

facilities? It may be said that it is the government's duty to furnish scales; that the charterer has nothing to do with the weighing. To a limited extent this is true; but his obligation requires him to take the cargo, as delivered from the ship, and if it is to be weighed as received, (to ascertain his obligations to the government,) instead of being deposited (wholly or in part) on the wharf, his duty requires him to see that such facilities for weighing are provided as will enable him to afford the dispatch which he has bound himself to give. The subject does not require extended discussion and I will not pursue it. I hold that the "customary quick dispatch" of this port, in the discharge of sugar, is such dispatch as can only be afforded by the use of platform scales in weighing, where the cargo is to be weighed as delivered; that the usual customary method of weighing, under the circumstances stated, is by the use of such scales, wherever haste is required. It follows that the libellant is entitled to demurrage. I will not undertake to determine how much; but will refer the question to a commissioner if the parties do not agree about it.

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THE CALEDONIA.

GOLDSMITH *v.* HENDERSON *et al.*

(District Court, D. Massachusetts. August 15, 1888.)

1. SHIPPING—UNSEAWORTHY VESSEL—WEAK SHAFT.

Where a steamer's propeller shaft, which had been long in use, broke in fair weather, when the ship was under ordinary full speed, and no wreckage lay about or rock that could have been struck, and the shaft showed no flaw on subsequent examination, the court found that the shaft was weak before the vessel left port, and *held*, that this constituted such a defect as to render the ship unseaworthy at the commencement of her voyage, and her owner liable for damages arising out of such condition.

2. SAME—DAMAGES—DELAY—LOSS OF WEIGHT.

When a shipper of cattle furnished sufficient provisions to last during an ordinary voyage, but, owing to the unseaworthiness of the ship, the voyage was unduly prolonged, *held*, that the ship was liable for the shrinkage in the weight of the cattle occasioned by lack of provisions.

3. SAME—FALL IN MARKET PRICE.

In the usual course of the business of shipping cattle abroad, they are sold immediately on arrival, which fact was known to the ship agent when the contract for transportation was signed. Owing to the unseaworthiness of a ship, the voyage was prolonged 20 days, during which the market price of the cattle fell. *Held*, that the ship was liable for the shipper's loss caused by the fall in the market price.

In Admiralty. Libel by shipper of cattle for damages arising out of the breaking of the shaft of the steamship Caledonia. Decree for libellant. Affirmed on appeal, 43 Fed. Rep. 681.

*Henry M. Rogers* and *Warren K. Blodgett*, for libellant.

*William G. Russell* and *George Putnam*, for claimants.

NELSON, District Judge. The Caledonia sailed from Boston, June 15, 1885, and on June 24, when nine days out, her propeller shaft broke in the stern tube, and the machinery was disabled. The rest of the

voyage was performed under sail, and she arrived at Deptford, July 20th, being 20 days beyond her usual passage. The cattle were put on short allowance, and were landed in an emaciated condition. It appeared that the ship experienced no rough weather on her passage previous to the accident, and that the breaking of the shaft occurred in fine weather; that, at the time of the accident, she was under ordinary full speed; that there was no wreckage floating about to indicate that the ship struck any submerged bulk, and no reef or rock could have been struck. It also appeared that the propeller shaft had been 14 years in use. On her previous trip out, the ship had encountered severe gales. Upon examination of the breakage in England, no flaw was discovered. Upon these facts I find that the shaft must have become weakened from long use, and broke from that cause, and that this weakness existed at the time the ship left Boston, and constituted such a defect as to render the ship unseaworthy at the commencement of her voyage; and that the exception in the bill of lading of perils of the sea, and damage by delays and defects of machinery, was no limitation on the warranty of the seaworthiness of the ship, at the commencement of the voyage. I find that there was no fault on the part of the ship in not accepting assistance from other vessels spoken after the accident. Upon the question of damages, it appeared by the agreement of the parties, in lieu of a reference to an assessor to assess the damages, that the whole amount of damages suffered by the libellant arose from two sources of loss,—shrinkage in weight from the protracted voyage, and fall in the market value of the cattle during the delay in arrival; and that these two causes together made the loss \$7,850, and that one half thereof, \$3,925, was to be attributed to each cause.

The steamship company claimed that the shrinkage in weight was caused by the failure of the libellant to provide sufficient provisions for the cattle during the voyage. Upon this point I find that the libellant provided sufficient provisions for a voyage of the usual length, and that was all which, by the usage of the business, he was bound to provide, and that the shrinkage in weight was owing to the giving out of the provisions in consequence of the delay in arrival, for which the steamship company is responsible.

The steamship company also claimed that, as a matter of law, it should not be held responsible for the fall in market value. But as it appeared in evidence that the cattle were not to be sold until their arrival at Deptford, and were to be sold immediately upon their arrival, and that this was the usual course of the business of shipping live cattle by steamship line from Boston to Deptford for the London market, and that this was known to the agents of the steamship line at the time the contract between the parties was executed and the bill of lading was signed, I am of opinion the steamship company is responsible for the loss by the fall in the market, as well as by shrinkage in weight, and is liable for the whole amount of the libellant's damage from both causes. Decree for the libellant for \$7,850, and interest from the filing of the libel, and for costs.

## THE FAVORITE.

BRAND *et al.* v. THE FAVORITE.

(District Court, D. Washington, W. D. May 11, 1892.)

## TUGS AND TOWS—NEGLIGENCE—UNSEAWORTHY TOW.

When a scow in tow of a tug careened and lost overboard her deck load of brick, and the court found that the leaky and unseaworthy condition of the scow was the cause of the accident, but also that the master of the tug had not made the usual examination to ascertain her condition before undertaking to tow her, it was held that both tug and tow were in fault, and the owner of the scow should recover against the tug but half his loss.

In Admiralty. Libel to recover damages for negligent towage.

*A. J. Hanlon*, for libelant.

*Crowley & Sullivan*, for claimant.

HANFORD, District Judge. This is a suit brought to recover damages for the loss of a scow load of brick, on the ground of negligence and unskillfulness on the part of the master of the steamer in towing the scow, causing said loss. The libelants were owners of the scow and cargo. They employed the steamer to tow the scow, loaded with brick, a distance of 16 or 17 miles, from the brickyard to Tacoma. In order to take advantage of the tides the steamer went for the tow, and started with the same on the trip to Tacoma, in the night. After making a distance of about seven miles, as the scow appeared to be filling with water, the master attempted to run her upon the beach to save her, but before he could accomplish his purpose the scow careened so that the brick which were loaded upon her deck were dumped into the water and entirely lost. The mishap occurred in fine weather and in smooth water. The leaky and unseaworthy condition of the scow was the sole cause of it, and for this the libelants, who loaded her and sent her upon the venture, must be held to be primarily responsible. But the loss could not have occurred if the steamer had left her moored as she was at the brickyard. The master relied upon an assurance given by an employe of the libelants that he had on the day previous let the water out of the scow, and that she was all right, and towed her away without making the usual examination to ascertain her actual condition. Had he acted with ordinary care and prudence the loss would not have occurred while the property was in his charge, and for his neglect in this respect he is in part responsible for the consequent damage. According to the rule in admiralty the loss must be shared by all who were contributors towards producing it. I find from the evidence that 83,000 brick were lost, the market value of which at Tacoma was \$9 per 1,000. The cost of transportation would have been 40 cents per 1,000. Deduct this expense from the value of the brick, and the difference will be the whole loss. A decree will be entered in favor of the libelant for one half of said amount, and costs.