

THE BURGUNDIA.¹
STRAUS AND OTHERS *v.* THE BURGUNDIA, ETC.

Circuit Court, E. D. New York.

June 31, 1886.

CARRIERS—OF GOODS—SHIPS—DAMAGE TO CARGO—IMPROPER STOWAGE.

On the delivery of a consignment of eight drums of glycerine, two were found to be broken. On suit brought for the loss, *held*, that if all eight were stowed in an equally proper place, then the stowage of the two could not, in detail and arrangement, have been proper or sufficient. If the two were

THE BURGUNDIA.1STRAUS AND OTHERS v. THE BURGUNDIA, etc.

stowed in a less safe place than the six, considering the peculiar character of the drums, that was improper stowage; and therefore that the carrier had not relieved himself from the presumption of negligent stowage as the cause of the loss, and that the vessel was liable for the loss.

In Admiralty.

L. H. Arnold, Jr., for libelants.

Lorenzo Ullo, for claimant.

BLATCHFORD, Justice. I concur in the conclusion of the district judge that there must be a decree for the libelants.¹ The case is substantially like that of *The Surrey*,² in this court. The six drums came in good order, whatever perils of the sea there were. If the two drums which were broken had been Stowed properly, they would not have been injured. If all eight were stowed in an equally proper place, then the stowage of the two could not, in detail and arrangement, have been proper or sufficient. If the two were stowed in a less safe place than the six, considering the peculiar character of the drums, that was improper stowage. On the whole evidence, including the new testimony taken in this court, the carrier has not relieved itself from its liability, or successfully rebutted the presumption of negligent stowage as the cause of the damage.

There must be a decree for the libelants for \$649, with interest from March 1, 1884, and their costs in the district court, taxed at \$129.86, and their costs in this court, to be taxed.

BLATCHFORD, Justice. On the new proofs taken in this court it appears that on the same voyage the vessel carried 35 drums of glycerine consigned to one Korneman, which were delivered on arrival in the same good order as when received. In view of this fact, and of all the evidence in the case, it cannot be held that the carrier has relieved himself from the liability thrown on him by his bill of lading, by showing the existence of a sea peril sufficient to account for the damage to the libellants' drums, and to rebut the presumption of negligent stowage as the cause of such damage. Let there be a decree for the libelants, with a reference to ascertain the damages.

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

¹ The decision of the district judge was not accompanied by an opinion.—[REPS.

² The following is the opinion of Mr. Justice BLATCHFORD in the case of *Marx v. The Surrey*, in the circuit court, E. D. of New York, July 2, 1885, (not heretofore reported:)