

were unknown would have left the defendant free from responsibility for a variance of the actual contents from those described in the bill of lading." *Bank of Batavia v. New York, L. E. & W. R. Co.*, 106 N. Y. 195, 202, 12 N. E. Rep. 433.

The ship, when a common carrier, is an insurer of the goods taken on board as against all perils not lawfully excepted; but not an insurer as regards goods not shipped. She is bound to care and diligence in keeping tally and in receipting for a specific quantity of goods. The recitals in the bills of lading of the amount of goods shipped are entitled to weight. But none of these constitute, in the federal courts, any estoppel against proof of fraud or mistake. The remedy of the respondents is against the shippers.

Decree for the libelants, with costs.

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THE GUY C. GOSS.

E. LOBE CO. v. THE GUY C. GOSS.

(District Court, D. Washington, N. D. December 19, 1892.)

1. CORPORATIONS—ACTIONS—PROOF OF CORPORATE EXISTENCE.

A libel in admiralty by a corporation will be dismissed where the legal existence of libelant is put in issue, and there is no proof of its organization.

2. SHIPPING — CARRIAGE OF GOODS — LIABILITY FOR DAMAGE — PLEADING AND PROOF.

Where goods were shipped under a bill of lading exempting the ship from liability "for leakage, breakage, or rust, except from improper stowage," the proof that the goods were delivered damaged by breakage, rust, chafing, sweating, and dampness is insufficient to sustain a libel charging damage to the goods by unseaworthiness of the ship, bad stowage, want of proper dunnage, negligence, and improper conduct of the master and crew.

In Admiralty. Suit in rem by the E. Lobe Company, (a corporation,) for damage to toys and furniture carried by the bark Guy C. Goss from New York to Seattle. Dismissed.

Thompson, Edsen & Humphries, for libelant.

W. H. Pritchard and John H. Elder, for claimant.

HANFORD, District Judge. The libelant sues as a corporation. Its legal existence and right to sue is put in issue by the answer, and there is no proof of its organization. For this cause, if no other, the libel must be dismissed.

I have, however, read all the evidence, and find that to sustain the allegations in the libel of damage to libelant's goods by the unseaworthiness of the ship, bad stowage, want of proper dunnage, "negligence, carelessness, and improper conduct and want of attention of the master, his mariners, and servants," there is no proof whatever, except testimony showing that certain goods, when delivered at Seattle, were in a damaged condition, the damage being by breakage, rust, chafing, sweating, and dampness. The bills of lading contain a clause exempting the ship from liability for "leakage, breakage, or

rust, except from improper stowage." To warrant a decree awarding damages, the libellant must prove affirmatively one or more of the faults of the ship, her master or crew, which the libel charges. *Clark v. Barnwell*, 12 How. 282; *McKinlay v. Morrish*, 21 How. 343; *Transportation Co. v. Downer*, 11 Wall. 129. The evidence fails to do so. It does not go more than half way towards making a complete case. Therefore the court decrees that the suit be dismissed.

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BYRNE v. JOHNSON et al.

(Circuit Court of Appeals, Fifth Circuit. January 9, 1893.)

No. 49.

1. SALVAGE SERVICES—WHAT ARE—COMPENSATION—MISCONDUCT.

The steamer *E.*, of 2,500 tons, struck a concealed rock near the Bahama bank, and sprung a leak, which made it necessary to run her aground about 10 miles from Great Isaac's lighthouse. In order to lighten ship the master sent to Key West, and obtained the schooner *Cora*, with a crew of 22 men. She worked for five days, but her appliances and the methods of her crew were crude, and her diver failed to discover the largest leak. At the end of that time other salvors arrived, with a competent crew and efficient apparatus, who soon stopped the leak, and got the *E.* off, and towed her to a sheltered place, where her cargo was transferred to the steamer *New York*, sent out by her owners for that purpose. In the mean time the *Cora*, with a portion of the *E.*'s cargo, which she had on board, returned to Key West, against the protest of *E.*'s master; her reasons for so doing being fear of a hurricane, and a broken rudder, which the officers of the *E.* offered to repair. At Key West the cargo was libeled for salvage. *Held*, that the *Cora*'s services were of doubtful value, and, in view of the fact that she unnecessarily carried part of the cargo to a place where it would not sell to advantage, the service was one for which the compensation should be *pro labore et opere*, and not for salvage services. 50 Fed. Rep. 951, reversed.

2. SAME—COMPENSATION.

Libellants having been already compensated for their services, as respects the *E.* herself, through a decree of another district court, their services in respect to the cargo which was carried to Key West by them should be compensated at the rate of \$25 for each of the crew, and \$550 for the *Cora*, which was valued at \$3,500. 50 Fed. Rep. 951, reversed.

Appeal from the District Court of the United States for the Southern District of Florida.

In Admiralty. Libel by B. W. Johnson and others against a portion of the cargo of the steamer *Eldorado* (Henry J. Byrne, claimant) to recover for salvage services. The district court held that the service rendered was a salvage service, and awarded 25 per cent. of the value of the cargo saved as compensation. See 50 Fed. Rep. 951. The claimant appealed. Reversed.

J. P. Blair, (G. Bowne Patterson, on the brief,) for appellant.  
Jefferson B. Browne, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and BILLINGS, District Judge.