

TYGERT Co. v. THE CHARLES P.  
SINNICKSON.

*District Court, E. D. Pennsylvania.*      May 29, 1885.

CARRIER OF GOODS BY WATER—DAMAGE TO  
CARGO OF KAINIT—DELIVERY OF PART ONLY.

In this case the vessel was held liable for the damage to the cargo and the failure to deliver the whole of the kainit taken on board.

In Admiralty.

*Theodore M. Etting*, for libelant.

*Henry R. Edmunds*, for respondent.

BUTLER, J. The cargo, kainit, was taken on board in good order, and put off damaged, by water. For this damage the respondent must pay. It is not shown to have occurred from "peril of the sea." I am convinced, also, that the quantity delivered was not the whole quantity taken on board. The weighing on delivery was not so careful as en loading, and the precise extent of shortage may be difficult, if not impossible, of ascertainment. The disadvantage of this must fall on the libelant, whose agents are responsible for want of care. But that some allowance should be made on this account seems clear. How the shortage occurred, whether in pumping out the water, with which the kainit became mixed, or otherwise, need not be considered. The burden of accounting for it is on the respondent, and he has failed to give us any information. The commissioner appointed to assess damages may hear further testimony respecting the amount lost; and will be careful to avoid charging the respondents excessively, confining his allowance to the loss clearly shown.

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