

and very near the middle of the boat. The tide was slack high water. The ferryboat approached her slip in the usual manner, and at the time of collision, as is shown by the great weight of evidence, her bow was at least 30 feet inside of her slip, heading a little down river; and her side was about 30 feet from the southerly corner of pier 22. By the force of the collision, the stem of the Sylvan Dell was broken, and the planks carried away a little on her port side, but much more on her starboard side. Her stem cut through the plank sheer of the Fulton, some 15 inches into the cabin. This latter circumstance is of itself conclusive evidence that the Sylvan Dell at the time of collision was moving ahead, and with considerable force. The blow was about a right-angled one. The Sylvan Dell was endeavoring to swing her stern by a hawser around the end of pier 22, so as to back up into the slip between pier 22 and pier 23, and she was maneuvering for that purpose. The position of the ferryboat at the time of the collision leaves no doubt that the stem of the Sylvan Dell was encroaching upon the entrance to the ferryboat's slip. This was unnecessary, as there was space enough for the Sylvan Dell to swing her stern and back into her slip without impeding the entrance of the ferryboat. I find, therefore, that the collision was owing to the lack of proper attention on the part of the Sylvan Dell to the ferryboat, and to her entrance of her slip, and not to any drifting up by the ferryboat against the stem of the Sylvan Dell. The position and course of the ferryboat were entirely proper in entering her slip, and her pilot had no reason to suppose that the Sylvan Dell in her maneuvers would come down so far as to interfere with his entrance; and, when the Sylvan Dell started ahead, the Fulton was so far forward as to make avoidance of the collision by her impossible. *The West Brooklyn*, 45 Fed. 60. I must find the fault of the collision, therefore, to have been wholly with the Sylvan Dell; and the libel must, therefore, be dismissed, with costs.

GOULD v. GRAFFLIN.

(District Court, D. Maryland. July 10, 1894.)

DEMURRAGE—LIABILITY OF CHARTERER—READINESS TO TAKE CARGO.

A schooner was chartered to load a full and complete cargo, not exceeding 1,150 tons; but her master, on tendering her, stated that she had been leaking, and asked to have 500 or 600 tons furnished, and, if that did not increase the leak, so much more as she could safely carry. *Held*, that the charterer was justified in refusing this, and was not liable for the delay until the master, after a survey, gave notice that he would take a full cargo.

This was a libel by Moses M. Gould, master of the schooner *Florance*, against George W. Grafflin, charterer of said schooner, for demurrage for detention of the vessel by delay of defendant in furnishing cargo.

Robert N. Smith, for libellant.

T. M. Lanahan and Frank Gosnell, for respondent.

MORRIS, District Judge. The schooner Florence was chartered by the respondent to proceed from Galveston to Punta Gorda, Fla., and there load a full and complete cargo of phosphate rock, not exceeding 1,150 tons, to be furnished at the rate of 100 tons per day. The libellant stipulated that the schooner should be tight, staunch, strong, and in every way fitted for the voyage. The schooner sailed from Galveston in ballast, and reported in Punta Gorda on March 14, 1893, the master saying he would be ready for cargo on the 16th. He accompanied this tender, however, with the statement that his vessel had been leaking somewhat, and he did not think he would be able to take anything like a full cargo, as he could not tell how much she might leak when she was loaded. He asked to have five or six hundred tons of rock sent to the vessel, and said he would try that, and see if she could safely carry any more. This was not a tender which gratified the charter party. The charterer was not required to load the schooner unless she could carry a full and complete cargo, such as would usually be carried by a tight and seaworthy vessel of her class and tonnage. Here the tender was qualified with the statement that the vessel was leaking, and that the master would have to find out, while loading, whether or not the cargo increased the leak, and how much she could safely carry. It is obvious that the master distrusted the schooner, and did not mean to tender her as ready for a complete cargo until he had observed what effect resulted from putting the cargo into her. He had found she leaked some while light on the voyage from Galveston. He expected stormy weather coming up the coast in March, and he did not mean to risk his vessel, and he intended, as soon as he found that the loading increased the leak, to stop. The charterer's agent was justified in refusing to furnish cargo when the tender of readiness to receive it was accompanied with such qualifications. This attitude of the parties toward each other continued until March 27th, when the master, finding the leak did not increase, had his vessel surveyed by three pilots of the port, who, after examination, certified that she was seaworthy. On March 28th, after the survey, the master notified the charterer's agent as follows: "I declare my vessel in condition for cargo, as per charter party and as per survey, and will take a full and complete cargo, as per charter party." Thereupon, the cargo was promptly furnished, and the schooner sailed with 1,005 tons. I think it is clear that the delay from March 16th, when the master said he would receive 500 or 600 tons, and so much more as he found he could safely carry after he had tested its effect on the leaking of his schooner, to March 28th, when he finally, after a survey, definitely said that he was prepared to receive a full and complete cargo, was not by the default of the charterer. Libel dismissed.

