

the supreme court having, in the case of *Sherlock v. Alling*, given to the latter a broad construction, there was room for doubt as to the legal rights of parties in cases likely to arise, for, if the facts of a case should bring it within both sections, it would be extremely difficult, if not impossible, to determine which to regard as paramount. The latest, and therefore controlling, expressions of legislative will on the subject are the section above quoted from the act of 1884, and the act of 1886, extending its provisions to every description of vessel employed on lakes, rivers, and in inland navigation. In *Butler v. Steamship Co.*, 130 U. S. 527-558, 9 Sup. Ct. 612, Mr. Justice Bradley criticizes the law of 1884, saying, on page 554, 130 U. S., and page 612, 9 Sup. Ct., after stating only a part of the provisions of the eighteenth section:

"The language is somewhat vague, it is true; but it is possible that it was intended to remove all doubts of the application of the limited liability law to all cases of loss and injury caused without the knowledge or privity of the owner."

The language of the act, if vague, is nevertheless comprehensive. Its title indicates a purpose to relieve shipowners from burdens, and the proviso to section 18 makes an exception of "wages due to persons employed by said shipowners." What other exceptions do the rules for construing statutes admit of? I think that the maxim, "*Expressio unius est exclusio alterius*," may with great propriety be applied here. Congress certainly intended to relieve shipowners of some burden of liability by enacting the eighteenth section. Then, what kind of liability theretofore imposed was removed by this law? The inquiry forces me to conclude that congress intended to encourage investments of capital in all kinds of vessels, and to authorize persons to become owners of steam vessels with freedom to intrust to others the entire burden of care in the management thereof, and with a right to the same immunity from claims for damages, in case of any disaster, that the law extends to owners of sailing vessels. In accordance with this opinion, a decree will be entered that, upon payment into court of the amount of the appraised value of the vessel and pending freight for the benefit of the several claimants, the libelants be forever released from all liability for damages on account of said explosion and wreck.

THE JOSEPH OTERI, JR.

OTERI et al. v. SCHMIDT et al.

(Circuit Court of Appeals, Fifth Circuit. December 11, 1894.)

No. 320.

SHIPPING—INTERRUPTION OF VOYAGE — SALE OF GOODS BY MASTER—LOSS AND DAMAGES.

A steamship bound from New Orleans to Ceiba and Truxillo, Spanish Honduras, was denied inspection at the usual place, and the master changed his course to the island of Ruatan, where he learned that the authorities had issued orders not to permit his vessel to do any business on that coast. He then proceeded to Livingston, Guatemala, where, on the

advice of the United States consular agent, he turned over the goods to the latter, to be sold for the benefit of all concerned. The sum realized, as reported by the master, was but a small part of the invoice price. There was much delay in the meantime,—sufficient to have enabled the master to return to New Orleans, and consult with his owners and the shippers. *Held*, that the master had not acted with the good faith required under the circumstances, and the vessel was liable in damages to the shippers; and, further, that no injustice would be done in making the invoice price the measure of such damages.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

This was a libel by William B. Schmidt and Francis M. Zeigler, partners under the name of Schmidt & Zeigler, against the steamship Joseph Oteri, Jr., (Mrs. Luella A. Oteri, claimant). The district court rendered a decree for the libelants, and the claimant and Joseph Oteri, her husband, and surety on the release bond, took this appeal.

The steamship Joseph Oteri, Jr., left the port of New Orleans on the 30th day of July, 1892, bound for the ports of Ceiba and Truxillo, Spanish Honduras, and having on board the goods shipped by libelants for those ports. The vessel proceeded on her voyage, and on arriving off the island of Utila, Spanish Honduras, August 3d, signals were given for fruit inspectors to come on board, as had been done on previous voyages of the vessel, but, the master finding no response to signals, and seeing that the lighthouse was occupied by soldiers, and as the vessel had been seized and detained by armed forces on a previous voyage of the vessel at the port of Ceiba, Spanish Honduras, and fearing this would be done again, the master changed the course of the vessel, and proceeded to the island of Ruatan, Spanish Honduras, and was there advised by the United States consul at that port, and by an officer of Spanish Honduras, that orders had been issued by the government of Spanish Honduras not to permit the steamship Joseph Oteri, Jr., to receive inspection, laborers, or to transact any business on the coast of Spanish Honduras. The master then changed the course of the vessel, and proceeded to the port of Livingston, Guatemala, and there he was advised by John T. Anderson, Esq., United States consular agent at that port, to turn the goods over to him, and he would sell them for the benefit of the parties in interest. The evidence shows that the goods were turned over to, and were sold and disposed of by or under the direction of, Anderson, the consular agent at Livingston; and the claim is that the proceeds of the sale of the goods shipped by libelants and reported by Anderson is \$741.88, which amount of money was tendered to libelants in the answer of respondents, and placed in the registry of the court. Testimony was taken, and the case submitted to the court, and on the 18th day of May, 1894, decree was rendered for libelants for \$2,393.11, with interest from June 30, 1894, until paid, and costs of suit, being the proved value as per invoices at port of shipment, less the sum of \$741.88, the amount tendered by respondents as due to the libelants on account of the proceeds of goods sold.

Guy M. Horner, for appellants.

W. S. Benedict, for appellees.

Before PARDEE and McCORMICK, Circuit Judges, and BRUCE, District Judge.

