

report of the commissioner in the district court, and for her costs in the district court, and for the owner of the Nannie Lamberton for costs of this court.

THE JOHANNE.¹

LORENTZEN v. THE JOHANNE.

(District Court, S. D. New York. November 30, 1891.)

CARRIERS—NEGLIGENT STOWAGE—CASES OF HOUSEHOLD GOODS.

Cases of household goods, shipped under a bill of lading which contained the exception, "not accountable for damage and breakage," were stowed in the lower hold of the brig J., and were delivered damaged by water taken on by the ship in heavy weather. The brig was old, and her construction was such as to necessitate more than usual care in the stowage of merchandise liable to be damaged by water. The master had notice that the cases contained household goods. *Held*, that it was negligence to stow such goods near the bilge in the hold of a vessel of such construction and age, and the ship was liable for the damage.

In Admiralty. Suit to recover for damage to cargo.

J. P. Kirkin, for libelant.

Wing, Shoudy & Putnam, for claimants.

BROWN, J. Sixteen cases of household goods, shipped at Bremen on the brig Johanne, were found, on discharge at New York, to have been damaged by water. The bill of lading recited that the cases were received in good order and condition, and, besides peril of the seas, contained the exception, "not accountable for damage or breakage." They were not broken, but had been in water so much that permanent water-marks were left upon the sides of some of the cases, and the contents, consisting of furniture and books, were water-stained. The vessel was old, and her bottom had not been generally overhauled for four years. She encountered two severe storms on the passage. In the face of the evidence submitted, I cannot find that she was generally unseaworthy; but she was certainly liable to incur more than usual leakage, and her great breadth, of 35 feet, for her size, also required more than usual care in the stowage of any merchandise liable to be damaged by water. The cases of furniture were not stowed between-decks, but in the lower hold, on the starboard side of the ship, on top of about five feet of ore. Upon the testimony of the officers, I must assume that the damage to the cases arose from accumulations of water in the hold during the heavy leakage of the ship in the storms which she encountered, and in the list which she had while sailing for long periods on the port tack, during which the cases were more or less in water. The bill of lading shows that the master had notice that the contents of the cases were household goods. In my judgment, he was not justified in stowing such cases in the lower

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

hold and on the side of a brig of such construction and age as this brig; reasonable caution required that he should stow it either between-decks, or, if in the hold, in the center of the ship, where it would not be subjected to water damage, through leaks which such a ship was specially liable to incur. The ship is therefore liable. *The Hadji*, 20 Fed. Rep. 875, 18 Fed. Rep. 459. Decree for libelant, with costs, and an order of reference to compute the amount, if the same be not agreed upon.

THE WEATHERBY.¹

SPRECKELS v. THE WEATHERBY.

(District Court, E. D. Pennsylvania. December 9, 1891.)

GENERAL AVERAGE—ADJUSTMENT—PAYMENT.

A cargo of sugar damaged by a collision was sold in Germany, and the proceeds received by the owners of the vessel, and subsequently paid over to the cargo owner, less a portion retained to cover average charges; the rate of exchange calculated being the rate at the time of the payment by the vessel owner to the cargo owner. After paying the average charges, the vessel owner claimed that he should be allowed the difference between the amount in American money which the amount of English money received would have produced at time of receipt of same by him and the amount of American money actually accounted for. *Held*, as the cargo owner was entitled to this amount when received by the vessel owner, the rate of exchange at that time was that by which the amount of American money due the cargo owner should be determined, the delay being compensated for by interest.

In Admiralty.

Petition by libelant for order on respondent to pay over remainder of money left in his hands after deduction of average charges. Answer of respondent, and cross-petition by respondent to restate account. A cargo of sugar, shipped by Claus Spreckels on the steam-ship *Weatherby*, was damaged by collision; and the proceeds of the sale of the cargo, which was sold in Germany, was remitted to the vessel owner in England on June 15, 1890, and was retained by him until October, 1890, when, in pursuance of a decree of court, the sum in hand was declared to be \$51,842, which, less a sum of \$15,000, retained to cover average charges, was paid over to Spreckels. After adjustment Spreckels claimed \$7,375.46, the difference between the average charges and the \$15,000 retained, together with interest on the amount retained. The vessel owner then moved to restate his account so as to account only for so many dollars as the amount of pounds which came into his hands would have produced on June 15, 1890, at the rate of exchange current on June 15, 1890.

John G. Johnson and *Morton P. Henry*, for libelant.

Curtis Tilton and *John F. Lewis*, for respondent.

BUTLER, J. On the question raised by the petition and answer my judgment is with the respondent. On receiving the proceeds of the sugar

¹Reported by Mark Wilks Collet, Esq., of the Philadelphia bar.