BAETJER v. LA COMPAGNIE GENERALE TRANSATLANTIQUE.

(District Court, S. D. New York. February 15, 1894.)

SHIPPING—BILL OF LADING—FOREIGN LAW—EXCEPTION OF NEGLIGENCE—LAW OF JURISDICTION WHERE INJURY OCCURRED.

The peculiarity of a patch put upon a cask of brandy brought from Cognac to New York, via Havre, indicated that it must have been put on at Havre. The bill of lading excepted the carrier from the results of negligence of the servants or agents, which exception is valid by the law of France. *Held* that, if the injury occurred during land transit from Cognac to Havre under a contract other than the bill of lading, this court would have no jurisdiction; if it arose under the bill of lading, but wholly within foreign territory, the law of that jurisdiction would prevail; and in either event the ship was not liable.

In Admiralty. Libel for damage to cargo. Dismissed.

D. McMahon, for libelant.

Jones & Govin, for respondent.

BROWN, District Judge. The peculiarities about the lead patch over the hole in the cask of brandy, leave no doubt that the patch was made in Havre, and consequently that the breakage of the stave, which caused the loss of the contents, occurred either in Havre, or before its arrival there, during its passage from Cognac to Havre. The bill of lading was stamped, dated at Cognac, which is about 300 miles from Havre. It recites the cask as received in good order upon the steamer La Champagne, or upon the next following steamer; and it is doubtful from what point the stipulations of the bill of lading should be deemed applicable. If the injury arose during transit by land from Cognac to the steamer at Havre, upon a contract outside of the bill of lading, then the negligence and the damage were not maritime, and this court would have no jurisdiction. If, on the other hand, the bill of lading is held to cover the whole transportation by land and sea from Cognac to New York, as an entire contract, then the exceptions in the bill of lading must also apply to the whole carriage; and these exempt the carrier from negligence of its agents or servants. These exemptions are valid by the law of France, which has been pleaded in the amended answer, and proved upon the final hearing. To acts of negligence and consequent damage occurring, not on the high seas, but within foreign territory, the law of that jurisdiction must, I think, prevail; and as no cause of action arises according to the law of the jurisdiction within which the injury occurred, none, I think, can be recognized here. Such was the view expressed in the case of The Trinacria, 42 Fed. 863.

If the damage occurred, however, after the brandy was delivered to the ship's representatives in Havre, inasmuch as the breakage, if negligence at all, was through negligence before the ship sailed, the negligence and the damage were still wholly within the French jurisdiction, and therefore subject to the same valid exception.

The libel must, therefore, be dismissed.

THE SACHEM.

HILL v. THE SACHEM.

(District Court, S. D. New York. February 15, 1894.)

SEAMEN'S WAGES—DISCHARGE ABROAD—IRREGULAR HEARING BEFORE CONSUL.

Where, on the question of the competency of a seaman, there has been a hearing before a consul, and a proper record preserved of his decision and judgment, it is ordinarily entitled to full credence; but, where there has been no hearing, no judgment, and no record, a forced discharge abroad is illegal, and it is no defense that it was abetted by irregular action of the consular office.

In Admiralty. Libel for seamen's wages. Decree for libelant.

R. J. Moses, for libelant.

Wing, Shoudy & Putnam and Mr. Burlingham, for respondents.

BROWN, District Judge. The evidence of incompetency of the libelant as cook, is not, to my mind, satisfactory. It is certain that after the arrival of the ship at Hong Kong, the captain was determined to get rid of the libelant as cook; and it is equally certain that the consul, before whom both went, endeavored to favor the captain's wishes, while he at the same time refused to afford the libelant any opportunity to prove his capacity or fitness for the place. The captain made no charges against him in the log until after the seaman had been sent ashore. The alternative was forced upon him, either to go back on board the ship and be disrated, or else to be discharged at Hong Kong; and that, without any hearing on the merits. This was an injustice to the libelant, and apparently an abuse by the consul of his position and influence.

Where a hearing has been had on the merits, on the demand of the master, or the seaman, and a proper record preserved of the consul's decision and judgment, discharging the seaman, it is ordinarily entitled to full credence, notwithstanding the contradictions made by the seaman afterwards, such as I have not unfrequently had in previous cases. In the present case, there was no hearing, no judgment, and no record, so far as the testimony shows. The libelant was paid $200, his wages up to the moment of discharge, which he received under protest. Such a forced discharge, with no hearing on the merits, at a distant place, and with no pay beyond the day of discharge, is inhumane and opposed to the policy and the statutes of this country, (Rev. St. § 4580;) and it is no defense that it was abetted, so far as appears, by the irregular action of the consular office. The libelant was unable to obtain employment to return from Hong Kong, and took passage for San Franciso at an expense of $196, and thence to New York, at an expense of $91.50. To this I add one month's wages, $40, all of which, with interest, amounts to $347.15, for which a decree may be entered, with costs.