for their landing. On Friday the libelants gave orders to their truckman to remove the goods. The truckman accordingly, on Friday, went to the pier, but did not take the goods, because, as he says, he was told by the delivery clerk that the whole cargo was not then discharged, but would be during that day. No inquiry was made for the goods at that time, nor any effort to remove them, although they were then upon the pier, ready to be removed, and could have been removed on that day. No attempt was made to remove the goods on Saturday, but they were allowed to remain on the pier over Saturday, and until the afternoon of Sunday, when they were burned. It thus appears that the consignees had actual notice that the goods would be upon the pier on Friday, and had more than a reasonable time to remove them before the fire occurred.

These facts compel the conclusion that at the time of the destruction of the goods they were in the possession of the defendants as warehousemen, and not as carriers. The case is stronger than the case of *Richardson v. Goddard*, 23 How. 28, where the supreme court held that a deposit of cotton in proper order, made with the knowledge of the consignee, upon a pier at midday, on a week-day, in good weather, constituted a good delivery, and the ship-owner was, therefore, not responsible for the destruction of the cotton by fire on the following night.

In this case, then, as in the previous case against the same de-

endants, it must be held, in the absence of proof that the fire was caused by the negligence of the defendants or their servants, the liability of the defendants has not been made to appear.

Let a decree be entered dismissing the libel, with costs.

BOURNE v. ROSS.

(Circuit Court, D. Massachusetts. August 25, 1883.)

SEAMEN'S WAGES—SUIT IN ADMIRALTY—ATTACHMENT FROM STATE COURT.

The right of a seaman to sue in admiralty in personam for his wages is not taken away or suspended by an attachment of his wages by trustee process from a state court in an action at law.

Ross v. Bourne, 14 Fed. Rep. 858, affirmed.

In Admiralty.

E. L. Barney, for Bourne.

C. T. Bonney, for Ross.

LOWELL, J. To the reasons given by NELSON, J., in *Ross v. Bourne*, 14 FED. REP. 858, for entering a decree for the libellant, I assent. I have given my view of the law relating to attachments in a foreign jurisdiction in a late case in the district of New Hampshire. *Lynch v. Hartford Ins. Co.*, ante, 627. As a general rule such attachments should be respected out of comity; but the attachment of seamen's wages is so unusual that it has been held to be impossible by Judge BENEDICT, in *The City of New Bedford*, 4 FED. REP. 818; and though Mr. Justice GRAY has doubted the reasoning and conclusions of that case, in a very learned opinion from which I do not dissent, (see *Eddy v. O'Hara*, 132 Mass. 56,) still, I am of opinion that comity does not require us to hang up a summary action in the admiralty in favor of a seaman, to await the dilatory proceedings in a court of common law. In ordinary cases I should be inclined to go further than most of the courts have gone in the direction of comity. I have always regretted the narrow rulings in favor of domestic attachments as against foreign bankruptcies and assignments, especially when neighboring states are treated as foreign; but the present case is one in which the admiralty court is bound to give that prompt and speedy justice which is one of the principal reasons for its existence. Decree affirmed.