THE ABBIE C. STUBBS.[1]

District Court, D. Massachusetts. July 9, 1886.

SHIPS AND SHIPPING—LIABILITY OF VESSEL OWNERS—LIMITATIONS IMPOSED—REV. ST. § 4383—GENERAL AVERAGE—SALVAGE—FREIGHT AND WAGES SUBSEQUENT TO COLLISION.

Vessel owners, entitled to the protection of the act limiting the liability of vessel owners, (Rev. St. § 4883,) should, in causes of collision, on petition, be credited with the expenses of salvage, and with the vessel's proportion of the general average charges, accruing subsequent to the collision, but not to any apportionment of freight or wages for a like period. "Freight then pending" means freight earned at the end of the voyage.

In Admiralty.

Petition by the owners of a vessel condemned and sold for the payment of damages, in a cause of collision, for leave to avail themselves of the benefits of the act limiting the liability of vessel owners, (Rev. St. § 4283,) and praying that freight earned, wages due, salvage, and general average, subsequent to the collision, be deducted from the proceeds.

R. Stone, for the Perkiomen.

W. W. Dodge, for the Abbie C. Stubbs.

NELSON, J. On the former hearing of this case both these vessels were pronounced at fault for a collision between them on the night of July 15, 1885, off Monomoy beach, in which the Perkiomen was sunk, and the Abbie C. Stubbs was so severely injured that she was run ashore on Monomoy beach, to keep her from sinking. The Perkiomen earned no freight, and has since been blown up by the government as an obstruction to navigation. The Abbie C. Stubbs was got off the beach, after throwing overboard a part of her cargo, and was towed to New Bedford, her port of destination, where she delivered what

was left of her cargo, and earned freight amounting to $258.55. She was arrested in this suit, and has been sold by the marshal, producing $7,760.53 net. Her owners claim the benefit of the act limiting the liability of ship-owners for loss by collision. There being no pretense that the collision occurred with their privity or knowledge, the court has no power to decree for a greater amount than her value after the collision, and "her freight then pending." Rev. St. § 4283. But as one-half of the loss by the destruction of the Perkiomen, after deducting one-half of the damage to the Abbie C. Stubbs, exceeds $50,000, the decree must necessarily exhaust the whole fund in the registry of the court, unless certain deductions asked for by the owners are allowed.

They ask, first, to have the freight apportioned, and to be held responsible only for so much as accrued up to the time of the loss. It 720 has been recently decided by the supreme court in the case of *Place* v. *Norwich & N. Y. Transp. Co.,* 6 Sup. Ct. Rep. 1150, that there can be no apportionment of the freight where the voyage has been broken up by the collision, and no freight earned. The court held that, for the purpose of measuring the amount of the ship-owner's liability, under section 4283, it is at the termination of the voyage that the vessel is to be appraised, whether the voyage is stopped by the disaster of the collision, or is continued after the collision, and ends at the port of destination; and to this is to be added the freight, if any, earned on the voyage; but that no unearned freight is to be added in any event.

When a ship-owner sends his ship to sea, so far as his liability for collisions and other losses happening through the fault of those in charge of her, and without his privity or knowledge, is concerned, he puts at risk only his ship, the expense of navigating her, and the freight she may earn on the voyage. His responsibility is limited to the capital embarked in

the adventure, and the profit he may gain from it in the form of freight, or its equivalent. If the ship is sunk or destroyed, and no freight earned, his whole responsibility is at an end. If either or both are saved, in whole or in part, to that extent his liability remains. The words "her freight then pending," as used in section 4283, must at least include freight earned at the end of the voyage, for cargo on board at the time of the collision, which is this case. Any deduction from the freight in the nature of an apportionment is therefore disallowed. So, also, are the wages of the master and seamen after the collision, and the expense of a tug in towing the vessel from Monomoy beach to New Bedford. These were not, in any sense, salvage services, but were the ordinary expenses of the voyage, incurred in earning the freight.

The owners also claim deduction for sums paid salvors for services rendered in getting the vessel off the beach, and also a contribution in general average for the cargo jettisoned. Both these claims should be allowed. Both were extraordinary expenses, incurred for the preservation of the vessel and freight, as well as of the cargo, and for the common benefit, after the libelants' lien had attached. They stand on the same footing as repairs made after the collision, which the court decided in *Place* v. *Norwich & N. Y. Transp. Co., ubi supra,* ought not to be included in the appraisement of the vessel for the purpose of determining the amount of the ship-owner's liability. The salvage expenses are to be apportioned upon the vessel, freight, and cargo in proportion to their respective values, and the shares belonging to the vessel and freight are to be deducted from the proceeds in the registry. The general average contribution apportioned upon the vessel and freight for cargo jettisoned is to be deducted in full.

A decree is to be entered for the libelants, made up in accordance with this opinion, without costs. Ordered accordingly.

[1] Reported by Theodore M. Etting, Esq., of the Philadelphia bar.