

BROWN, District Judge. The condition of the vessel, 27 years old, is proved by Mr. Congdon's examination to have been so worn in her plates and unserviceable that I find the inspection theretofore made could not be such as "due diligence" under the "Harter Act" requires. 27 Stat. 445.

I also find the owners chargeable in this respect with any negligence of their agents appointed to inspect.

Decree for libelants, with costs.

#### THE MANHANSET.

BACCUS v. THE MANHANSET et al.

(District Court, S. D. New York. June 6, 1895.)

#### SHIPPING—INJURY TO STEVEDORE—NEGLIGENCE OF OFFICER.

A stevedore's laborer working in the hold cannot recover against the ship for injuries occasioned by the fall of one of its officers upon him, through carelessness in walking upon an unguarded beam while in the discharge of his duties.

This was a libel by Rosario Baccus against the steamship Manhanset (Francis Duck, claimant), impleaded with Charles Hogan and others, respondents.

The libel was for injuries sustained by a stevedore's laborer, occasioned by the mate of the steamship falling down on him from an orlop deck beam. There was no flooring on the orlop beams, which were about 10 inches wide. In the course of his duties the mate was walking across one of the beams and testified he was in the exercise of care. Libelant's evidence was that the mate was in liquor. The mate lost his balance, and falling on the back of libelant, who was slinging tin, crushed him to the floor, damaging his kneecap.

Francis L. Corrao, for libelant.

Convers & Kirlin, for claimant.

BROWN, District Judge. There is not sufficient evidence of any negligence in the duties of the ship. Libelant's injury arose from the personal carelessness and fault of the officer in walking along the beam. I find no case in which a ship has been held for such a secondary result from the fall of a careless officer or member of the crew.

Libel dismissed, without costs.

#### THE FLINTSHIRE.

ULLMANN et al. v. THE FLINTSHIRE.

(District Court, S. D. New York. July 22, 1895.)

#### SHIPPING—DAMAGE TO CARGO BY SWEATING—EXCEPTED PERILS—BURDEN OF PROOF.

Where damage by sweating is expressly excepted in the bill of lading, the shipper, in order to recover for damage due to that cause, has the bur-

den of proof to show that the carrier was negligent, in that he failed to take all the usual precautions to prevent sweating.

This was a libel by Joseph Ullmann and others against the steamship *Flintshire* to recover damage to a consignment of dogskins on a voyage from China to New York.

George A. Black, for libelants.

Convers & Kirlin, for claimant.

BROWN, District Judge. The circumstances proved show that the fractured scupper pipe in the 'tween decks had nothing to do with the damage to the dogskins. The damage, I find, arose from sweating of the cargo. This was a peril expressly excepted in the bill of lading. The contract, therefore, was not that there should be no damage from sweat; and the carrier's duty in that regard was only to take all usual precautions against that liability to damage, and such as might be reasonably foreseen to be necessary. The evidence shows that such precautions were taken. The burden of proof to show negligence in that respect is on the libelants. They have not shown it. No witness has even been called to testify that the cargo ought to have been differently stowed, or differently dunnaged, or more dunnaged; the port warden's report approves it; and no defects of the ship connected with the damage are shown.

The libelants' main contention in their three briefs has been that the damage was from the scupper pipe, and not by sweat at all. Their contention in effect is, that in fact no further precautions against sweat were necessary, since there was no sweat damage; but if it was sweat damage, which they do not believe, then more precautions were necessary. That is mere claim from the event, but without proving negligence before the event.

The warden's report does not seem to refer to the libelants' dogskins, which were in the hold. The marks are not given. As he was not called as a witness, his report of sea-water damage, as respects these dogskins, would be of little weight as against the opposite proofs, even if the report referred to these skins. Libel dismissed with costs.

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#### THE GLENMAVIS.

#### SPRECKELS SUGAR-REFINING CO. v. THE GLENMAVIS.

(District Court, E. D. Pennsylvania. August 20, 1895.)

No. 8.

#### 1. SHIPPING—DAMAGE TO CARGO—UNSEAWORTHINESS.

Where, at the end of a voyage, the water pipe leading to one of the water-ballast tanks was broken, so that in an attempt to fill the tank the water ran into the hold, and damaged the cargo, *held*, that there was a breach of the implied warranty of seaworthiness, in that, at the beginning of the voyage, the casing inclosing the pipe consisted only of a long board box, without corner posts or other means of stiffening or strengthening it against the tendency to work loose from bending and springing through