

THE LISCARD.

COMPANHIA DE MOAGENS DO BARRIERO v. LONDON ASSUR. CO.

SAME v. MANHEIM INS. CO.

(District Court, E. D. Pennsylvania. May 12, 1893.)

1. MARINE INSURANCE—CARGO—WHEN POLICY ATTACHES.

A marine policy on a cargo of wheat "at and from New York and bound for Lisbon" attaches while the wheat is in harbor at New York, immediately upon loading.

2. SAME—PARTICULAR AVERAGE CLAUSE.

Under a marine policy against all sea peril, loss and damage to cargo, except as provided in the clause, "Free of particular average unless the vessel be stranded, sunk, burned, or in collision," the exception ceases to operate as soon as the vessel had been stranded or in collision, whether the subsequent loss is caused thereby, or by some other cause.

3. SAME—COLLISION IN HARBOR.

There is a "collision," within the meaning of such a policy, when the vessel, being fully loaded, has once cast off her moorings, but has returned to her dock because of a difficulty with her engines, and is there struck by a scow, which makes a slight break in her bulwarks.

In Admiralty. Libels by the Companhia de Moagens do Barriero against the London Assurance Company and the Manheim Insurance Company of Manheim on marine policies on the cargo of the steamer Liscard. Decrees for libelants.

Curtis Tilton and John F. Lewis, for libelants.
Morton P. Henry, for respondents.

BUTLER, District Judge. I find the libelants' statement of facts substantially correct. On December 10, 1890, the libelants, through Lawrence Johnson & Co., of Philadelphia, shipped on board the steamer Liscard, at New York, bound for Lisbon, Portugal, 33,000 bushels of wheat in bulk, and 1,542 bags, valued at \$40,887; and for and at the expense and request of libelants the said Lawrence Johnson & Co. insured the said wheat in the Manheim Insurance Company for said voyage, in the sum of \$10,000. The wheat was purchased by libelants from Lawrence Johnson & Co., and as soon as loaded on board ship was by the terms of sale, the property of libelants. The bills of lading and certificates of insurance were made out in the names Lawrence Johnson & Co., the cargo being delivered and insurance payable to their order, and the papers were by them indorsed in bank. The payment for cargo was made through a credit opened by the libelants with London bankers, to whom the bills of lading and certificates of insurance went in passing from Lawrence Johnson & Co. to the libelants. The wheat was invoiced to libelants and the premium for insurance charged against them in the invoice.

Another lot of 33,000 bushels of wheat, valued at \$40,887, was shipped on the same steamer by libelants, and insured by the London Assurance Co., for said voyage, for the sum of \$20,000, the terms, conditions, and manner of shipment and insurance being the same

as to both lots, which were separated in the ship, and kept separate thereafter. Excepting as to the amount of libelants' claim, the case against the Manheim Company is the same as that against the London Assurance. The underwriters are both foreign companies and their method of business is to issue to their American agents open policies of insurance, for account of whom it may concern. Under these open policies their agents issue to the assured short certificates which stipulate as follows:

"This certificate represents and takes the place of the policy and conveys all the right of the original policy holder, for the purpose of collecting any loss or claim, as fully as if the property was covered by a special policy direct to the holder of this certificate."

The certificate and policy taken together contain the contract of insurance. Under the terms of this contract, the underwriters are liable for all kinds of sea peril, losses and damages to the wheat, whether partial or total, except as provided in the following clause:

"Free of particular average unless the vessel be stranded, sunk, burned or in collision."

The Liscard, while in the harbor of New York, after the insurances had attached, was run into by a scow or lighter, in tow of the George Carnie. Before the collision the steamer was fully loaded; her bills of lading had all been signed and delivered to libelants, and she had made every preparation to leave port; had cast off her mooring lines for the purpose of starting to sea, but in consequence of some trifling difficulty with her engines she again made fast to the wharf. The collision occurred after thus remooring. A break was made by the collision in the inclosed iron side of the steamer above her deck, called the "bulwark," of considerable length and open from one and a half to one and a quarter inches, a part of the distance. The steamer was duly surveyed before starting out, and pronounced seaworthy. In the course of her voyage she encountered very rough weather, which lasted for several days, and opened the seams of her deck, letting water in upon the wheat. Water passed in also through the hatches, from which canvas covers had been torn by the storm. Eventually her engines gave out under the strain, and she returned in distress to Boston. The wheat was there discharged, and found to be seriously damaged. Surveyors reported that no part of it was fit for further transportation, and recommended a sale. On February 2d, Lawrence Johnson & Co. and the master agreed that the voyage should be terminated and the cargo received at Boston. The insurers assented on condition that the rights of neither party to the policies should be affected thereby. The wheat covered by the London Assurance Co. was sold for \$28,554.15, which deducted from the valuation, \$40,887.00, showed a loss of \$12,332.85; while that covered by the Manheim Insurance Company's policy sold for \$27,851.25, which being deducted from the valuation, \$40,887.00, showed a loss of \$13,305.25. Parts of these balances have been paid by other companies having policies on the cargo. The libelants rendered serv-