

quired to be registered, licensed, or enrolled and licensed, shall be subject to be libeled in any of the United States courts for the wages of any person who may be employed on board thereof, or in navigating the same." That the boats in controversy are canal-boats without masts or steam-power seems beyond dispute. Prior to the trip in question they had been towed through the Erie Canal by mules and horses. On this occasion they were towed by a steam pleasure yacht at the end of a 200-foot hawser. The character of the boat is not changed by the means of propulsion selected by her. She does not cease to be a canal-boat because she is towed through the canal by a steam yacht. The statute has reference to the boat itself and not to the tow boat. That this must be the proper construction is made plain by the amending act of 1874 (18 Stat. 31), which provides that the enrollment act shall not extend to canal-boats, "excepting only such as are provided with sails or propelling machinery of their own." If the libelants are right in their contention that the propelling force outside of and disconnected from the boat determines her character it must follow that a tug which temporarily employs horse power to pull her through a narrow canal, will, for the time being, be a canal-boat without steam-power and, therefore, exempt from being libeled for mariners' wages.

The sole question is, has the libeled canal-boat sails, or propelling machinery, or, what is the same thing, steam-power or masts of her own? If she has not it matters little that some other boat has masts and steam-power. If the boats in question are not canal-boats it is difficult to perceive to what boats the statute refers. As the libeled boats are clearly covered by the statute it follows that this court has no jurisdiction of the action. This conclusion is reached with regret, for the libelants have rendered valuable services for which they should be paid.

The libel is dismissed.

ROBINSON et al. v. FRANKLIN SUGAR REFINING CO.

(District Court, E. D. Pennsylvania. November 15, 1895.)

No. 43.

SHIPPING—DAMAGE TO CARGO—IMPROPER STOWAGE—STEVEDORES APPOINTED BY CHARTERERS.

Where sugar carried in a chartered ship was improperly stowed upon the "ceiling" of the hold, without the interposition of a loose floor or other dunnage, held, that the ship was liable for resulting damage, notwithstanding that the stevedores, who stowed the cargo, were appointed by the charterers under a provision in the charter party. It was the duty of the ship to see that the hold was fitted to receive the cargo, and her failure to provide dunnage was a breach of this duty.

This was a libel by Joseph Robinson & Sons, owners of the steamship Ixia, against the Franklin Sugar Refining Company, to recover a balance of freight alleged to be due upon a cargo of sugar.

Horace L. Cheyney and John F. Lewis, for libelants.
Jas. Wilson Bayard and John G. Johnson, for respondents.

BUTLER, District Judge. The suit is for a balance of freight due on a cargo of sugar, carried under charter party. On delivery a portion of it was found to have been damaged, by reason of the bags being stowed directly on the "ceiling" of the hold. The respondents paid \$6,699.17 on account of freight, retaining \$163 to cover the damages sustained. The answer sets up two sources of claim to damage, first, humidity or dampness of the hold, and secondly, stowage on ceiling of the hold. It is clear, however, that the only just ground of complaint, if any exists, is the latter, improper stowage—and this consisted in stowing directly on the "ceiling" instead of upon a second, loose, floor, or other proper dunnage. I am satisfied that it was improper to stow immediately upon the "ceiling." The stevedores who loaded the sugar were appointed by the respondents under the charter; and the only question raised is whether this relieves the ship from responsibility in the premises. In my judgment it does not. It was her duty to render the ship seaworthy, that is, fit for carrying this cargo. Constructed as her "ceiling" was, the hold was not fit for the stowage of sugar without such second temporary floor, or other proper dunnage to protect it from the water in the tank, immediately below. It was her duty to see that the hold was thus fitted to receive the cargo; and in this she failed. It will not do to answer that the stevedores were the respondents' agents, and that the latter must therefore bear the consequences of placing the bags upon the ceiling; first, because the stevedores are not the agents of the charterers, except in a limited sense—their work being performed under the supervision of the ship; and second because it does not appear that the stevedores were familiar with the character of the "ceiling." It might have been so constructed as to render dunnage unnecessary, and whether it was, the stevedores were not required to ascertain. If dunnage had been provided they would have had notice that its use was necessary, and they should have used it. None however was provided. See *The Storm Queen*, 3 Law T. (N. S.) 25.

The respondents are entitled to an abatement from the freight equal to the loss sustained. What this was, precisely, I find some difficulty in ascertaining. The number of bags affected by contact with the ceiling is uncertain, as well as the extent of injury to them from this cause. Any injury to the cargo from sweating, the libellant is not responsible for. How much of the injury to the sugar in the bags next the "ceiling" resulted from contact with it and how much from sweating either in these bags or those above, I do not know. Possibly the facts necessary to ascertain the respondents' loss from such contact, with the "ceiling" (with reasonable certainty) can be ascertained from the testimony taken. I will refer the subject, however, to a commissioner, who with the assistance of the parties may pass on the question and report.

INSURANCE CO. OF NORTH AMERICA v. JOHNSON.

(Circuit Court of Appeals, Sixth Circuit. October 8, 1895.)

No. 304.

1. MARINE INSURANCE—ABANDONMENT.

In the absence of a requirement thereof in the policy, it is not necessary that an abandonment to the insurer of the interest of the assured, so far as covered by his policy, in a vessel of which there has been a constructive total loss, should specify the exact fractional interest conveyed.

2. SAME—WAIVER OF FORMAL OBJECTIONS.

An absolute rejection by a marine insurer of an abandonment which contains an offer to make any further conveyance or assurance of title to the abandoned vessel which may be required is a waiver of the right to object to the form of the abandonment.

3. SAME—PRESUMPTION OF TITLE.

Where a person is shown to be the owner of a ship, or an interest therein, and conveys the same, with an agreement to warrant the title as free and unincumbered, there is a presumption, in the absence of other evidence, that the title is unincumbered.

In Error to the Circuit Court of the United States for the Eastern Division of the Northern District of Ohio.

This was an action by Henry J. Johnson against the Insurance Company of North America on a policy of marine insurance. The plaintiff recovered judgment in the circuit court. Defendant brings error. Affirmed.

C. E. Kremer, for plaintiff in error.

Harvey D. Goulder, for defendant in error.

Before TAFT and LURTON, Circuit Judges, and SEVERENS, District Judge.

TAFT, Circuit Judge. The action below was by Henry J. Johnson, defendant in error, against the Insurance Company of North America of Philadelphia, plaintiff in error, to recover the sum of \$10,000, the full amount of a policy issued by the company to Johnson, as the owner of three-fourths interest in a lake steamer called the "V. Swain." The steamer was valued, by agreement in the policy, at \$33,600, and the limit of insurance on the interest insured was \$21,600. The policy covered only total loss and general average. The vessel was burned to such an extent that Johnson claimed that under the terms of the policy it was a constructive total loss, giving him the right to abandon the vessel and recover the full amount of the policy. It was conceded that, in order to establish his right to abandon, Johnson was obliged to show that it would have cost more than \$25,200 to repair the vessel and to restore it to its former condition. The defendant company made two points below, and makes but two here. The first is that there was no lawful abandonment, and the second that there was not sufficient evidence to show that it would have cost the required amount to repair the vessel.

The abandonment was in the following terms:

"November 20, 1893.

"To the Insurance Company of North America, George L. McCurdy, Manager, Chicago, Ills.—Dear Sir: Please take notice that I hereby abandon to