

at least a reasonable charge for such wharfage facilities as the libelants actually furnished to the steamer. A reasonable charge is proved to be not less than the single statutory rate; and no objection is made on this point. No other person makes, or can make, any claim for compensation for the wharfage facilities afforded. So long as neither the state nor city interferes with the libelants' possession, and letting of the wharfage facilities, I see no reason why the vessels enjoying the use of it, should be entitled to dispute the libelants' right to a fair compensation, any more than a tenant should be allowed to dispute his landlord's title, as a defense against the payment of rent. These views seem to me all implied, or directly asserted in the case of *Wetmore v. Gaslight Co.*, 42 N. Y. 384.

There must, therefore, be a decree for the libelants as against the *Idlewild* for 19 days' wharfage at the rate of \$5.43 per day, with interest; and against the *Havana* for the sum of \$32.75, the balance above stated, with costs.

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#### THE ALVAH.

#### MORRIS v. THE ALVAH.

(District Court, E. D. New York. February 2, 1894.)

#### 1. SHIPPING — MARITIME CONTRACT — PRELIMINARY OR UNAUTHORIZED CONTRACT—CONFIRMATION.

A contract binds the ship when it is confirmed by those who have authority, and the ship has actually entered upon the performance of it, although it may have been a contract preliminary to a maritime contract, or made by brokers acting without sufficient authority.

#### 2. SAME — TRANSPORTATION OF CATTLE — WARRANTY OF SUFFICIENT VENTILATION—DAMAGES FOR FAILURE TO PROVIDE.

In a contract for transportation of cattle, it is implied that the space allotted shall be sufficiently ventilated, and when the ship's brokers reported that the ship would insure, but insurance could not be effected on cattle placed in a certain portion of a ship without additional ventilation, which the shipmaster refused to provide, *held*, that the shipper was justified in not furnishing cattle to fill such portion of the ship, and the ship was liable for the failure to transport the cattle, provided for by contract, but shut out by the ship's refusal to provide further ventilation.

In Admiralty. Libel in rem for damages for failure to transport cattle. Decree for libelant.

Foster & Thomson, for libelant.

Convers & Kirlin, for claimants.

**BENEDICT**, District Judge. This is an action against the steamship *Alvah* to recover damages for a violation of a contract of affreightment. It appears that *Brigham & Pillsbury*, shipbrokers, claiming to act on behalf of the steamship *Alvah*, agreed with the libelant for the transportation of 374 head of cattle, in the steamship *Alvah*, from Boston to London. When the *Alvah* was ready to receive the cattle, the fittings for the transportation of the cattle were made, and a space for the transportation of 374 cattle arranged. Of this space a part, being the after part of No. 2 and No. 3 between decks, was declared by the agent of the insurers of the

cattle deficient in ventilation, and the master was required to provide certain additional ventilators. Some of the required ventilators he put in; others he refused to put in. Thereupon the shipper declined to allow his cattle to be placed in the parts of No. 2 and No. 3 between decks. The remainder of the space was sufficient for 332 head only. These were taken and transported to London, and the freight paid thereon. The libellant now seeks to recover damages sustained by reason of the nonshipment of 42 head of cattle, as was provided for in the contract. The amount of the damage is claimed to be about \$2,000.

On behalf of the claimants, it is insisted that the contract made by Brigham & Pillsbury was not a maritime contract, but a contract preliminary to a maritime contract, and did not bind the ship; and, second, that it was made without authority. This point cannot avail, for the reason that the contract made by the brokers was afterwards confirmed by those who had authority to bind the ship, and the ship actually entered upon the performance of the contract by taking on board cattle under the contract. After the performance of the contract had begun, the ship became bound to its performance, and the libellant can recover in admiralty against the ship for a violation thereof.

