

after the occurrence; he thought himself safe where he was. The testimony justifies a conclusion that his injury resulted entirely from his own want of care. It is unnecessary therefore to consider the legal question raised—that the vessel was not responsible for the mate's negligence, if he was negligent. The libel must be dismissed.

THE CAPE HORN PIGEON.

DA CROUZ *et al.* v. THE CAPE HORN PIGEON.

(District Court, N. D. California. January 27, 1888.)

1. SEAMEN—REMUNERATION OF WHALERS—SETTLEMENT.

On a question whether the valuation of whalebone, which formed the basis of a settlement between certain whalers and their men, was fair and reasonable, it appearing that there was no market therefor in San Francisco, where the settlement was made, the value must be fixed upon the basis of the selling price in New York, with proper deductions for the expense of sending it there and preparing it for sale.

2. SAME.

The settlement complained of was made at \$1.25 per pound for the men, and it appeared that, in order to pay this amount without loss, the owners must realize \$1.77 per pound in New York. The highest offer they had received was \$1.50, which they refused, and they had then offered to sell at \$2, which was not accepted. Several ship-owners and agents of experience in the business testified that the settlement was a fair one, and it was shown that many of the same men had engaged for the following season at \$1.25 per pound if the catch exceeded 200 whales, and \$1.50 per pound if it was less than that number. The catch for the season in question was 845 whales. *Held*, that the settlement should not be disturbed.

In Admiralty. Libel by J. A. Da Crouz and others against the whaling bark Cape Horn Pigeon.

Daniel T. Sullivan and *F. Van Norman*, for libellant.

Milton Andros and *Chas. Page*, for respondents.

HOFFMAN, District Judge. This is one of the several libels filed by the crews of the whaling fleet which arrived at this port at the close of last year's whaling season, to procure a revision by the court of the settlements made or offered to the men. It was stipulated by the advocates representing all the vessels libeled and all the libelants that the testimony should be confined to the inquiry, whether the valuation of the oil and bone, which formed the basis on which the men's accounts were made up and adjusted, was fair and reasonable, and, if not, the court should determine on what valuation the accounts should be restated. The testimony was quite voluminous. I have very carefully perused it. The conclusions I have reached are in accordance with the impressions I received from hearing it orally delivered.

1. With regard to the oil, I think it is conclusively shown that the price at which it was valued was fair, if not liberal.

2. As to the bone, it seems that there is no market for the bone in this city. The valuation on which the accounts must be adjusted is the

market price in New York, less the freight, shrinkage, insurance, and other charges and expenses incident to placing the bone on that market. The losses on a ton of bone shipped at this port, as taken from the ship and put on the market at New York, appear to be as follows:

Shrinkage between San Francisco and New Bedford, 10 per cent.,	200 lbs.
Shrinkage by cleaning at New Bedford, 5 per cent.,	100 lbs.
Separating cullings under 4½ feet, 10 per cent.,	200 lbs.
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	500 lbs.

There will thus arrive at New York, of good culled bone, 1,500 lbs., and also of cullings, 200 lbs. The charges and expenses incurred per ton in placing this quantity of selected bone and cullings on the New York market, and effecting a sale of it, are shown to be as follows:

Cartage from ship to railroad,	\$ 50
Freight to New Bedford at 2½ cents per lb.,	50 00
Insurance at 1½ per cent. on a valuation of \$1.25 per lb., or \$2,500 per ton,	31 25
Cartage to warehouse at New Bedford,	50
Cleaning and culling 1,800 lbs. of bone (the quantity arriving after deducting shrinkage) at 2½ cents per lb.,	45 00
Cartage at New Bedford for New York,	50
Freight to New York on 1,700 lbs. at ½ cent per lb.,	8 50
Insurance to New York at 1-10 of 1 per cent. on valuation of \$1.25 per lb.,	2 50
Cartage in New York,	50
Brokerage in New York, (say)	50 00
Interest 60 days at 6 per cent. per annum on valuation of \$1.25 per lb.,	25 00
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These charges aggregate	\$ 214 25
Adding \$1.25 per lb., the valuation at San Francisco,	2,500 00
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We have thus total cost of bone, if sold in New York within 60 days after arrival at San Francisco, without including warehouse charges at New Bedford or New York, - - - \$2,714 25

We have seen that from one ton of bone shipped from San Francisco there will be put on the market at New York, culled and selected bone, 1,500 lbs.; cullings, 200 lbs. The bone on arriving at New York is there charged with cost and expenses amounting to \$2,714.25. The 200 lbs. of cullings, it is testified, are of little value, perhaps 25 cents per lb., equal to \$50. To enable the owners to settle with the men at \$1.25 per lb., without loss, the 1,500 lbs. of selected bone must be sold at New York, within 60 days, at \$1.77 per lb. The best offer received by the owners, for any considerable quantity of bone, was \$1.50 per lb. for 100,000 lbs. This was declined. But they offered to sell at \$2 per lb. This offer was also declined. The bone was to be culled and selected bone, delivered free of charges in New York.

Several of the ship-owners and agents have testified in court. They are men of great experience in the business, and some of them of unusual intelligence. They affirm very positively, and with apparent candor, that

the basis of settlement adopted by them was, in their opinion, just and fair to the men; and their opinions derive much support from the fact that the crews of a large part of the whalers have reshipped for the next season on an agreed basis, of settlement of \$1.25 per lb. for bone if the catch amounts to 200 whales or over, and \$1.50 if the catch is less than 200 whales. Twenty cents is to be allowed for oil, without reference to catch. The number of whales taken during the last season was 345. The men have been settled with on the same basis as that mutually agreed for next year, if the catch is over 200 whales.

I find no reason for disturbing the settlement made, on the ground that the men have not been fairly dealt by.

THE SARAH CULLEN.

KNICKERBOCKER STEAM TOWAGE CO. v. THE SARAH CULLEN.

(Circuit Court of Appeals, Second Circuit. November 7, 1891.)

MARITIME LIEN—TOWAGE—CREDIT OF THIRD PERSON.

Libelant rendered towage service to a vessel without express employment by her master, or agreement to pay. Libelant was afterwards informed that the R. Ice Company was to pay for the towage, and thereafter, for the above and subsequent towage services, rendered bills to such ice company, which were paid in part. No notice was given to the vessel owner that the ship was expected to pay for the towage until the failure of the ice company, six months after the first voyage. *Held*, that the service was not rendered on the credit of the vessel, but on the credit of the charterer. 45 Fed. Rep. 511, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Admiralty. Libel for towage by the Knickerbocker Steam Towage Company against the schooner Sarah Cullen. A decree dismissing the libel was affirmed by the circuit court, and libelant appeals. Affirmed.

It appeared that the schooner was at the time under charter to the Knickerbocker Ice Company, which had agreed to pay for all towages in the Kennebec river. Previous to the rendering of the towage sued for, the libelant had rendered other towage services to the schooner, the bills for which had been paid by the Ridgewood Ice Company. No notice was given the master or owners of the vessel that they were expected to pay these towage bills until after the failure of the Ridgewood Ice Company, and the claimants contended that the services were not rendered on the credit of the vessel, but at the request and on the credit of the ice company. The district court found that the services were not rendered on the credit of the vessel, and dismissed the libel, (45 Fed. Rep. 511;) and, on appeal, a *pro forma* affirmance was rendered by the circuit court, whence libelant appealed to this court.

Wing, Shoudy & Putnam, for appellants.