

LEVECH *v.* A CARGO OF WOODEN POSTS.<sup>1</sup>

*District Court, E. D. New York.*

April 14, 1888.

DEMURRAGE—BURDEN OF PROOF.

On the evidence, *held*, that the delay claimed by the vessel against the cargo-owner had not been made out, and the libel should be dismissed.

In Admiralty.

The canal-boat Martha E. Loomis brought a cargo of posts from East Haddam, Conn., to New York, and the libel claimed that the vessel was delayed after arrival in New York by the fault of the consignees. It also claimed damage to the boat from floating ice through the fault of the shipper, which latter claim the answer averred had been settled. The claimant asserted that the boat had been sent at once to a proper dock, and that the delay arose from the slowness and absences of the master, and from the fact that he negligently discharged a part of the cargo at the wrong place.

*Peter S. Carter*, for libelant.

*Charles Murray*, for claimant.

BENEDICT, J. The settlement made between Goodrich and the master of the vessel left no claim enforceable except the claim for delay in the unloading of the vessel, which occurred after that settlement. In regard to the claim of a lien upon the cargo for the delay which occurred in unloading the posts, both at Schuyler's dock and at Wallabout, the evidence fails to prove that the delay was caused by fault on the part of the owner of the posts, or of the persons to whom the posts had been sold. The burden is upon the libelant to prove a fault causing the delay. This has not been done. Libel dismissed.

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.