

of them by another vessel than that contracted for, renders the carrier liable as insurer; both for violation of the contract, and because the shipper's insurance is thereby avoided, and he has no opportunity to protect himself by the ordinary security of marine insurance. These reasons apply more emphatically in this case than in ordinary cases of deviation. For these goods were brought back to the very point of starting; no notice was given to the shipper; he was ignorant of the facts, and the opportunity was not given him to insure that might have been given. The cases above cited have never been applied, so far as I know, to cases of maritime deviation. I must, therefore, hold the respondent liable as insurer. 1 Pars. Shipp. & Adm. 171, note, and many cases there cited; Ellis v. Turner, 8 Term R. 531; Trott v. Wood, 1 Gall. 443, Fed. Cas. No. 14,190; Bazin v. Steamship Co., 3 Wall. Jr. 229, Fed. Cas. No. 1,152; The Bordentown, 40 Fed. 682, 689.

It is further contended that under the first clause of the bill of lading, the libellant's recovery cannot exceed \$100 per package, as the value was not made known, nor any agreement made for the payment of freight at an extra rate. The validity of stipulations of this character has been repeatedly upheld by the supreme court (Railroad Co. v. Fraloff, 100 U. S. 24, 27; Hart v. Railroad Co., 112 U. S. 331, 5 Sup. Ct. 151; Magnin v. Dinsmore, 70 N. Y. 410; Baldwin v. Liverpool, 74 N. Y. 125); and recently in the court of appeals of this circuit in Potter v. The Majestic, 9 C. C. A. 161, 60 Fed. 624, 630.

It is urged that effect ought not to be given to this stipulation, because literally read it provides that the carrier shall not be liable for anything in this case; and that this is so unreasonable that the stipulation should be allowed no effect at all. I do not think that construction was the intention of the stipulation, or that it is a reasonable construction of it. Literally, the goods which are above \$100 in the package may be excluded from consideration, and only those which amount to \$100 be regarded. That, I think, is the fair intention of the clause in question; and as the decisions cited sustain it as thus construed, I must hold accordingly, and allow a decree for the libellant for \$2,900, for the 29 packages, with interest and costs.

THE G. R. BOOTH.

AMERICAN SUGAR-REFINING CO. v. THE G. R. BOOTH.

(District Court, S. D. New York. November 23, 1894.)

CARRIAGE OF GOODS—EXPLOSION—DETONATORS—CUSTOMARY STOWAGE SUFFICIENT.

While the steamship G. R. B. was discharging, an explosion of detonators caused a hole in the ship which let in water which extended to plaintiff's goods in the next compartment, by which they were damaged. The detonators were in cases, so packed as to be customarily stowed and handled like ordinary merchandise, and believed to be harmless. *Held*: (1) That the damage having arisen primarily from sea water, the burden of proof was on the libellant to show negligence in the defendant; (2) that stowage of detonators as ordinary merchandise being proved to be

in accordance with the custom of the country, and without knowledge of their dangerous character, was justifiable and was not negligence, and the libel was dismissed, without costs.

This was a suit in admiralty by the American Sugar-Refining Company against the steamship G. R. Booth for damages by an explosion, whereby sea water was let into the hold, causing injury to libellant's sugar.

Wing, Shoudy & Putnam, for libellant.
Convers & Kirlin, for respondent.

BROWN, District Judge. On the 14th of July, 1891, while the steamship G. R. Booth was discharging her cargo at East Central pier, Atlantic dock, Brooklyn, an explosion occurred in the after-hold when the cargo was nearly all discharged, by which the steamer's iron plates on the starboard side were burst through below the water line, in consequence of which the after-hold was flooded with water. The water made its way thence through the bulkhead into the compartment next forward, where the libellant's sugar was thereby wet, damaged and melted, for which damages the above libel was filed.

Although, upon the contradictory evidence, it is not altogether certain what it was that exploded, it was probably certain cases of "detonators," boxes of which had been stowed in the after-hold, and most if not all of which had been already removed to the dock.

