The boat was in legal effect delivered to the libelant. The libelant, in putting its grain on the boat, did not part with the possession of the grain, nor deliver it to the boat owner. On the contrary, the boat was delivered to the libelant, and was legally in its possession, custody, and control. The libelant was owner *pro hac vice*. The claimant was not liable for the boatman's willful torts or crimes, if any had been proved. *Scarff* v. *Metcalf*, 107 N. Y. 217, 13 N. E. Rep. 796.

The libel is dismissed, with costs.

THE EURIPIDES.

AMERICAN SUGAR REFINING CO. *v.* THE EURIPIDES.

(*District Court, S. D. New York.* June 11, 1892.)

1. SHIPPING—DAMAGE TO CARGO—INSUFFICIENT PUMP—NEGLIGENCE.
   Where a vessel arrived with her cargo of sugar damaged both above and below by water in the hold, and the evidence indicated that the damage above had been caused by water taken in through deck openings in heavy weather, but that the damage below was caused by a bad condition of the ship's pump and valve, which condition existed at the commencement of the voyage, and also that reasonable care had not been taken to remove the water when it was found that the pumps were choked, it was *held* that the ship was liable for the latter damage; not for the former.
2. SAME—CHARTERED VESSEL—LIABILITY OF SHIP.
   The vessel was demised to charterers, who had subchartered her at the time of the damage by a charter of affreightment. *Held*, that the original charterers having undertaken to transport the goods under authority and consent of the ship-owners, under a bill of lading signed by a duly-authorized agent, or without any bill of lading whatever, on her implied contract to transport safely, the ship would be liable.

In Admiralty. Libel for damages to cargo. Decree for libelants.

Wing, Shoudy & Putnam, for libelants.

Convers & Kirlin, for claimants.

BROWN, District Judge. On the discharge of a cargo of sugar in New York in March, 1892, brought by the Euripides from Havana, some two feet of water were found in her hold, causing considerable damage to the sugar, some of the bags being entirely empty, and some 2,500 partly empty or damaged. The above libel was filed to recover for this loss and damage.

The claimants contend that the loss occurred through a peril of the seas, in consequence of an unusually long and tempestuous voyage, during which a great deal of water was taken over her bows, which worked more or less down through the deck about the mast and ventilators into the two compartments below. The four-inch pipe from the water closet, leading to the ship's side, was also found to have a hole in it of about an inch and a half in diameter, claimed to have been gnawed by rats, about 12 or 18 inches inside of the valve, which was a little inside of

the ship's side, and through which additional water worked its way. The ship's pumps ceased to bring any water some five or six days after the vessel sailed, and no considerable amount of water was suspected to be aboard until her arrival in New York. Subsequent examination showed that the pumps had got filled up solid at the bottom by candied treacle and greasy matter from the bilges. The vessel sailed on February 17th. No heavy weather was experienced till the 19th; and from the 22d to the 28th was continuous heavy weather. She arrived in New York on March 3d.

I have considerable doubt whether the hole shown in the pipe was gnawed by rats. Although one rat was seen, there are no other indications of rat damage, nor of any considerable number of rats aboard. The amount of water taken in from the deck is shown to have been comparatively small. Three hundred bags is the highest estimate given at the trial of the number of bags damaged from this cause on the upper part of the cargo. This number, or whatever number may be found to have been injured from water taken in from above, should be excluded, as caused by sea perils.

But the evidence does not indicate any such amount of water taken in in this way as to injure the cargo at the bottom, where most of the damage and loss arose. This must have come through the pipe, and should have been prevented by the valve; but the valve, also, was proved by Reilly to have been so battered as to afford insufficient protection.

Water in the hold ought to have been removed also by the pumps, before it had accumulated to such an extent as to touch the bags protected by proper dunnage and flooring; but the pumps would not work after the vessel was five or six days out.

It is not credible that the pumps could have got stopped up solid in so short a time, if they were properly cleared before the vessel sailed. After arrival the water was removed without difficulty by hand pumps. Nor am I satisfied that on so short a trip the water-pipe valve, if in proper order at the beginning of the voyage, could have become so much battered as to account for the amount of water found at the close of the voyage. The unavoidable inference from all the circumstances, it seems to me, is that both the pumps and the valves were in bad condition at the commencement of the voyage; and that when it was found that the pumps did not work, reasonable care was not exercised to ascertain the amount of water in the hold, or to remove it by other means, if the pumps were stopped. On both grounds the ship is liable to make good so much of the damages as did not arise from water coming in from above.

The original charter was a demise of the ship, and the charterers were in the position of owners *pro hac vice*. *The India*, 14 Fed. Rep. 476, affirmed, 16 Fed. Rep. 262; *The Bombay*, 38 Fed. Rep. 512. The subcharter was not a demise of the ship, but a charter of affreightment only. For goods shipped under the subcharter the master, or the original charterers, or their authorized agent, the supercargo, had authority to sign any proper bill of lading, and that would bind the ship. This

was a common form of bill of lading and proper for the goods in question.

But the liability of the ship would be the same without any bill of lading. The original charterers undertook to transport these goods; this was done by the authority and consent of the ship owners, for such was the very object of the charter. The ship is, therefore, answerable for any negligence that causes damage to the goods, and is answerable to the shipper, or to his vendee, upon the implied contract to transfer safely, whether a bill of lading is issued or not. *The Water Witch*, 19 How. Pr. 241, affirmed 1 Black, 494; *The Peytona*, 2 Curt. 21, 27; *The T. A. Goddard*, 12 Fed. Rep. 184, and cases there cited.

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

SORENSEN *et al.* *v.* KEYSER.

(*Circuit Court of Appeals, Fifth Circuit.* June 20, 1892.)

No. 28.

1. DEMURRAGE—LAY DAYS—DROUGHT—CONSTRUCTION OF CHARTER.
   Where a ship is chartered in Liverpool to carry a cargo of lumber from Ship island, and the charter party provides that "in the computation of days allowed for delivery should be excluded any time lost by reason of droughts, floods, and storms, or any other extraordinary occurrence, beyond the control of the charterer," such exception does not apply to a drought existing at the time of the charter in the region of the Pascagoula river, and which prevented the charterer from obtaining the timber, but which did not interfere with its delivery from Moss point, the usual place of preparing cargoes, and between which place and Ship island no drought could affect the delivery. 48 Fed. Rep. 117, reversed.
2. SAME—STORMS.
   Under the terms of the charter, demurrage was to be paid for each "working day beyond the days allowed for loading." *Held*, that time lost by reason of storms before the beginning of the lay days, or after their expiration, could not be deducted in computing the demurrage.
3. SAME—"WORKING DAYS" DEFINED.
   The term "working days" in maritime affairs means a calendar day on which the law permits work to be done. It excludes Sundays and legal holidays, but not stormy days.

Appeal from the District Court of the United States for the Southern Division of the Southern District of Mississippi.

In Admiralty. Libel by Jacob E. Sorensen and others, owners of the bark Urania, against W. S. Keyser, for demurrage. The libel was dismissed, (see 48 Fed. Rep. 117,) and the libelants appealed. The case was then heard on motion of appellee to be allowed to take testimony as to the meaning of certain words in the charter party, which motion was overruled. 51 Fed. Rep. 30. The case is now on final hearing. Reversed.

John D. Rouse and *Wm. Grant*, for appellants.

E. Howard McCaleb and *John C. Avery*, for appellee.