

legations and deductions of this article; may show, if they can, that the duty of the libelant was to discharge the vessel, and that to his failure in the performance of this duty was due the delay. The questions are: Was the vessel detained? What detained her? If the discharge detained her, whose fault was it? If the delay was due to the slow discharge of the vessel, was that caused by the course of libelant or by that of respondents? If it was the duty of the former to discharge and of the latter to receive and remove cargo, did the former discharge with all proper dispatch, and did the latter receive and remove with sufficient speed? All these and other questions bearing on this article can be met and decided upon it and the answer to it and the evidence to be offered. This exception also is overruled.

THE MATTIE MAY.

SMITH *v.* THE MATTIE MAY.

(District Court, D. South Carolina. April 22, 1891.)

ADMIRALTY—LIBEL *IN REM*—STEVEDORE'S SERVICES.

The services of a stevedore in loading a vessel are maritime in their nature, for which, when rendered in a foreign port, a libel *in rem* will lie. Following *The Gilbert Knapp*, 37 Fed. Rep. 209.

In Admiralty. Exception to the jurisdiction.

Northrop & Memminger, for libelant.

J. N. Nathans and *Huger Sinkler*, for respondent.

SIMONTON, J. The libel is *in rem* for sum due to the stevedore who loaded the vessel. Claimant excepts to the jurisdiction. The services were performed upon the vessel, afloat in Georgetown harbor, and were maritime in their character. This court follows *The Canada*, 7 Fed. Rep. 119; *The Senator*, 21 Fed. Rep. 191; *The Gilbert Knapp*, 37 Fed. Rep. 209. Exception overruled.

THE ANNIE HARJES.¹

BRITISH & F. MARINE INS. CO. v. THE ANNIE HARJES.

(District Court, S. D. New York. April 9, 1891.)

CARRIERS—DISCHARGE OF CARGO—IMPROPER DOCK—LOSS OF VESSEL.

A coal-boat, while lying at a wharf under which a sewer discharged, was sunk at the wharf by an unusual discharge from the sewer, due to a heavy shower. Libelant insured the sellers and shippers of the cargo, and, on an abandonment by them, paid the loss, and brought this suit to recover damages against the carrier for negligence in going to an improper dock. The title to the coal had passed to the consignee before the accident. The consignee sent the vessel to the wharf, accepted part of the cargo, and made no objection to her lying there. When the shower came on the master was unable to get away, owing to the presence of other vessels. *Held* that, under such circumstances, no action for going to the dock could be maintained against the boat by either the shipper or consignee, and none, therefore, could be maintained by the insurer.

In Admiralty. Suit to recover damages for discharging cargo at improper dock.

Goodrich, Deady & Goodrich, for claimant.

Butler, Stillman & Hubbard, (*Mr. Mynderse* and *Mr. Cromwell*), for libelant.

BROWN, J. On August 22, 1890, the canal-boat Annie Harjes, with 280 tons of coal, was towed from Port Johnson, and landed at the end of the short projecting pier at Seventy-Ninth street, East river. She was directed by the bill of lading to land at Seventy-Sixth street, but, not being able to obtain a berth there, she went, under the general directions of Mr. Harjes, the consignee, to Seventy-Ninth street, where she unloaded about 80 tons during the same day. A sewer, the mouth of which is about 5 feet in diameter, empties beneath the surface of the pier. It is covered at high water, and, as the captain says, was not visible when the boat arrived there, but was seen when the tide fell. About 7 P. M. a shower came up, which proved extraordinary, and the discharge of water from the sewer, and from over the dock also, as the master now says, filled and sank his boat at about half past 9 P. M. The libelants insured Heilner & Co., the sellers and shippers of the cargo, under a standing policy on account of whom it may concern. On an abandonment made by them, and in their names, the libelants settled with them, and took a cession of all their claims, and then filed this libel to recover damages for negligence of the carrier in going to an improper dock to discharge. The shipment of coal was upon a cash sale. Harjes paid for the coal the day it was towed to New York, and, as he testifies, owned the coal and took the risk, paying the shipper for the insurance, and the insurance being, as he says, according to the usual course of dealing, for his benefit. The insurers, after raising the damaged coal, turned it over to the consignee at an agreed price, but without receiving

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