

actually received by the ship. The burden is on the libelants to show this. In the state of the proof on the subject I am unable to say that they have done so. From the testimony of libelants' witness Chandler it appears that he loaded 28 cars with lumber for them at a mill some 60 miles from Mobile, and whither they were brought. A copy of the specifications made by him is in evidence, and which specifications show an aggregate of 27,234 pieces. Pradoss, another witness for libelants, testified that he loaded 2 cars for the "Tongoy," and they aggregated 3,371 pieces; making a total as loaded at said mill of 30,605 pieces. Neither of these witnesses had any personal knowledge that the lumber they put on the cars at the mill was actually received by the ship. The mate of the ship is the only witness who testifies positively to the number of cars bringing lumber to the ship, and he gives the number of each car, and the number of pieces of lumber which he received on board the ship from each car. The number of pieces of lumber he claims to have received is 27,911. His testimony shows 26 cars corresponding in their numbers with numbers found in Chandler's specifications, and 4 cars with numbers that do not correspond with any of said specifications. Two of the last cars, I take it, were those loaded by Pradoss. But Chandler's specifications give the number of one car that does not appear from the master's testimony to have been received at the ship. There is no direct evidence accounting for this car, and I cannot find that it ever reached the vessel. The shippers were loading other vessels with lumber at the same time in the port of Mobile. The number of pieces of lumber claimed by the bill of lading to have been delivered to the ship "Tongoy," and for which the master was requested to receipt, is 29,686. The number claimed to have been loaded on the cars at the mill, and shipped to Mobile for her, is 30,605, nearly 1,000 pieces more than shown by the bill of lading, and the number claimed by the ship to have been received is 27,911 pieces, or 1,775 pieces less than shown by the bill of lading. In this condition of the evidence I am unable to find what the truth is. I must therefore hold that the libelants have failed to discharge the burden resting on them to show, at least by a preponderance of evidence, that the vessel did receive as her cargo 29,686 pieces of deals and boards, as they have averred in their libel. The libelants have not made a case which entitles them to damages, if any had been shown. The libel must be dismissed; and it is so ordered.

---

#### THE CYPRUS.

#### KEILEY v. THE CYPRUS.

(District Court, S. D. New York. March 29, 1893.)

#### SHIPPING—PERSONAL INJURIES—DEFECTIVE APPLIANCES—CONTRIBUTORY NEGLIGENCE.

A vessel is liable for maintaining defective and unsafe appliances, but an employe who knew of such defect, but failed to use additional care, is not entitled to full damages in case of injury.

In Admiralty. Libel by William S. Keiley, as guardian, etc., against the steamship *Cyprus*, for personal injuries. Decree for libelant.

Libelant, a boy of 16, was employed on board the steamship *Cyprus* by a boiler cleaner who was cleaning the steamer's engines under contract. The entrance to the boiler room was by means of an iron ladder, leading into the stoke hole. The ladder was bolted fast at the bottom on each side, and was designed to be fastened at the top to the deck on each side, but the evidence tended to show that the fastenings at the top on one side were not in place. The sides of the ladder were flat, iron plates, and, instead of single large rungs for steps, two iron rods, about an inch apart, were riveted in for each step. Libelant testified that the want of a fastening on one side of the ladder, at the top, caused it to sway under his weight as he was ascending it, in consequence of which he lost his foothold, and fell into the stoke hole. Libelant had been up and down the ladder several times previously on that day, and was aware that it was shaky, and insecurely fastened on one side, at the top.

William B. Tullis, for libelant.  
Convers & Kirlin, for claimants.

BROWN, District Judge. The evidence leaves no doubt that the ladder in the present case was in a defective and unsafe condition through the absence of the usual fastening at the top on the right-hand side. The ship is responsible for this defect. *The A. Heaton*, 43 Fed. Rep. 592; *The France*, 53 Fed. Rep. 843. The libelant must, however, have had previous knowledge of the unsteadiness of the ladder from his previous use of it. He must have gone up and down the same ladder that day at least three times before. The witnesses show that its condition in the morning was the same. Notwithstanding the defect, I have no doubt that he could have gone up without falling, as he and others had already done, had he used the additional care which proper caution would show to be necessary. Both are, therefore, chargeable with fault. As the libelant has practically fully recovered, and is not entitled to his full damages by reason of his own contributory negligence. (*The Max Morris*, 137 U. S. 1, 11 Sup. Ct. Rep. 29.) I award him \$300, with costs. A decree may be entered accordingly.

---

#### THE PERSIAN MONARCH.

#### BRIODY v. THE PERSIAN MONARCH.

(Circuit Court of Appeals, Second Circuit. April 18, 1893.)

#### SHIPPING—INJURIES TO STEVEDORE—FELLOW SERVANTS.

Plaintiff, a foreman stevedore, was requested by a fellow stevedore to pass a derrick fall rope, in plaintiff's charge, with which to haul a lighter alongside the ship on which they were at work. The derrick was unsuited to this purpose, and the rope broke, causing an injury to plaintiff, who was looking on. There were suitable appliances at hand for hauling the lighter alongside, in the use of which plaintiff and his fellows were skilled. The stevedores were not directed by the officers to use the derrick on this occasion, but they had been in the habit of using it, without objection