BRUCE, District Judge, after stating the facts as above, delivered the opinion of the court.

The testimony shows that Spanish Honduras was in a state of turbulence, and even war, at the time of the arrival of the vessel off that coast, and, on account of what had happened to this master and his vessel on a previous voyage to that country, when his ves-

sel was seized by an armed force, and, against his protest, used for a time as a transport for troops, and it coming to his knowledge that his vessel would not be allowed to transact any business on that coast, we think he had good grounds for apprehension for the safety of his vessel and cargo if he landed at the ports to which he was destined. After this, however, and after he had decided that he could not with safety land at Ceiba, or get to Truxillo, there seems to have been much delay, and it was not until the 14th, and even the 16th, of August, the last of the goods were disposed of at Livingston. It would seem that during this time the master could have returned to his home port with his cargo, and could have conferred with his owner and the shippers of the goods he had on board. In the case of *The Julia Blake*, 107 U. S. 427, 2 Sup. Ct. 692, speaking of the necessity under which the master is authorized to sell ship and cargo, and quoting from the former case of *New England Ins. Co. v. The Sarah Ann*, 13 Pet. 387, the court say:

"All will agree that the master must act in good faith, exercise his best discretion for the benefit of all concerned, and that it can only be done upon the compulsion of a necessity, to be determined in each case by the actual and impending peril to which the vessel is exposed."

The testimony, we think, shows a want of good faith on the part of the master in the matter of the disposition of his cargo. He seems to have sought to avoid the responsibility of his position, turning the goods over to Anderson, consular agent, to be disposed of under his order. The purser, the witness Commegere, says he opposed this; but, under the advice of the consular agent, Anderson, a cargo of bananas was taken, and paid for in part from the proceeds of the sale of the goods as stated by the witness Commegere, and the vessel cleared for New York. The conclusion is, we think, inevitable, from the testimony on this subject, that the master was at fault in the matter of the disposal of the goods shipped by the libelants, and that the case is one in which damages should be awarded. This brings us to the question of the measure of damages, which, it is insisted, is the value of the goods at the port of destination. If we are correct in the conclusion that the master was justified in not proceeding to and landing the goods at the ports of destination, according to the tenor and effect of the bills of lading, then we are of opinion that it devolved upon the master to either dispose of the goods in good faith, and to the best advantage, in the nearest ports which he was able to reach, or to return the goods to the shippers, with reasons for nondelivery. It is not shown that he did either. The bill of lading provides that, in the event of loss or nondelivery, the liability of the carrier is not to exceed the invoice value,—this to protect the carrier in ordinary cases where the goods are lost by some casualty. In view of the fact that the carrier might have relieved himself from responsibility by returning the goods to the shipper, and as the proof shows that in the port of shipment the goods were of the value specified in the invoice, we are of opinion that, under the peculiar facts of this case, no substantial injustice results to the carrier from following the rule of damages adopted by the district court, to wit, the

value of the goods as shown by the invoices at the port of shipment. We think the judgment of the court below should be affirmed, and it is so ordered.

THE OXFORD.

SWEETING et al. v. THE OXFORD et al.

(District Court, S. D. Florida. March, 1894.)

1. SALVAGE COMPENSATION—HOW MEASURED.

The whole of a salvage service is to be considered together, and any bonus or gratuity may be measured by valuable, energetic action, and exposure of person or property; but, when the amount is necessarily limited to a mere compensation for work and labor, it should not be reduced by anything short of gross negligence or dishonesty and fraud.

2. SAME—AMOUNT.

\$37,114 allowed upon a valuation of \$155,000 for services of some 65 sailing vessels and four steamers, with 500 men, in discharging and carrying to Key West a cargo of sugar from a steamer grounded in a dangerous position on the Florida Reefs, and for floating her and bringing her disabled to the same place; the service lasting during 13 days, and much of it prosecuted at night and in rough weather.

This was a salvage case, in which separate libels were filed by Thomas B. Sweeting and others, and O. J. Kendal and others, against the steamship Oxford and cargo; and an intervening petition was presented by the Davis Coast Wrecking Company.

Geo. W. Allen and J. Vening Harris, for libelants.
J. B. Browne, for respondent.

LOCKE, District Judge. This vessel, a large steamship, laden with about 4,000 tons of sugar, bound from Cardenas to Philadelphia, went ashore early in the morning of 11th of February, 1894, upon a projecting point of Florida Reef known as "Conch Reef," about 100 miles northeast of the port of Key West. The place was a dangerous one, and one upon which several vessels have been wrecked, and was exposed to the full force of the sea from the northeast and around to south. A portion of the libelants herein, seeing the vessel aground, went to her assistance, and tendered their services, at about half-past 8 o'clock a. m. At first the master thought he might be able to float his vessel without aid, but finally, later in the day, agreed to accept the services of the several vessels and their crews which had arrived, and at about 12 o'clock permitted them to carry out a heavy anchor and hawser in the direction which he himself designated as the one which he considered the most proper, which was off the starboard quarter, trending well astern. The vessel, at the time of going ashore, had gone with such force and speed as to drive herself several feet out of the water, so that, at the time of the libelants' sounding around her, she was found to be in some four feet less water than when floating, with an uneven bottom. The anchor, weighing some three tons, with a