

his opera-glass, saw no light on the Royal Arch, when the latter was approaching in such a position that her green light ought to have been seen by him, as well as from the Nellie Floyd, if it had been a proper light. On the whole evidence, I must pronounce for the Nellie Floyd.

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THE CITY OF COLUMBUS.

BOSTON & SAVANNAH STEAM-SHIP CO. *v.* BROWN and others.

FAUCETT, Adm'r, *v.* BOSTON & SAVANNAH STEAM-SHIP CO.

BROWN *v.* SAME.

(*District Court, D. Massachusetts.* December 3, 1884.)

1. LIMITATION OF LIABILITY OF SHIP-OWNERS—REV. ST. § 4283—PERSONAL INJURY AND LOSS OF LIFE.

Section 4283 of the Revised Statutes, limiting the liability of ship-owners for any loss or damage occasioned or incurred without the privity or knowledge of such owners to the amount of the interest of such owners in the vessel and her freight, extends as well to claims for personal injuries suffered by passengers, and for loss of life of passengers, whether arising under the general law of admiralty, or under federal or state statutes, as to claims for embezzlement, loss, or destruction of property, goods, and merchandise.

2. SAME—STAY OF SUITS FOR DAMAGES.

Pending a determination of the question of such liability under section 4283 of the Revised Statutes, the prosecution of suits for damages against the owners, whether in the court where such proceedings are pending or in the state courts, will be stayed.

3. SAME—INSURANCE ON VESSEL AND FREIGHT—SURRENDER TO CLAIMANTS.

Insurance effected by the owners on the vessel and her freight is not an "interest in such vessel and freight" which they are bound to surrender for the benefit of the claimants, within the meaning of Rev. St. § 4285.

In Admiralty.

These cases were heard together, as involving the same questions of law, arising out of the stranding and sinking of the steam-ship City of Columbus off Gay Head, Martha's Vineyard, January 18, 1884. After the loss of the steam-ship, the Boston & Savannah Steam-ship Company, as owner thereof, filed in this court, February 18, 1884, a libel to limit its liability under Rev. St. § 4283, claiming limitation for all losses to the value of its interest in the vessel and pending freight after the loss. Upon this libel, appraisal of the value of such interest in vessel and freight was ordered and had, and thereupon the company gave proper stipulation to pay the amount into court whenever ordered, as provided by admiralty rule 54. The court then issued a monition to "all persons claiming damages for any loss of life or property, or destruction, damages, or injury, by reason of, or caused by, or arising out of, said striking on the rocks, stranding,

and sinking, as aforesaid," to appear before this court, on the first day of July, 1884, and make due proof of their respective claims in the premises. Service of this monition was made as required, and the court, on March 4th, on application of said company, made an order restraining "the further prosecution of all and any suit or suits against said company, in respect of any such claim or claims for any loss, destruction, damage, or injury by reason of, or caused by, or arising out of, the loss, damages, and acts in said libel or petition set forth." Various claimants filed exceptions to the libel for limitation, claiming that the limitation of liability claimed was, under the act of congress, limited to loss of property, and did not extend to loss of life or personal injuries. They also filed motions that all insurance money paid on account of the loss of said steam-ship should be ordered to be paid into court and appropriated to payment of claims of loss, as part of the interest of the owner in said steam-ship. Claimants also filed separate libels in admiralty against the company, to recover for loss of life and personal injuries. To these libels the company filed exceptions, claiming that such losses were within the limitation of liability, and that the court had no jurisdiction to entertain separate suits while the proceedings for limitation under the libel of the company were pending.

*F. Goodwin and E. P. Carver*, for claimants.

*C. T. Russell and C. T. Russell, Jr.*, for Boston & Savannah Steam-ship Company.

NELSON, J. 1. Section 4283, Rev. St., limiting the liability of ship-owners for any loss or damage occasioned or incurred without the privity or knowledge of such owners, to the amount or value of the interest of such owners in the vessel and her freight then pending, extends as well to claims for personal injuries suffered by passengers, and for loss of life of passengers, whether arising under the general law of the admiralty or under federal or state statutes, as to claims for embezzlement, loss or destruction of property, goods, and merchandise.

2. The question whether the owners of the steam-ship City of Columbus are liable at all for the consequences of the stranding and sinking of that steam-ship, and, if liable, whether their liability is to be limited to the value of the vessel and her pending freight, must be determined in the proceedings instituted by the owners, and now pending in this court, to obtain the benefit of the statute of limitations. In the mean time, the further prosecution against the owners of suits for damages growing out of the disaster, whether in this court or the courts of the state, must be stayed.

3. Insurance effected by the owners on the steam-ship and her freight is not an "interest in such vessel and freight" which they are bound to surrender for the benefit of the claimants, within the meaning of Rev. St. § 4285.

Ordered accordingly.

