

RELYEA v. NEW HAVEN ROLLING-MILL CO.¹

(District Court, D. Connecticut. August Term, 1873.)

1. BILL OF LADING—FALSE RECITALS—LIABILITY FOR DAMAGES.

Where a master, who is also owner of a vessel, gives a shipper a bill of lading, reciting receipt of a certain amount of iron, and agreement to deliver it to the consignees, he is liable for damages to the consignees, who, relying on the correctness of the recital, pay the shipper for more iron than was actually on board.

2. SAME—RECOUPMENT OF DAMAGES.

Such damages may be recovered in an independent action, or may be recouped against a claim for the freight, which was to be paid by the consignees: such recoupment, however, being limited to the amount claimed for freight.

Libel by Relyea against the New Haven Rolling-Mill Company.

C. R. Ingersoll, for libelant.

J. T. Platt, for respondents.

SHIPMAN, District Judge. This is a libel in personam in favor of the owner and master of the sloop Carver, to recover freight money from the respondents. On or about the 8th day of August, 1872, Pettee & Mann engaged the libelant to transport in his sloop a cargo of scrap iron from New York to New Haven. The iron was weighed upon the wharf at New York, and delivered on board the vessel by Pettee & Mann. The captain, on August 8, 1872, signed three bills of lading, whereby he acknowledged to have received on board the sloop 109 tons and a specified fraction of a ton, and agreed to deliver the same to the respondents at New Haven, or to their assigns, he or they paying freight at the rate of \$2.25 per ton of 2,240 pounds. The captain demurred to signing the bills of lading, as he had not seen the iron weighed, but finally signed them upon the assurance of Pettee & Mann that the quantity was correctly stated. On the same day, the consignors sent by mail to the respondents one of the three bills of lading, and a bill of the iron, at \$62.50 per ton. This letter was received before the vessel arrived. The vessel and cargo reached New Haven about the 10th of August. There was a delay of three or four days in discharging, in consequence of the respondents' dock being preoccupied, but the vessel was discharged on the 17th. On the 16th, the respondents paid Pettee & Mann in accordance with the quantity stated in the invoice and the bill of lading. On the 17th, when the iron was entirely discharged, the respondents discovered a deficiency of about six tons, and refused to pay for the freight. The libelant delivered all the iron that was put on board his vessel, and which amounted to 103 tons. It is fairly to be inferred that the consignees would not have paid Pettee & Mann until the weight of the iron had been ascertained had they not relied upon the positive statement of the bill of lading.

The question of law in the case is whether the consignees, who have advanced money on the faith of a clean bill of lading, signed by the

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master and owner of a vessel, and have been injured thereby, can recoup, in an action for freight money brought by such master, so much of their loss as does not exceed the libellant's claim for freight. It is well settled that, as between the shipper and the shipowner, the receipt in the bill of lading is open to explanation. But the point here is whether the master and owner are concluded by positive representations as to third persons who have relied upon such statements, and have suffered loss thereby. Since the case of *Lickbarrow v. Mason*, 2 Term R. 63, it has generally been considered as settled law that a bill of lading is a quasi negotiable instrument, and when goods are sold by the consignees "to arrive," and the bill of lading is indorsed to the purchaser, who receives the same in good faith, that the consignor's right of stoppage in transitu is lost. The custom of merchants upon a sale of goods which have not arrived is to deliver the bills of lading to the purchaser, which pass from successive vendor to vendee, and thus become a muniment of title of great value. In such case the only evidence which the purchaser has of the quantity of goods which he has bought may be the statement of the master in the bill of lading. This declaration is oftentimes the only source of information upon which the purchaser can safely rely. It then becomes the duty of the master to see to it that innocent purchasers are not deceived by his incorrect or uncertain representations. In case purchasers are deceived, a corresponding legal liability should be imposed upon him to make good the loss which he has caused. Had the New Haven Rolling-Mill Company sold the iron while in transit, and had the purchaser, relying upon the representations of the bill of lading, paid the full amount therein stated, there can be little doubt that the master, being also the owner, would have been considered bound by his statements, at least to the extent of his freight money. I see no reason why his liability should be diminished when the person who is deceived is the consignee named in the bill of lading. If the consignee has not been misled, and has not suffered loss in consequence of the bill of lading, he has no cause of complaint. But if it is found that a loss has been suffered, and that such loss happened through a reliance upon an erroneous bill of lading, there is no just reason why the person whose negligence has immediately caused the injury should not also bear the loss.