BERRY v. GRACE et al.¹

(District Court, S. D. New York. June 20, 1894.)

CHARTER PARTY—CARGO FORWARDED FROM PORT OF DISTRESS — ADVANCES—
BOTTOMRY—RIGHT OF FORWARDING VESSEL TO FREIGHT—PRIORITIES.

Charterers of the ship Y. to carry a cargo from Taltal and Pisagua to New York, at a freight of 17 shillings per ton, made advances, pursuant to provisions of the charter, for which the master of the Y. gave a bottomry note, payable three days after arrival of the Y. at New York, which assigned the freight to pay for such advances. After sailing, the Y. was obliged to put into Callao in distress, where, with the consent of all parties, including the charterers, the ship M. was chartered to carry part of the Y.'s cargo to New York, at the rate of 12 shillings per ton. The M.'s bill of lading, however, called for freight at 17 shillings, the master of the M. giving to the master of the Y. an obligation to repay to the latter the difference of 5 shillings per ton. There was no evidence that the master of the M. had knowledge of the prepayment of any part of the freight to the Y. The Y. sailed from Callao, and was wrecked, and became a total loss. The M. arrived safely in New York, when the charterers claimed to deduct from the freight called for by the bill of lading the entire advances made to the Y. *Held*, that the M., as an independent carrier, properly obtained in a port of distress by the Y., had the right, under the ordinary provisions of the maritime law, to the payment of her own freight, without reference to any previous arrangement between the Y. and the cargo owner of which she had no knowledge; that the bottomry, which hypothecated the freight to secure the advances, was liable to be postponed by subsequent maritime obligations necessarily incurred in order to complete the voyage, and the charter of the M. was a necessary expense of this kind; that such hypothecation, therefore, as against the M.'s claim, only extended to the 5 shillings per ton agreed to be returned by the M. to the Y., which the charterers were entitled, under the bottomry, to retain; but that they were liable for the balance of the freight at the rate of 12 shillings per ton.

This was a libel by Benjamin F. Berry against William R. Grace and others for a balance of freight under a charter party.

Wing, Shoudy & Putnam, for libellant.
MacFarland & Parkin, for respondents.

BROWN, District Judge. By charter made March 28, 1892, the respondents chartered the Yorktown for a voyage from Taltal and Pisagua to carry nitrates to New York on respondents' account, freight to be paid at and after the rate of 17 shillings per ton. Clause 17 of the charter provided that the charterers should supply the master in Valparaiso, or loading port, with such advances as might be necessary, not exceeding £——, which, with the cost of insurance thereof, was to be reimbursed by the master in cash immediately after the arrival of the vessel at the port of discharge; and that any contributions to general average losses, which, if any, should become payable in respect to such advances, should be borne and paid by the owners. The vessel took on board 2,750 tons of nitrates, and the charterers advanced to the master £577.16.11. This was indorsed on the Yorktown's bill of lading as an advance of freight; and as such, it was insured at an expense of \$115.60, which was charged to the owners of the ship. The master at the same time

¹ Reported by E. G. Benedict, Esq., of the New York bar.