## THE PERSEVERANCE.\*

(District Court, E. D. New York. March 21 and April 1, 1884.)

1. ADMIRALTY—MARSHAL'S FEES—CUSTODY FEES—REV. ST. § 829.  
Section 829 of the Revised Statutes does not fix \$2.50 per day as an absolute limit of the charges taxable by the marshal for expenses incurred by reason of his custody of property attached in admiralty cases.
2. SAME—PROTECTING PROPERTY AGAINST RIVER THIEVES.  
If it is necessary for the marshal to maintain possession and care of property in different places at the same time, and also to protect it from an unusual and serious danger, such as loss by depredations of river thieves, there is nothing in section 829 to limit the marshal's expenditure to \$2.50 a day.
3. SAME—EXPENSE OF WATCHMEN.  
But he cannot charge \$5 a day on the ground that he paid a watchman \$2.50 for watching the property in the day-time, and another watchman \$2.50 for watching the same property, at the same place, in the night-time.
4. SAME—EXTRA MEN—DEFENSE OF PROPERTY AGAINST COLLECTOR OF CUSTOMS.  
Charges, incurred by the marshal for extra men employed to prevent the collector of customs from taking the property by force out of the marshal's custody, were disallowed.

In Admiralty.

*Sidney Chubb*, for claimants.

*Benedict, Taft & Benedict*, for libelants.

*Goodrich, Deady & Platt*, for the marshal.

BENEDICT, J. Section 829 of the Revised Statutes does not, in my opinion, fix \$2.50 per day as an absolute limit of the charges taxable by the marshal for expenses incurred by reason of his custody of property attached in admiralty cases. In the case of *The F. Merwin*, 10 Ben. 407, it is said by Judge CHOATE that there may be cases where the marshal, as actual custodian of a vessel, is bound to protect the vessel from danger, and may tax the reasonable expenses incurred in protecting it, in his costs, as a necessary disbursement. To this I agree; and I am of the opinion that section 829 does not limit the marshal to \$2.50 a day in the present case, where, as I understand, the process ran against a vessel partly burned, laden with a cargo of jute, partly burned, and some still on fire, and where it was necessary to remove the cargo from the vessel and store it in two different places, whereby the marshal became bound to keep the vessel at one place, part of the cargo at another place, and part of the cargo at still another place, and where all the property was in unusual danger of loss by the depredations of river thieves. If the cargo could not be allowed to remain in the vessel, but was of necessity removed and kept in places of storage distinct from each other and from the vessel, and the marshal was, therefore, obliged to maintain possession and care of property in three different places at the same time, and in addition to keeping it, obliged to protect it

\* Reported by R. D. and Wyllys Benedict, of the New York bar.

from an unusual and serious danger, I find nothing in section 829 that will limit the marshal's expenditure to \$2.50 a day.

As the facts of this case do not very fully appear, I shall send the bill back to be retaxed by the clerk in accordance with the view above expressed, and give any party interested liberty to show the actual amount of expense incurred by the marshal in keeping, and also in preserving, the property from danger. As several processes against the same property were in the marshal's hands at the same time, I suppose the marshal's disbursements will be divided among the various libelants, and therefore all the libelants must have notice of the retaxation of the costs.

BENEDICT, J. The testimony in regard to the disputed items in the marshal's bill is vague. As I understand it he has sought to charge \$5 per day for expenses incurred in keeping the property seized, upon the ground that he paid one watchman \$2.50 for watching the property in the day-time and another watchman \$2.50 for watching the same property, at the same place, in the night-time. The statute will not permit this, and the clerk's allowance of more than \$2.50 per day is therefore overruled. The rejection by the clerk of the charges incurred to prevent the collector of customs from taking the property from the marshal by force must, upon the testimony as it stands, be affirmed. It may be, however, that all the facts have not been brought out in the affidavits submitted to the clerk; and as it appears that the marshal has, in fact and in good faith, paid the amount charged in his bill for expenses, leave is given him, if he desires, to present additional testimony, and to have the bill retaxed before the clerk upon such additional testimony in regard to the items now disallowed.

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### THE MARY GIBBS.

#### SWAN and others v. STANDARD SUGAR REFINERY.

(*District Court, D. Massachusetts. December 4, 1884.*)

**GENERAL AVERAGE—SPARS, RIGGING, ETC., CUT AWAY TO SAVE VESSEL—LIABILITY OF OWNERS OF CARGO.**

The owners of a cargo are liable to contribute in general average for masts, spars, rigging, etc., cut away for the purpose of saving the vessel and cargo; the value of the material, in adjusting the loss, to be estimated as if it had been recovered from the sea and stowed in safety on board the vessel.

In Admiralty.

This was a libel in admiralty to recover a general average contribution by the owners of the brig *Mary Gibbs* against the respondent,