

"By the settled law, in the absence of some valid agreement to the contrary, the owner of a general ship carrying goods for hire, whether employed in internal, in coasting, or in foreign, commerce, is a common carrier, with the liability of an insurer against all losses, except only such two irresistible causes as the act of God and public enemies."

These bills of lading are to the same effect. There is nothing in them that serves to protect the ship from liability for damage arising from other goods. This damage did not happen from any peril of the seas, as the master himself testifies. The damage is directly traceable either to unfit oil casks, or to improper stowing of such casks over the plumbago, or to the lack of suitable attention to the leakage through the deck and in the hold during the voyage. Upon such bills of lading, and in the absence of any other exceptions, the ship takes the risk of such accidents as respects *bona fide* purchasers and consignees of the goods to whom she issues bills of lading, even though the goods were shipped by the charterers. *The T. A. Goddard*, 12 Fed. Rep. 174; *The Antoinette C.*, 5 Ben. 564. The libelants are in the situation of *bona fide* purchasers, paying for the goods on the faith of the bills of lading issued to their agents, Winter & Smilie. Decree for the libelants, with costs.

THE ZEALANDIA.

(District Court, D. California. January 18, 1886.)

SHIPPING—DAMAGE TO CARGO—PERILS OF THE SEA.

Where a cask of oil, which is lashed securely as against all ordinary weather, breaks loose during an extremely violent gale, and causes injury to other goods, the damage must be attributed to a peril of the sea, especially when it appears that such accidents are not infrequent.

In Admiralty. Libel for damages to cargo.

J. D. Redding, for libelants.

Milton Andros, for claimants.

HOFFMAN, J. The proofs show, I think, to a demonstration, that the very great damage sustained by the hides in question in this suit could not have been caused by the negligence of the carriers. If any confidence can be placed in human testimony, we must believe that the ship was stanch and dry, and that no water found access to the hides by the leakage of the vessel. This is shown, not only by the testimony of the master and all his principal officers, but by the evidence of the very capable and reliable surveyors, who examined the after-hold with the special object of ascertaining whether any signs of leakage could be discovered. It also appears that the vessel has conveyed several shipments of hides from Sydney to this port, stowed in the same place and same manner as the hides in question, without damage. She has also made two voyages since delivering the hides, with cargo in the after-hold, which was de-

livered in good order, the vessel in the mean time having undergone no repairs whatever. It is impossible, I think, to attentively peruse this testimony without coming to the conclusion that this extraordinary and unprecedented condition of the hides when delivered, whatever may have been the cause, cannot be attributed to the fault of the carrier. The damage to the skins was caused by this breaking adrift of a cask of oil in the between-decks. The testimony shows that the ship encountered weather of extreme violence; that the cask was securely lashed, and broke away during a tempest,—an accident, it is said, of not infrequent occurrence. I should have thought that an accident of this character might be prevented by the exercise of proper care on the part of the carrier, but on the proofs I feel obliged to decide that in this case it must be attributed to perils of the sea. Libel dismissed.

THE NATHAN HALE.

THE GERTRUDE.

ABELL v. THE NATHAN HALE AND THE GERTRUDE.

(District Court, S. D. New York. December 17, 1891.)

PERSONAL INJURIES TO EMPLOYE—DIVIDING TOW UNDER WAY—NEGLIGENCE—MUTUAL FAULT.

It is imprudent and hazardous to divide a tow under way in a tide-way and in a high wind, to be picked up by other boats; and this being done without necessity, off the Battery, and a hand having his foot cut off by a coil of rope which rendered while making fast to the drifting tow, held negligence in the tug for which it was answerable. But the court being of the opinion that the hand's attention was to some extent given to the naval parade at the Ericsson funeral, and that the hand was partly in fault, allowed him \$700 only.

In Admiralty. Edward S. Abell sued the tugs Nathan Hale and Gertrude to recover for personal injuries.

Hyland & Zabriskie, for libellant.

Samuel Park, for claimants.

BROWN, J. In the afternoon of August 23, 1891, the libellant, who was captain of the barge Susquehanna, then in tow along-side of the steam-tug Gertrude, had his foot cut off at the ankle by getting caught in a coil of the rope which was rendering, while he was making fast two other barges on his port side. The three barges were bound for the North river. They had come down the East river with six or seven other barges bound for Amboy, in tow of the Nathan Hale and the Gertrude. At about 3 o'clock in the afternoon, when they arrived off the Battery, or a little beyond, the Gertrude was assigned to detach the three barges, while the rest of the tow went to Amboy. The Gertrude accordingly first took on her port side the libellant's barge Susquehanna before