THE HUGO.

BRAUER et al. v. COMPAGNIA DE NAVIGACION LA FLECHS.

(District Court, S. D. New York. April 26, 1894.)

SHIPPING—LIABILITY FOR LOSS.

The damages for cattle lost at sea through the negligence of the ship includes, in addition to the market value of the cattle at the place of shipment, the freight paid in advance, and the pro rata premiums of insurance.

Exceptions to Commissioner's Report on Damages. See The Hugo, 57 Fed. 403.

MacFarland & Parkin, for libelants.
Butler, Stillman & Hubbard, for respondent.

BROWN, District Judge. 1. As respects the number of cattle lost through the misconduct of those on board the Hugo (see 57 Fed. 403), the testimony presents such extreme difficulties that I do not find sufficient warrant for departing from the finding of the commissioner; having no confidence that any different finding that I might make on that point would be any more nearly accurate or just than the commissioner's finding.

2. The damages for the loss of the 63 cattle, as found by the commissioner, being estimated in the same manner as upon a total destruction of cargo at sea in collision cases, viz.: the market value of the articles at the place of shipment, with interest and expenses of transportation (The Ocean Queen, 5 Blatchf. 493, Fed. Cas. No. 10,410), I think the libelants are entitled to recover, in addition to the market price in New York, as fixed by the commissioner, the advanced freight also, on the 63 cattle lost (not on the 126); and in addition thereto, the pro rata proportion of insurance premiums paid, and the cost of feed for the 63 cattle, with interest; both of those items being necessary, or reasonable and proper expenses and charges, which should, therefore, be added to the market value at the place of departure. The Scotland, 105 U. S. 24, 35; The Aleppo, 7 Ben. 121, Fed. Cas. No. 158. The exceptions in the bill of lading do not extend to cases of losses by negligence, or misconduct, as is here found in regard to the 63 cattle; though they do apply to the residue of the loss through sea perils.

As above modified, the report is confirmed.

THE PARADOX.

JOHNSON ENGINEERING & FOUNDRY CO. v. THE PARADOX.

(District Court, S. D. New York. June 13, 1894.)

MARITIME CONTRACT—"BUILDING" OF VESSEL.

A contract for the machinery of a vessel is not enforceable in admiralty, where such machinery was supplied for the completion of the construction of the vessel, and such vessel was not then completed for the purpose for which she was intended.

In Admiralty. Libel for materials and supplies.

Hoadly, Lauterbach & Johnson, for libelant.
Benedict & Benedict, for respondent.

BROWN, District Judge. The libelant furnished machinery to the yacht Paradox. If the supply of machinery is to be deemed a part of the "building" of the vessel, the contract, by the settled law of this country, is not a maritime contract, and cannot be enforced in this court. Though the state law gives a lien for building a vessel, the lien can be enforced in the state courts alone.

The Paradox was designed and built for the purpose of experimenting with a system of water-jet propulsion, patented by J. S. Morton. The libelant company, and its immediate predecessor, contracted to put in the propelling machinery. The original contract was made with the preceding company before the vessel was launched; and the libelant, the succeeding company, took up and finished what the former left undone. The evidence leaves no doubt that all the machinery was contracted for and supplied for the purpose of completing the construction of the vessel as an experimental yacht, in accordance with the original design. The libelant's officers understood this from the beginning. After the hull, constructed by other persons, was sufficiently advanced, it was launched, towed to the libelant's yard, and the machinery there put in by the libelant company, and by the preceding company, with changes of detail from time to time in the course of construction so as to make the machinery as efficient as possible.

In the case of The General Cass, 1 Brown, Adm. 334, Fed. Cas. No. 5,307, Longyear, J., says:

"The true criterion by which to determine whether any water craft, or vessel, is subject to admiralty jurisdiction, is the business or employment for which it is intended, or is susceptible of being used, or in which it is actually engaged, rather than its size, form, capacity, or means of propulsion."

When the vessel is completed for the purpose intended, then the vessel is "built," and not till then; whether it be a steamer, a sailing vessel, a barge, a scow, or a mere float designed to support and transport a bath house (The Public Bath No. 13, 61 Fed. 692); and whatever is supplied to such a vessel for the purpose of making it what it was intended to be, and to enable it to enter upon the kind of business or navigation intended, is a part of the "building" of the vessel. This is the clear weight of authority. The case seems to me to be entirely within the decisions of Roach v. Chapman, 22 How. 129; In re Glenmont, 32 Fed. 703; The Pioneer, 30 Fed. 206; The Iosco, 1 Brown, Adm. 495, Fed. Cas. No. 7,060; Wilson v. Lawrence, 82 N. Y. 409; in which cases all the suggestions and arguments of the libelants seem to me to be met and overruled.

I much regret the necessity of this conclusion in the present case; but it seems unavoidable upon the authorities, and I must, therefore, dismiss the libel, though without costs, as not based upon a maritime contract, and hence not within the jurisdiction of this court.

THE LIME ROCK.

BORNE et al. v. DONNELLY et al.

(Circuit Court of Appeals, Second Circuit. May 29, 1894.)

No. 104.

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

The decision of the district court in this case will be found fully reported in 55 Fed. 126. The proctors for the appellant claimed in their brief that the "new evidence" hereafter referred to in the opinion of the court of appeals tended to establish the following facts, namely:

"(1) That the libelants testified falsely when they testified that the Alpha was in good condition. (2) That the Alpha had been leaking previously, had been in danger of sinking within a day or two of the collision, and that the leak in her had been only temporarily stopped by Capt. Kelly's putting overboard some manure to check the leak."

Benedict & Benedict, for appellants.

Hyland & Zabriskie, for appellees.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. Notwithstanding the new evidence introduced by the appellant since the decision of the cause by the district court, we are satisfied that the libelants' canal boat was sufficiently strong and tight for the ordinary exigencies of her use as a coal boat, and that she did not sink in consequence of any defect in her condition, but that she was forced ahead, and brought in contact with the dock, by the impact of the steam lighter, and a hole thereby knocked into her bow. The occurrence was due to the carelessness of those in charge of the lighter. They used unnecessary violence in the attempt to move the canal boat. The lighter must accordingly be condemned for the damages. We should have been better satisfied if the commissioner to whom it was referred to ascertain and report damages had rejected the item allowed for repairs which were not made, but which he found were necessary to put the canal boat in as good condition as she was previous to the accident; but the proofs are not such as to justify us in overruling his conclusion and that of the district judge. The decree is affirmed, with interest and costs.

THE PHILADELPHIAN.

LEWIS et al. v. TRANT.

WILEY et al. v. SAME.

(Circuit Court of Appeals, First Circuit. April 18, 1894.)

No. 66.

1. COLLISION—CONFLICTING EVIDENCE.

Testimony as to precautions taken by a steamer to avoid collision with a schooner, given by intelligent witnesses on board the steamer, who co-operated in the precautionary maneuvers, is not overcome by that of witnesses looking on from remote points, or aboard the schooner, who failed to observe such precautions.