nation. The cargo of tea was a comparatively light cargo; it was not calculated to damage and to break down into an unseaworthy condition a vessel properly constructed, and in proper condition at the commencement of the voyage. The weather was not so extraordinary that damages arising from mere insufficiency of the interior structure of the vessel to keep the cargo from water damage, should fall on the cargo. The bolt when loose was found to be much rusted. The master in his testimony speaks of it as so loose and rusted that water might come around it.

Packages of tea are, or ought to be, so tightly packed as not to admit of any shifting. In this case there was no proper shifting; only evidences of slight movement of the cargo. Some boxes in the neighborhood of the stanchion were broken; and some damaged on top. But the risks of the bending of a stanchion like this, and of pulling out rusty bolts, do not belong to the cargo, but to the ship. Had they been of proper strength and in proper condition, no such accident could have happened, or such damage arisen. In my judgment the damage proceeded from either the original insufficient strength of the stanchion, or from its bad condition, or bad fastening at the commencement of the voyage. For such defects, either of condition, or of original structure, the ship, and not the cargo, takes the risk; and to such damages none of the exceptions of the bill of lading apply. *The Hadji*, 16 Fed. Rep. 861, affirmed 20 Fed. Rep. 876; *The Rover*, 33 Fed. Rep. 515, 516, affirmed 41 Fed. Rep. 58; *The Caledonia*, 43 Fed. Rep. 681; *Steel* v. *State Line, etc.*, 3 App. Cas. 72, 86; *Tattersall* v. *Steamship Co.*, 12 Q. B. Div. 297.

Decree for the libelant, with costs, with an order of reference to compute the damages, if not agreed upon.

THE COVENTINA.

MUSICA *v.* THE COVENTINA.

(*District Court, S. D. New York.* July 14, 1892.)

1. SHIPPING—DELAY IN SAILING—CONTROVERSY BETWEEN OWNER AND CHARTERER—LIABILITY TO CARGO OWNER.
   The owners of a vessel chartered her for the purpose of procuring freight, and the master issued the usual bills of lading to a shipper, importing a delivery of the goods within a reasonable time. Thereafter a controversy arose between the owners and charterers, by reason of which the sailing of the vessel was unduly delayed. *Held*, that the vessel was liable to the shipper for the excessive delay caused by such controversy.
2. SAME—DELAY DUE TO ATTACHMENT OF VESSEL—DUTY OF OWNER TO SHIPPER.
   When a vessel was attached after cargo had been put aboard, and could not be released until the end of an uncertain litigation, *held*, that the shipper's goods should have been transferred to another vessel, or notice given the shipper of the liability to delay, with the privilege of reshipping. In default of this, the ship took on herself the risk of loss by delay, with right of recourse for indemnity over to the person causing it.

In Admiralty. Libel for damage caused by delay in shipping cargo. Decree for libelant.

Hobbs & Gifford, for libelant.

Convers & Kirlin, for claimants.

BROWN, District Judge. On the 9th of January, 1892, a quantity of wine was shipped at Leghorn, Italy, on board the steamship Coventina, bound for New York. The vessel did not arrive till the 18th of April, 1892, a period of 100 days. Forty-three days was the outside limit of the usual time of delivery. The wine had been sold by the consignee "to arrive," and in consequence of the great delay in arrival, the purchaser revoked the contract and refused to accept the wine. Meantime the market price declined; and this libel was filed to recover the loss.

The vessel had been chartered by the owners. After the wine was shipped, a controversy arose between the owners and the charterers upon the terms of the charter, whether the ship was bound to touch at certain ports in Spain. The master refusing to proceed to the ports desired, the charterers caused the vessel to be attached in Italy on the 27th of January, on a claim of damages for breach of charter, and she remained in custody 40 days, until a reversal on appeal. The owners were unable to procure her release at first, the practice there not entitling them to this right. There is no proof of negligence in the endeavor to procure the release of the ship, or to dispatch her upon the voyage. The court of first instance at Civita Vecchia decided the suit in favor of the charterers. The owners might then have obtained a release of the vessel by the payment of the judgment; but the charterers having become insolvent, the owners could not safely pay the decree and expect to get back the money in case of reversal. The vessel was, therefore, left in custody and an appeal taken to Rome, on which the judgment below was reversed, at the end of 40 days from the original arrest, with damages to the amount of the charter, pursuant to its stipulation, in favor of the owners.

For the ship it is contended that, in the absence of any negligence, she is not liable; 1 Pars. Shipp. & Adm. 311; *The Success*, 7 Blatchf. 551; *The Onrust*, 6 Blatchf. 533; for the libelant, that she is answerable for damages to the cargo owner for nondelivery within a reasonable time.

The exception in the bill of lading, "Restraint of Princes," etc., does not, I think, include a detention under a suit like that above stated. *Finlay* v. *Steamship Co.*, 33 Law T. (N. S.) 251. The charter was a charter of affreightment, voluntarily entered into for the mutual interest of the owners and the charterers. As respects the shipper of goods, they both represented a single interest; and the vessel was bound for the delivery of the goods according to the legal import of the bill of lading, which the owners in legal effect, by the master, had issued. This obligation was to deliver within a reasonable time. The charter was but a means of procuring freight; and if, for securing freight, the owners incumbered themselves by a charter contract, I do not perceive how any controversy

between them and the charterers could change their obligation to the shipper to deliver within a reasonable time under the bill of lading they had issued. The shipper was a stranger to that controversy. Its consequences were not at the shipper's risk, but at the risk of the owners, who had voluntarily dealt with the charterers and had chosen to obtain cargo in that way. If the charterers were in the wrong, the owners were entitled to indemnity from them; and the court of appeal, as above stated, seems to have awarded that indemnity.