The libellant contends that these boxes of detonators were highly dangerous, and that the ship in stowing them in the lower hold took all risks of explosion and the damages that might be caused thereby. The officers of the ship, however, had no actual knowledge of the shipment of any dangerous explosives; or that these boxes were dangerous, if, indeed, they were so under the ordinary conditions of shipment. They had no mark upon them like "Mit vorsicht," such as is usually put upon goods at Hamburg, to indicate that they were to be carefully handled, although they were marked "Capsules" and "Spring-Capseln," and were specified as "Detonators" in the bill of lading; terms not appreciated by the officers.

I do not think that the liability of the vessel in this case is made out. The explosion did no direct damage to the sugar, nor in any manner directly affected it. By bursting a hole in the side of the ship, sea water was let into the hold, which subsequently made its way among the sugar and damaged it. Such damage is a sea peril. *The Xantho*, 12 App. Cas. 503, 508. The burden of proof is upon the libellant to show that it might have been avoided by the ship by reasonable care. *Clark v. Barnwell*, 12 How. 272, 280, 282; *Transportation Co. v. Downer*, 11 Wall. 129; *The New Orleans*, 26 Fed. 44. In other words, the question is one of negligence; and in this case, a question of negligence in the reception and stowage of cargo.

But the evidence is not sufficient to show, or to warrant the inference of, any negligence or lack of customary care on the part

of the ship in receiving these boxes, or in stowing them as was done with other cargo in the hold or in the subsequent handling of the cases. The small capsules are so packed in cases, and with such care, as to make it difficult or impossible to produce any explosion by any mode of handling, or by dropping, knocking or pounding. See Mackenzie's Report. They had been long accustomed to be handled by sea and land as ordinary merchandise is handled, and carried in the same manner. They were not known, or considered, or treated, as dangerous cargo. No previous explosion in transit is shown. Prior to this accident, it was usual to carry them indiscriminately with other cargo. Since this accident, it has become customary for steamers to carry them either in the hatches or on the deck; while sailing vessels still stow them below deck.

In the absence of any proof of knowledge of danger, it is sufficient, on a question of stowage, to stow according to the knowledge and experience of the time, and to observe the usages of the time and place. See *Baxter v. Leland*, 1 Blatchf, 526, Fed. Cas. No. 1,125; *Lamb v. Parkman*, 1 Spr. 343, Fed. Cas. No. 8,020; *The Titania*, 19 Fed. 107, 108; *The Dan*, 40 Fed. 691, 692; *The Dunbritton*, 61 Fed. 764, 766; *Carv. Carr. by Sea*, § 96. This was done by the steamship in this case. Why the explosion occurred in this instance can only be conjectured, viz., from some possible detachment of a portion of the fulminate within the capsules, an occurrence previously unknown in transportation, and arising, probably, in the manufacture and packing; certainly not from any fault of the ship. To charge the ship in this case with negligence in care or stowage, would be to make her responsible for what was essentially accidental, and altogether contrary to previous experience and usage, which justified the carriage of these boxes in the same manner in which they were carried, even had the officers fully understood their contents.

The libel must be dismissed, with costs.

THE ETONA.

DOHERR v. THE ETONA.

(District Court, S. D. New York. November 24, 1894.)

CARRIAGE BY SEA—DAMAGE TO HIDES—SUGAR DRAINAGE—FOREIGN SHIPS—STRANDING—PILOT'S MISTAKE—INVALID STIPULATIONS—HARTER ACT.

The British ship *E.* being anchored by a local pilot in the Amazon at Para, while unloading part of her cargo dragged her anchor from the great force of the current and grounded upon a sand bank which caused her to take a strong list, in consequence of which the drainage from some Perriambuco sugar in the between decks ran over the coamings upon some hides in the hold beneath: *Held* (1) that the stowage of hides beneath sugar stowed on perfectly tight iron between decks was not negligent stowing; (2) that the possibility of the escape of drainage into the hold over coamings a foot high, in consequence of a strong list from stranding, was not such a contingency as was to be foreseen and guarded against, or evidence of the ship's negligence; (3) that the selection of a place for anchoring, from which the stranding resulted, was a part of "the navigation and management of the ship," within the third section of the Harter