

cargo, and it also appears that there was time before she sailed to have landed all the oranges in suitable weather and taken in all the outward cargo that she had to take. In this instance, therefore, there was no necessity to discharge the oranges when she did, to enable the steam-ship to keep her appointment. The oranges in question were shipped under two bills of lading, differing from each other in some particulars, but, in the view I have taken of the case, they are alike in legal effect, so far as regards the libellant's demand, and under any aspect in which I have been able to consider them, they do not relieve the steam-ship from responsibility to the libellant for the destruction of his fruit. There must therefore be a decree in favor of the libellant. The amount of his damages will be ascertained by a reference.

Let a decree be entered accordingly.

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THE GEISER.<sup>1</sup>

(District Court, E. D. New York. March 4, 1884.)

DAMAGE TO CARGO BY HEAT FROM STEAM-PIPES—BILL OF LADING—CONSIGNEE'S RIGHT OF ACTION—ADVANCES.

Where cabbages were stowed in the between-decks of a steam-ship, and were injured by heat from steam-pipes placed around the room where the cabbages were, for the purpose of warming the room when used, as it was intended, for steerage passengers, and it appeared that, the pipes being new and in some places obstructed, extra steam was put on in them to keep the chart-room warm, *held*, that the vessel was negligent and liable to the shipper for the damage done; that, though the shipper had expressed himself satisfied to have the cabbages stowed as they were, he could not be supposed to have assented to the pipes being unduly heated as they were; that the fact that the consignees who sued on the bill of lading had afterwards been paid their advances, did not destroy their right of action upon the contract.

In Admiralty. Action on bill of lading by consignee of cargo.

*Clarence Cary*, (Alex. Cameron, counsel,) for libellants.

*Jas. K. Hill*, *Wing & Shoudy*, for claimants.

BENEDICT, J. This action is to recover for non-delivery in good order of a consignment of cabbages shipped in Copenhagen, on board the steam-ship Geiser, to be transported therein to the port of New York. The cabbages were stowed in the between-decks, and upon their arrival in New York a large portion of them were decayed, being then, according to the witnesses, about the consistency of soup. This condition of the cabbages was not owing to their condition when shipped. Then they were hard and sound. Nor was it owing to an unusually severe voyage. Quantities of cabbages in various vessels have endured a voyage of equal severity without decay or injury.

<sup>1</sup> Reported by R. D. & Wyllys Benedict, of the New York bar.

What destroyed the cabbages in this instance was heat developed in steam-heating pipes which were placed around the room, in which the cabbages were stowed, for the purpose of warming the place when used, as it was intended to be used, for transporting steerage passengers. On this voyage these pipes were kept unduly heated, whereby the place was kept hot. I incline to the opinion that it was negligence on the part of the ship to have any steam in these pipes so long as the cabbages were stowed near there; but, however that may be, certainly it was negligence to heat the pipes as the proof shows they were heated on this occasion. The fact is that the steam-pipes of the ship, being new, were in some places obstructed, and in an effort to keep the chart-room warm by putting on extra steam, an extraordinary heat was developed in the pipes where they ran by the cabbages. And although the cabbages were nearly cooked by these pipes, and the ship filled with the odor, the presence of extraordinary heat in the pipes does not seem to have been discovered until the arrival of the vessel in New York. Ordinary diligence would have disclosed the fact that in the effort to keep the chart-room warm the pipes running by the cabbages were being unduly heated; and, under the circumstances, it was negligence to apply great heat to the cabbages, for which the ship is responsible.

There is nothing in the point that the shipper expressed himself satisfied to have the cabbages stowed as they were. He had, as I think, the right to suppose that the pipes would not be heated at all, so long as the room was used to stow cabbages. At any rate he cannot be supposed to have assented to the pipes being unduly heated as these pipes were.

The right of the libelants to maintain their action has not been successfully disputed. The contract sued on was made with them. The cabbages were consigned to them, and they had at that time an interest in them to the extent of their advances. The fact that since the contract was made they have been paid their advances does not destroy their right of action upon the contract made with them.

There must be a decree for the libelants, with an order of reference to ascertain the amount of the loss.

## THE AMERICAN EAGLE.

(District Court, N. D. Illinois. March 3, 1884.)

## MARITIME LIEN—ASSIGNMENT OF DEBT.

A maritime lien passes to an assignee of the debt.

In Admiralty.

*W. G. Beale*, for libelant.

*Schuyler & Kremer*, for respondent.

BLODGETT, J. This case comes before me at this time upon exceptions to the libel. The libel is filed by the assignee of the material-man who furnished the materials for repairing the tug, and who has assigned his claim to the libelant, who now seeks to enforce the lien of the material-man upon the tug. The exception to the libel is taken on the ground that the lien of the material-man does not accompany the claim into the hands of an assignee. It is conceded, for the purposes of this case, that the person who originally furnished the material had a statutory lien which he could have enforced in admiralty; but it is insisted that the transfer of the debt waived the lien, or, at least, that it does not inure to the benefit of the assignee to whom the debt is transferred. There is no doubt some seeming authority in support of the libelant's exception, but I think the more reliable and better considered cases are in favor of supporting the lien in behalf of the assignee, or giving him all the security which the original creditor had. In the case of *The Sarah J. Weed*, 2 Low. 555, this question is exhaustively discussed, and the authorities considered and analyzed by Judge LOWELL, who comes to the conclusion that all the rights of the original creditor come to the assignee; that the lien is a part of the indebtedness and goes with it into the hands of whoever the original creditor shall assign it to. After discussing the authorities, the judge says:

"The convincing reason is that given by Judge WARE in the case cited, that the debtor cannot be injured by an assignment, while the creditor will lose part of the benefit of his security if he cannot assign it."

The conclusion of this learned judge seems to me so satisfactory upon the question that I am content to accept his reasons without adding any of my own.

The exceptions to the libel are overruled, and the report of the commissioner confirmed.