To this effect is the decision of Judge Nelson in *Bradstreet v. Heran*, 2 Blatchf. 116, Fed. Cas. No. 1,792a. This was a libel in personam by the master to recover freight on cotton shipped from New Orleans to New York, and consigned to the respondents. The court say:

"The consignees made large advances upon the cotton, on the faith of the representation in the bill of lading that it was shipped in good order. They are justified in doing so, and their security should not be lessened or impaired by permitting the master to contradict his own representation in that instrument. It might be otherwise if the question arose between the master and the owner of the cotton. The question of damage might in that case be well limited to that accruing in the course of the voyage, notwithstanding the bill of lading. But the respondents stand in the light of bona fide purchasers, who became such on the faith of the representation of the master."

In case of *Sears v. Wingate*, 3 Allen, 103, the court hold that the master and owner is bound by the representations in the bill of lading, when the consignee is deceived thereby, provided the statements are those which the master knew or ought to have known were erroneous, and the incorrectness of which he had the means of discovering. Here the cargo was weighed upon the dock at New York. It is not probable that the master, unless exceedingly diligent, could have verified the accuracy of the weights, or have ascertained the truth or incorrectness of the representations made to him by the consignors. But, in my opinion, it was his duty either to have ascertained the true weight, or to have refused to sign a clean bill. The master, when he ignorantly signs a bill of lading whereby he undertakes to deliver a specified quantity, is always in danger of misleading a third person. It is incumbent upon him to avoid that danger, by refusing to sign a bill unless he is satisfied of the accuracy of its contents.

It is claimed by the libelant that the 103 tons were accepted, and that the freight money is therefore to be paid. It is true that there was an acceptance, and that the respondents are liable for the freight money. But they have, nevertheless, a right to recoup against this claim for freight the damage which they have sustained in consequence of the fault of the master in the same transaction which is the subject of the suit; but such recoupment cannot be to an extent beyond the amount claimed for freight. The respondents can prosecute this claim for damage either by an independent suit or libel, or they can, by recoupment, "seek to diminish or extinguish the libelant's just claim." *Kennedy v. Dodge*, 1 Ben. 315, Fed. Cas. No. 7,701; *Nichols v. Tremlett*, 1 Spr. 367, Fed. Cas. No. 10,247. The libelant was also entitled to a small sum for demurrage, but, as the price of the six tons of iron was greater than the amount of the freight money and demurrage, the libel must be dismissed.

WHITMAN v. VANDERBILT.

(Circuit Court of Appeals, Second Circuit. May 12, 1896.)

1. DEMURRAGE—DELAY BY ABSENCE OF MASTER.

The master or shipowner cannot recover demurrage, under a charter party, for delay in discharging caused by the master's absence from the vessel, so that she could not be moved to another dock upon the purchaser of the cargo refusing to receive it on the ground that it was in bad condition.

2. SHIPPING—DUTY OF MASTER—SIGNING BILLS OF LADING.

The master cannot be held at fault for accepting lumber cargo from a firm to which his ship was consigned by the charterer for loading, and giving a bill of lading describing it as in apparent good order and condition, when in fact it was largely rotten, if its worthless condition is only determined by putting the boards through a planing mill. The master is not required to be an expert in lumber.

Appeal from the District Court of the United States for the Southern District of New York.