

All that libellant can judge from is the result. He made a contract to be carried to sea safely. In being carried to sea he got aground. He alleges that it was through the negligence of the pilot, aided by the negligence of the tug; that is to say, that these caused it, and he did not. This seems to be enough for the purposes of pleading. *The Quickstep*, 9 Wall. 670. The mere charge of negligence does not put on respondent the burden of proof. That will be developed as the case goes on. See *The Webb*, 14 Wall. 414.

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DONKIN et al. v. HERBST et al.

HERBST et al. v. DONKIN et al.

(Circuit Court of Appeals, Second Circuit. May 23, 1893.)

1. CHARTER PARTY—VESSEL OUTSIDE CHARTER LIMITS—MASTER, CHARTERERS' AGENT—HEALTH LAWS—CHARTERERS' DUTY TO PROCURE CLEAN BILL OF HEALTH.

The charterer of a vessel running under a time charter from the river Platte to the United States or the United Kingdom or Europe made a subcharter, which provided that the ship should go outside her charter limits, and take a cargo from Progreso, Mexico. The charter provided that the master, though appointed by the owner, should be under the orders of the charterer. The ship went from Buenos Ayres, an infected port, to Progreso, where the health officer refused her admittance. The ship then went to Key West, where the master telegraphed the charterer that he could not return to Progreso without a clean bill of health from some other place. The vessel on the same day was put in quarantine at Key West for 30 days. After some further telegrams, the charterer ordered the ship to return to Progreso immediately. After the vessel was ready for sea, with steam up, and anchor chain short, the charterer telegraphed to have the papers vised by the Spanish consul, to which the master replied, "Too late," and went to Progreso, where he was again refused admittance, and, after much consequent delay, the charter was terminated. The charterers declined to pay the charter hire, averring that they had suffered damage by reason of the master's failure to obtain the vise, and, on being sued for the charter money, brought a cross suit to recover such damages. *Held*, that the owners were under no obligation to obtain clean health papers for Progreso, since they never authorized the ship to go there; that the master was the charterers' agent in respect thereto; and that the master's defaults, if any, did not become the faults of the owners. 49 Fed. Rep. 379, affirmed.

2. SAME.

It appearing also that the final refusal to permit the ship to enter at Progreso was not due to the lack of the vise, but because she came from an infected port, and without a clean bill of health, for which the owners were not responsible, the charterers' claim of damages must be dismissed, and the ship recover her charter money. 49 Fed. Rep. 379, affirmed.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. Libel by Richard S. Donkin and others against Robert Herbst and others to recover the charter hire of the steamer *Shadwan*, and a cross libel by respondents to recover damages for a failure of the master to obey the charterers' orders. There was a decree for libellants in the court below. See 49 Fed.

Rep. 379, for the opinion of Judge Brown, which is practically adopted by this court. Affirmed.

Ed. L. Owen, for appellants.

Mr. Mynderse, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We agree with the opinion of Judge Brown in these causes, and affirm the decree in each, with costs to the appellee.

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NINE THOUSAND BUNCHES OF BANANAS.

THE CURLEW.

HENRY et al. v. BOWRING et al.

BOWRING et al. v. HENRY et al.

(Circuit Court of Appeals, Fourth Circuit. May 23, 1893.)

No. 35.

1. SHIPPING—CHARTER PARTY—EXCEPTED PERILS—BREAKING OF MACHINERY.  
The breaking of a junk ring on a steamship engine cylinder must be held an "accident of the sea and of the machinery," within the meaning of a charter party exempting the ship from liability for losses to cargo caused by such dangers, when such ring performed its function without jar or fault prior to the breakdown, and no flaw was disclosed by an examination of the broken pieces. 51 Fed. Rep. 246, affirmed.
2. SAME—DELAY—DAMAGE TO CARGO—SHIPPER'S FAULT.  
The charterers of a steamship, immediately on her departure from Baltimore, ordered by telegraph that a cargo of bananas should be cut and placed at the landing in Jamaica by the time at which the steamer would arrive in due course. The ship, however, was delayed about three days by an accident to her machinery, and the bananas, having been promptly cut, greatly deteriorated in the mean time. It was the custom of the trade to order bananas in advance, but in no other known instance had bananas been ordered cut before the arrival of the ship in the immediate vicinity. *Held*, that the proximate cause of the loss was a premature cutting of the bananas, and the ship was not liable in damages.

Appeal from the District Court of the United States for the District of Maryland. Affirmed.

Robert H. Smith and John H. Thomas, for Henry Bros. & Co.

T. Wallis Blackistone, for The Curlew.

Before GOFF, Circuit Judge, and DICK and HUGHES, District Judges.

HUGHES, District Judge. In this case there is a libel by Bowring and others, representatives of the steamship Curlew, for the freight due on a cargo of bananas brought by her from Jamaica to Baltimore in July, 1890, amounting to \$3,854.77; and there is a counterlibel by the owners of the bananas, Henry Bros. & Co., claiming damages to the amount of \$4,000, resulting from the bananas brought to Baltimore on July 14, 1890, having become de-