Nor is a detention of the vessel by an attachment in such a litigation such a circumstance as is to be taken into account in considering what is a usual or reasonable time. Upon this point the case of *Broadwell* v. *Butler*, 6 McLean, 296, is analogous. It is there said, (page 300:)

"The subsidence of the water in the Ohio river, which prevented the boat from passing over the falls, was not a cause of delay, which, within any of the principles, would excuse the carrier from the obligation imposed by law to deliver the property within a reasonable time. It was practicable to have delivered the cargo at Cincinnati by draying the molasses and sugar around the falls, and reshipping on other boats."

The waiting for the rise of water was there justified solely on the ground of long usage. So in this case, had not the owners wished to rely on indemnity to be obtained from the charterers, they might have reshipped the goods by another vessel.

In the case of *Stiles* v. *Davis*, 1 Black, 101, it was held in the supreme court that a seizure of the goods by the sheriff under an attachment as the property of a third party, was a good defense by the carrier to an action of trover for nondelivery. But in such cases the carrier is a stranger to the controversy. He performs his whole duty by prompt notice to the owner and proper care and defense of the goods meantime. In the case at bar the controversy was the ship's own controversy, founded on her own contract by charter to which the shipper was a stranger, no reference to the charter being made in the bill of lading. The relations of the cargo owner to the controversy in the two cases are reversed. But even in the former class of cases, prompt notice to the owner, and due care in the meantime, are obligatory on the carrier. For nonperformance of these duties the ship in the case of *The M. M. Chase* and *The G. P. Trigg*, 37 Fed. Rep. 708, in this court, was held liable; and this ruling was affirmed on appeal.[1] So here, when it was found that this ship had been seized and could not be released, except at great risk to the owners, until the end of an uncertain litigation, reasonable consideration of the shipper's interests required either that the goods should be transhipped to their destination by some other vessel, or else that the shipper should be notified of the liability to delay, and the privilege given him to reship at his option. In default of this, the ship took on herself the risk of loss by delay, with the right of recourse to the charterers for indemnity.

On both grounds I think the libelant is entitled to a decree, with costs.

[1] No opinion.

THE DANIEL BURNS.

STARIN'S CITY, RIVER & HARBOR TRANSP. CO. *v.* THE DANIEL BURNS.

(*District Court, S. D. New York.* June 28, 1892.)

SHIPPING—HIRED VESSEL—BAILMENT—SHORTAGE—OWNER PRO HAC VICE.

A canal boat was hired by libelant at a specified daily rate for an indefinite time, to be used by libelant for storing or carrying its own grain. A man was attached to the boat, who, however, had nothing to do with the manipulation of cargo or the navigation of the boat, which was done exclusively by the libelant. A shortage in a cargo of grain having occurred, this suit was brought to recover its value. *Held*, that the boat was not a common carrier, and that the libelant, in putting its grain aboard, did not part with its possession, or deliver it to the boat owner. Therefore, apart from the unsatisfactory nature of libelant's proof as to the actual shortage, *held*, that the libel should be dismissed.

In Admiralty. Libel for shortage in cargo. Libel dismissed.

Goodrich, Deady & Goodrich, for libelant.

Hyland & Zabriskie, for claimant.

BROWN, District Judge. The libel was filed to recover the value of 1,348 bushels of oats, which, it is alleged, were not delivered out of a quantity of 8,989 bushels, alleged to have been loaded upon the canal boat Daniel Burns on December 8, 1891. The libel states that the quantity missing "was sold and delivered by the master without orders from the libelant," and that the canal boat was "under charter to the libelant for transportation of the oats from Hoboken, N. J., to such point or points in the harbor of New York as might thereafter be ordered."

The proof is scarcely satisfactory as to the actual quantity loaded upon the canal boat. What was put upon the boat was put in from cars, which had been weighed and measured upon different days previous to the loading. The weigher could give no testimony as to the amount on either of the cars. The weight he testified to was obtained, as he said, by the addition of the weights on the several cars together. He testified positively to this aggregate; but he could give no items; he did not remember them without his memoranda; and his memoranda though called for, were not produced. There was no proof as respects the custody of the cars, or of the grain, between the time when they were measured and the time when they were unloaded upon the boat; and hence no proof that all of it went upon the boat. There was no proof of any abstraction of grain from the boat, nor of any improper delivery without orders of the libelant. 7,641 bushels were admitted to have been delivered in three different deliveries; but there was no proof of the actual measurement of the quantity delivered, or that the amount taken by the libelant's vendee did not exceed that quantity. I should hardly be satisfied to render any decree for the libelant upon such evidence, if in other respects the libel could be sustained.

But upon the proof as to the hiring of the boat, I do not think the facts show that either the Burns or her owner was liable for a mere deficiency of grain found on unloading. There was no charter of the