

THE VENNER.¹

District Court, E. D. New York. December 15, 1885.

1. CARRIES—OF GOODS BY SHIP—DAMAGE TO CARGO,—ODOR OF PETROLEUM—PROOF.

On the evidence, *held*, that the damage to canary—seed, claimed by libelants to have occurred from the odor of petroleum, while on the bark *venner*, had not been proved, and that the action must therefore fail.

2. SAME—DELIVERY OF CARGO—SHORTAGE—BILL OF LADING—“WEIGHT AND CONTENTS UNKNOWN”—EVIDENCE.

There can be no recovery for short delivery where the bill of lading says “weight and contents unknown,” and no testimony is offered to show how much cargo was shipped, while the testimony from the ship is that all taken on board was delivered.

In Admiralty.

Scudder & Garter, for libelants, D. V. Arguimbau and others.

Wilcox, Adams & Macklin, for claimant.

BENEDICT, J. If the canary—seed while on board the vessel was damaged by petroleum, the liability of the vessel for such damage cannot be disputed, whether the damage arose from actual contact with petroleum, or from the fumes of petroleum caused by the heat of the hold. The decisive question of the case is whether the seed was so damaged while on board the vessel. Upon this question of fact the testimony is conflicting, and I am unable to say that the existence of such damage to this seed at the time of its discharge from the ship has been proved. Furthermore, there is uncontradicted testimony that no odor of petroleum could be detected on the seed claimed to have been damaged, when carefully examined some time subsequent to its discharge; that a sample taken from this part of the seed was actually fed to a

canary, and eaten by the bird without objection or injury; and a sample is produced in court in which no odor of petroleum is discovered. This testimony seems to prove that, if the seed had been tainted with the odor of petroleum while on the vessel, that odor disappeared in time, and left the seed as valuable as before. Such being the fact, the action must fail because no damage is proved. In this connection it is to be remarked that there is no evidence that the seed was sold as damaged, and if the sample produced in court is a fair sample, as is testified, no reason is seen for selling it as damaged.

There is also a claim for short delivery; but the bill of lading says: "Weight and contents unknown." No testimony is offered to show how much the bags contained when shipped, and that they were all full, and the testimony from the ship is that all taken on board was delivered.

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

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