

As to the amount of damages. The injury is serious; two trepanning operations have been necessary, and paralysis is impending. The libelant is about 30 years old. His health and ability to earn a livelihood are permanently impaired. He had been accustomed to earn \$18 per week. My opinion is there should be a judgment for the libelant for \$5,000, with interest from judicial demand.

THE GIAVA.

SERIO v. THE GIAVA, (RUSSO, Intervener.)

(District Court, E. D. Louisiana. May 30, 1893.)

No. 12,962.

SHIPPING—DAMAGE TO CARGO—BURDEN OF PROOF—EVIDENCE.

Certain boxes of macaroni were shipped from Palermo in good condition, and arrived at New Orleans in bad condition. It appeared that the boxes were stowed on top of casks, in the same hatch with a lot of green fruit. *Held*, that the burden was on the ship to show that the damage was caused by perils of the sea, and this burden was not sustained by evidence that heavy seas were encountered, and much water taken over all, and perhaps through the seams, but none down the hatches, and that there were but 18 inches of water in the hold.

In Admiralty. Libel by F. P. Serio against the Italian steamship Giava, in which Augustine Russo intervened. Decree for libelant and intervener.

L. O'Donnell, for libelant and intervening libelant.
H. P. Dart, for claimants.

BILLINGS, District Judge. Libelant alleges that on or about 30th April, 1892, there were shipped, per said steamer, from Palermo, Sicily, for his account, 86 boxes of macaroni, marked as valued at \$2.25 per box; that, at time of shipment the said boxes of macaroni were in good condition and a clean bill of lading was given, but when received at this port, to which they were consigned, they arrived in a damaged condition, so as to be unsalable; and that said damages were caused solely by the negligence and carelessness of the officers of said vessel, in improperly stowing them. The averments of Russo, intervening libelant, owner of 46 boxes of macaroni, of the total value of \$114.75, are to the same effect.

I think that Floria, the stevedore, and John Thompson, the foreman, established the fact that green fruit was stowed in the same hatch with the macaroni. There is no evidence tending to show that the macaroni was not shipped in good condition, and the evidence establishes that it arrived in bad condition. This being so, the boat, to discharge itself from obligation, must show that the damage happened from the perils of the sea.

The protest states that they encountered heavy seas, took much water over all; that she strained heavily, and, they feared, took water through the seams; they found water in the bilges. The master, in his testimony, states that no water was shipped down

into the hatches; the macaroni was stowed on the top of casks, and with green fruit. It is difficult to see how water coming through the seams of the vessel could have made this macaroni musty, stowed, as it was, on the top of casks, and there being only 18 inches of water in the hold. It seems, therefore, that the burden being upon the ship to show that it arose from the perils of the sea, and, the testimony failing to establish this, the inference must be that the damage was caused by bad stowage,—the macaroni being stowed along with green fruit. There must be judgment for the libelant and intervening libelant, as claimed.

THE MAJESTIC.

POTTER et al. v. THE MAJESTIC.

(District Court, S. D. New York. May 10, 1893.)

1. SHIPPING — PASSENGERS — DAMAGE TO BAGGAGE — FLOATING WRECKAGE — BROKEN PORT—LIABILITY OF CARRIER.

Where a passenger's baggage was damaged, while in transit on a steamship, by sea water taken in through a broken porthole, and it was claimed in behalf of the vessel that the port was broken while passing through floating wreckage, and that this was a peril of the sea, *held*, that if the port was sound, but was unable to withstand a blow from floating wreckage while passing through it at full speed, then reasonable precaution required the ship to steam away from the wreckage, or slow down on passing through it, and it was for the ship, not the passenger, to take the risk of such damage.

2. SAME — STIPULATIONS EXEMPTING FROM LIABILITY — NOTICE ON PASSAGE TICKET—PASSENGER CONTRACT.

A notice printed on the back of a passenger's ticket, exempting the carrier from liability under certain circumstances, never seen or read by the passenger, whose attention is not called to it by any reference in the body of the contract is outside of the contract, and not operative on the passenger.

In Admiralty. Libel for damage to passenger's baggage. Decree for libelants.

Cary & Whitridge, (Willard Parker Butler, of counsel,) for libelants.

Wheeler, Cortis & Godkin, (Everett P. Wheeler, of counsel,) for claimants.

BROWN, District Judge. The libelants were passengers on the steamship *Majestic*, which sailed from Liverpool on the 20th of January, 1892, and arrived at New York on the 28th. On disembarking, the contents of their trunks were found badly damaged by sea water. The above libel was filed to recover for the loss.

The trunks had been stowed for convenience of passengers in compartment No. 3 of the orlop deck, the same deck with passengers' rooms. On the fifth day out, the first officer, on examining the water-tight compartment at about 8 A. M., found two or three feet of water in that compartment, and one of the ports open, the glass having been shattered, and the iron cover, called a "dummy," which is designed to be screwed tight across it, forced open. During