

FOWLER *ET AL.* V. THE BERTRAM L. TOWNSEND.¹

District Court, E. D. New York.

July 27, 1888.

SHIPPING—DAMAGE TO CARGO—PERILS OF THE SEA.

On the evidence, *held*, that the damage to a cargo of sugar on the schooner Bertram L. Townsend, to recover for which this suit was brought, was caused by a peril of the sea, and not by neglect on the part of the ship, and that the libel should accordingly be dismissed.

In Admiralty.

J. Adriance Bush, for libelant.

Wing, Shoudy & Putnam, for claimant.

BENEDICT, J. This is an action to recover for damage to a cargo of sugar while being transported in the schooner Bertram L. Townsend.

The schooner arrived in the port of New York in May, 1885, and delivered a cargo of sugar in hogsheads and bags, part of which were damaged by sea-water. The libelant charges improper stowage of the cargo, unseaworthiness of the vessel because insufficiently calked, and that her limbers were permitted to be clogged with sand. The answer admits the shipment, the charter-party, bills of lading, and payment of the freight; and avers that the cargo was well stowed, that the vessel was tight, staunch, and seaworthy. That during the voyage she encountered very heavy and severe weather, with high seas, in which she labored heavily, shipped much water, became strained and damaged, and that the damage to the cargo was caused by perils of the sea. On the trial the libelant abandoned all charges in regard to the stowage of the cargo, and expressly admitted good stowage. This left but two questions for discussion—*First*, whether the schooner was in good seaworthy condition as to repairs and calking when she undertook the voyage; and, second, whether damage to the sugar arose from her limbers being allowed to become clogged up by the negligence of the master of the schooner. Upon these two questions much evidence has been taken. An examination of it has satisfied me that the damage in question must be attributable to the peril of the sea, and not to neglect on the part of the ship. The libel is accordingly dismissed, with costs.

¹ Reported by Edward G. Benedict, Esq., of the New York bar.