

KERRUSH v. HAVEMEYERS & ELDER SUGAR REFINING CO.

CHURNSIDE v. SAME.

(Circuit Court of Appeals, Second Circuit. November 14, 1891.)

SHIPPING—DELIVERY OF CARGO—SHORTAGE.

On the evidence, held, that all the sugar received by the steam-ships Ixia and Hampshire had been delivered, the contents of the missing bags having been put into new bags by the ships' men; and respondent's claim to make a deduction from the freight because of such alleged shortage should not be allowed. 42 Fed. Rep. 511, affirmed.

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

In Admiralty. Suit by the masters of the vessels Hampshire and Ixia against the Havemeyers & Elder Sugar Refining Company to recover a balance of freight. A decree for libelants was affirmed by the circuit court, and respondent appeals. Affirmed.

The evidence showed that the respondent took charge of the unloading, and its employes handled the bags roughly, destroying some of the bags, and obliterating their marks; that a great deal of sweepings remained after the discharge, which were placed in new bags by the ships' coopers. The Hampshire delivered 211 more bags than the bills of lading called for; the Ixia, 76. The shortage in weight was not 1 per cent. of the amount stated in the bills of lading, which could be accounted for by the tendency of sugar to vary in weight from inherent causes. The district court held that all of the sugar received had been delivered, and hence that the alleged offset to libelants' claims failed, and they were entitled to recover, (42 Fed. Rep. 511;) and, on appeal, a *pro forma* affirmance was rendered by the circuit court, whence respondent appealed to this court.

Parsons, Shepard & Ogden, for appellant.

Conners & Kirlln, for appellees.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. There is no proof of a short delivery of cargo in these cases, except as to the sugar in the 11 cargo bags not delivered by the Ixia, and the 15 not delivered by the Hampshire. We are satisfied that the contents of these bags were delivered in the 76 new bags of the Ixia, and the 211 of the Hampshire, containing sweepings, and that some of the cargo bags were destroyed by rough usage during the discharge, and others, partly destroyed, were put inside the new bags. The decree of the circuit court in each case is affirmed, with interest, and the costs of the appeal to be paid by the appellant, and the cause remanded to the circuit court for further proceedings in conformity with this opinion.

THE SAMUEL W. HALL.

HALL v. KELLY.

(District Court, S. D. New York. January 30, 1892.)

1. SHIPPING—CHARTER-PARTY—OPTION TO REJECT VESSEL—WHERE EXERCISED.

Upon charters for loading the ship in remote places across the seas, options providing for the acceptance or rejection of the charter are to be exercised at the place where the ship is to load, and the ship has no right to call upon the charterer to exercise his option elsewhere.

2. SAME—NON-ARRIVAL AT PORT OF TRADE BY SPECIFIED DATE.

A charter of a vessel from Macoris to the United States stated that the charterer was to have option of canceling charter if vessel had not arrived at Macoris on or before June 20, 1891. On June 22d, the vessel still being at Guadaloupe, her master telegraphed to his agents at Philadelphia asking whether he should go to Macoris. They consulted the charterer in New York, and, no release of the charter being obtained, the vessel proceeded to Macoris, arriving there July 1st to find her cargo had been shipped on another vessel. On suit brought to recover damages for non-fulfillment of the charter, *held*, that the ship took the risk of not finding the cargo after the appointed day, and could not recover in this suit.

In Admiralty. Suit by John W. Hall against Hugh Kelly for damages in failing to load vessel under a charter. Decree for defendant.

Wilcox, Adams & Green, for libellant.

George A. Black, for respondent.

BROWN, District Judge. On the 9th of April, 1891, by a charter-party made between the defendant and Thomas Mumford, master of the schooner Samuel W. Hall, then lying at Philadelphia, the vessel was chartered for a voyage from Macoris, San Domingo, with a cargo of sugar, to the breakwater for orders, and to discharge between Hatteras and Boston. The charter stated:

"It is understood vessel loads lumber at Bucksville for Guadaloupe and when discharged there it is to proceed to Macoris to enter upon this charter.
* * * The charterers to have option of canceling charter if vessel not arrived at Macoris on or before June 20th, 1891."

On the 22d of June, the schooner being still at Guadaloupe, her master telegraphed to her agents in Philadelphia to ascertain whether she should proceed to Macoris, and not obtaining any release of her charter obligations, she proceeded thither. She sailed from Guadaloupe on the 28th of June, arrived at Macoris on the 1st of July, and on reporting to Mr. Mellor, the defendant's correspondent there, was informed that the cargo designed for the Hall had been shipped on the 26th of June on board another vessel; and that he had no cargo for her. The master thereupon proceeded to Turk's island, where he obtained a cargo of salt for Providence, R. I.; and thereafter filed this libel for \$621 alleged damages for the refusal to load the cargo of sugar at Macoris.

I cannot sustain the libellant's claim. The charter was in fact made for account of Mr. Mellor, who had a sugar plantation at Macoris, and had been accustomed to obtain through the defendant charters of vessels to come thither for his products. The present charter, however, did not