The next ground of contention is that the evidence is that the master was ready and willing to take on board the number of cattle required by the contract, and the failure to transport the 42 head was owing to the refusal of the shipper to ship them. I think it cannot be doubted that, in a contract for the transportation of cattle, it is implied that the space to be allotted to the cattle for the voyage shall be sufficiently ventilated. If, therefore, the act of the insurance company in refusing to insure cattle placed in the after part of No. 2 and No. 3, without the additional ventilators, was justified by the facts, the shipper was not bound to ship more than 332 cattle, and can recover for the failure of the ship to transport the additional 42 head called for by the contract. The brokers reported that the ship would insure. This undoubtedly meant that 374 head of cattle, if carried in the space allotted by the ship for their transportation, could be insured. As the fact turned out, insurance could not be effected upon cattle placed in the after part of No. 2 and No. 3 between decks without additional ventilation, which the master refused to provide. This, I think, justified the shipper in refusing to ship more than 332 head of his cattle, and rendered the ship liable for the damages sustained by the shipper by reason of the nonshipment of the 42 head of cattle that were shut out by reason of the master's refusal to provide sufficient ventilators for the space allotted to the cattle.

The libellant must therefore have a decree, with an order of reference to ascertain the damages.

## THE VIOLA.

## HAWKINS v. THE VIOLA.

(District Court, S. D. New York. December 18, 1893.)

**1. COLLISION—SAIL VESSELS—BAD LIGHT—BAD LOOKOUT—MISTAKE OF BEARING.**

The schooner M., bound east in Long Island sound, came in collision with the schooner V., bound west, about south of Stonington light, the wind being moderate from the northward. Upon conflict of testimony it was found that the M. was closehauled, and a little on the starboard bow of the V., which had the wind two or three points free. The night was clear and starlight. The V.'s lights were seen at a considerable distance, but neither of the M.'s lights were seen before collision, though looked for by both the master and mate, when the M. was first seen by them, only 200 yards away, when the Viola improperly put her helm hard a-port and ran into the M. *Held*, both liable,—the M. for not showing proper lights; the V. for not seeing the M., on such a night, in time to avoid mistake in the bearing of the V., and the consequent erroneous luff.

**2. STATUTORY CONSTRUCTION—CARRIERS' ACT OF FEBRUARY 13, 1893—APPLIES ONLY TO CARGO OF THE VESSEL IN FAULT—REPUGNANCY.**

The general words of a statute may be limited to the subject-matter to which the statute relates, as indicated by preceding or following words. *Held*, accordingly, that section 3 of the act of February 13, 1893, providing that under certain conditions, "neither the vessel nor her owner," etc., "shall be held responsible for loss resulting from faults in navigation," applies only to the claims for loss to cargo on board the vessel in fault; the preceding and following words indicating that the statute is dealing only with the relations between carriers and the cargo on board. *Held*, also, that this clause of the act is not repugnant to the sixth clause, providing that it shall not modify section 4283 of the Revised Statutes; since the latter applies only to cases where a legal liability exists, and does not prescribe when any legal liability for a loss shall or shall not arise.

In Admiralty. Libel by J. Clarence Hawkins against the schooner Viola for collision. Decree for divided damages.

Owen, Gray & Sturges, for libelant.

Wing, Shoudy & Putnam, for respondent.

BROWN, District Judge. On the 7th of November, 1893, at about 2 A. M., the libelant's schooner Monette, bound east in Long Island sound, was sunk, through a collision with the schooner Viola, bound west, at a point about south of the Stonington light. The above libel was filed to recover for the damages to the Monette and her cargo.

The wind was moderate, from the northward. The Monette had been previously making a course of east half north, and claims to have been closehauled on her port tack. The Viola had been making a course of west half north, admitting that she had the wind a little free. Each was making some four or five knots an hour. If the Monette was closehauled, it was the duty of the Viola to keep out of her way. But the latter contends that the Monette also had the wind two or three points free, and that it was consequently her duty to keep out of the way of the Viola. For the latter it is also contended that the Monette, as she approached,