

have done so. They undoubtedly intended to join with the master in these efforts to save the vessel; their pecuniary interests and their conduct were all in that direction. I hold, therefore, that the libelants were the employés jointly of the owner and the underwriters, in this effort to save their common property.

I hold also that the so-called abandonment of the vessel, after she was already lost, does not have the effect of exempting the owner from her just share of liability for this employment. A proceeding so completely after the fact cannot affect the relative liabilities of the parties with relation to an effort intended to avoid that fact. Had the vessel been saved, or partially saved, there would, of course, have been no attempt at abandonment. To allow it now, as against these libelants, would be giving the owner the unfair option of choosing to pay her proportionate share if the services were successful, and escaping when she found they were unsuccessful.

The limitation act is not, in my judgment, in question in this case. Vessel owners and underwriters, employing men to save their vessels in extremity, make themselves, by such act of employment, liable to the extent of the contract price; and I think the contract sufficiently maritime in its nature, aided, as it is, by the statutes of the state wherein the services were rendered, to create a maritime action that would bring it within the jurisdiction of a court of admiralty. A decree may be entered finding for the libelants, and against the libelees, one-third of the liability against the owner, the other two-thirds against the underwriters, in proportion to their interests in the vessel.

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#### THE PENINSULAR.

#### FOLEY v. THE PENINSULAR.

(District Court, E. D. New York. April 19, 1897.)

#### SHIPPING—PERSONAL INJURIES—FELLOW SERVANTS.

A winchman, by whose negligence a piece of cargo falls upon a man working in the hold, is the latter's fellow servant, so that the ship is not liable.

This was a libel by Patrick Foley against the steamship Peninsular to recover damages for personal injuries.

Charles J. Patterson, for libelant.  
Convers & Kirlin, for claimant.

**BENEDICT**, District Judge. This is an action for personal injuries caused by the falling of a tub of salt upon a man in the hold of the steamship Peninsular. Upon the evidence it is impossible to conclude that the accident was caused by any neglect on the part of the shipowners. It was caused by the negligence of the winchman. The winchman, however, was a fellow servant with the libelant, and therefore his negligence entails no liability upon the owners of the ship. Libel dismissed, with costs.

## THE ALVENA.

WELSH et al. v. THE ALVENA.

(Circuit Court of Appeals, Second Circuit. April 8, 1897.)

## SHIPPING—SEAWORTHINESS—SUGAR CARGO—INSUFFICIENT INSPECTION.

Sugar in the hold of an iron steamship was damaged by water coming in through a small hole made by corrosion of the acid of sugar drainage and sea water, which reached the plate through cracks in the lining of Portland cement. The evidence was insufficient to show that the cracks were caused by any accident after sailing. Respondents relied on an exception to the bill of lading of damage from unseaworthiness, provided "all reasonable means have been taken" to make the ship seaworthy, and also on the Harter act, which exempts the carrier if he has exercised "due diligence" to make the ship seaworthy, etc. *Held* that, in the inspection prior to the voyage, a failure to take up one of four ceiling boards in a passageway over the limber spaces, underneath which the leak occurred, in order to examine the cement, was a lack of "due diligence" and "reasonable means" to make the ship seaworthy, and the carrier was not exempted either under the statute or bill of lading. 74 Fed. 252, affirmed.

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

This is an appeal from a decree of the district court, Southern district of New York, in favor of the libelants and against the steamship *Alvena* for \$2,904.73, for loss and damage to sugar shipped at Savannah La Mar, in Jamaica, and consigned to the port of New York. The sugar was stowed in No. 3 hold, aft of the engine-room bulkhead. The facts are sufficiently set forth in the following excerpt from the opinion of the district judge:

The steamship left Kingston, Jamaica, for New York, on April 3d. At about 1 a. m. of April 8th, water was found rushing into No. 3 hold, coming through a hole in the B strake, the second strake from the keel, on the starboard side of the bottom of the ship, immediately beneath the vertical manhole entrance to the tunnel. The pumps were not, at first, able to cope with the influx of water; but after the water from No. 3 was let into the engine room, and some jettison of cargo was made, they were able to do so. The vessel put into Norfolk, which she reached about 11 p. m. of the 9th. Temporary repairs were made there, and the vessel reached New York in April. A portion of defendant's sugar was damaged by the influx of water. It does not distinctly appear whether any of the plaintiff's sugar was jettisoned or not. The evidence leaves no doubt that the hole in the bottom of the steamer was caused by the corrosive action of the sugar drainage upon the iron plate of the steamer. This corrosive action is well understood. To prevent it, iron steamers intending to carry sugar cargoes have, as the *Alvena* in this case had, a layer of Portland cement, from five to six inches thick, covering the entire bottom where sugar is expected to be stowed. It is necessary that this layer of cement be kept solid and free from cracks. The explanation of this accident accepted by both sides is that some crack or break in the cement permitted the sugar drainage to work through it so as to corrode the plate beneath. Examination of the hole showed that the cement was gone in an oval space of about five inches by three at the bottom, and sloping upward and outward at an angle of about 60°. The hole in the iron plate was of irregular, ovate shape, nearly 2½ inches long, and nearly 1½ inches wide in the widest part. Around the margin of the hole the iron was eaten down to a very thin edge, and the corrosion extended in a less degree all around about ¾ of an inch back from the edge of the hole, at which distance from the edge the plate was again of the normal thickness of about half an inch. The sugar acid, therefore, had eaten out a saucer-like excavation in the plate over an extent of nearly 5 inches in length by about 3 inches in breadth at the