The captain testifies that had he known of the soundings and holes found by his son, he "would not have stayed a minute, but would have towed right away with the tug." He made no inquiries of Mr. Schmidt, the consignee, and did not direct his son to do so. In his hurry to return, he took the chances of mid-stream as a safe place to lie in, and as I cannot find that either of the defendants were under any duty to keep the bed of the middle of the stream level, the libel must be dismissed: but under the circumstances without costs.

ROBINSON *v.* RUSSELL.[1]

(*District Court, E. D. Pennsylvania.* April 6, 1892.)

SHIPPING—CONTRACT OF AFFREIGHTMENT.

The evidence of a master of a vessel and of a member of a firm acting as the ship's brokers was that a shipper had agreed to ship 400,000 shingles on the vessel. The shipper testified he had agreed to ship all he had,—estimated at that many. The firm were pretty closely related to the shipper also. *Held*, the weight of the evidence was against the shipper.

In Admiralty. Libel by Thomas B. Robinson, master of the schooner Charles C. Lister, against Daniel L. Russell, to recover damages for failure to ship a full cargo according to contract. Decree for libelant.

Henry R. Edmunds, for libelant.

Flanders & Pugh, for respondent.

BUTLER, District Judge. The only question involved is one of fact, to wit: Did the respondent contract for the shipment of 400,000 shingles, as the libel avers, or simply for the number he might have on hand, as the answer states? The testimony is directly conflicting. The only persons present when the contract was entered into, were the master of the schooner, Mr. Robinson, William Harriss, of the firm of George Harriss, Son & Co., ship brokers, and the respondent. Messrs. Robinson and Harriss state the contract to have been for 400,000 shingles and are very positive about it, while the respondent just as positively states it to have been for no given number, but such only as he might have—which he supposed would reach 400,000 or more. George Harriss, Son & Co. were the ship's brokers, and are pretty closely related to the respondent. There are some circumstances referred to in the evidence which tend to shed a little light on the question involved, but its decision depends mainly upon the testimony of the three witnesses named, respecting what occurred on the occasion referred to, when the contract was made. A discussion of the evidence is unnecessary. It is sufficient to say that its weight is clearly, in my judgment, against the respondent. A decree must therefore be entered for the libelant. If the parties cannot agree upon the damages the subject will be referred to a commissioner.

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

THE OCEAN PRINCE.

PRINCE STEAM SHIPPING CO. *v.* LEHMANN *et al.*

(District Court, S. D. New York. April 12, 1892.)

CONSTRUCTION OF CHARTER-PARTY—"BAD WEATHER"—"DISPATCH MONEYS."
The words "bad weather" in the charter in this case, must be construed to include weather not fit or reasonably safe for loading by reason of the state of the sea as well as of the atmosphere; dispatch moneys computed accordingly.

In Admiralty. Libel for freight under charter. Counter-claim for dispatch money.

The steam-ship Ocean Prince loaded a cargo of iron ore at Elba, where there is no harbor, but only an open roadstead, in consequence of which the ore was furnished to the ship in lighters. There was a conflict of testimony between the master of the ship and the agent of the shipper as to whether during certain days during which no cargo was furnished the ship the weather was bad or not. The clause of the charter referring to the weather was as follows:

"The act of God, restraint of princes and rulers, strikes of miners or workmen, *bad weather*, quarantine, riots, Sundays, holidays, frosts, stoppage of trains or mines, accidents to machinery, etc., and all unavoidable accidents, and all causes beyond the control of the shippers, charterers, or the consignee, which may prevent or delay the loading or discharging, always excepted."

For prior report, see 39 Fed. Rep. 704.

Butler, Stillman & Hubbard, for libelant.

Benedict & Benedict, for respondents.

BROWN, District Judge. The amount of freight, $3,913.27, is not disputed. The charter allowed for the loading and discharge at the rate of 250 tons per day during working days; Sundays, holidays, *bad weather*, etc., being excepted; and it provided for a credit to the charterer of £15 per day, dispatch moneys, for any time saved upon the above allowance. Computation upon the amount of cargo gives an aggregate time allowance of 8 days and 5 hours for loading and the same for discharging. The respondents claim to have used but 5 days 18½ hours in all, and claim a credit, therefore, at the stipulated rate, for the balance of the lay-days. The principal question turns on the meaning of the term "bad weather" in the charter, and upon the actual condition of the weather while the vessel was loading by means of lighters three-quarters of a mile from the jetties, at the island of Elba, in the Mediterranean.

From the evident general intent of the charter, and from the immediate context of the words "bad weather," they must be construed to include, I think, weather not fit for loading or unloading by reason of the state of the sea as well as of the atmosphere. The entries in the master's log, and his testimony, show that he constantly used the phrase in that sense. "Bad weather," as used in the charter, means not merely weather during which cargo could not by any possibility have been