

Island. These actions were brought by the owners and masters of the vessels to recover their damages occasioned by the loss, upon the theory that the tugs were negligent in prosecuting the voyage in the weather conditions prevailing when and after the flotilla left the Kills, and in failing to render necessary assistance to the vessels when they were in distress. The court below condemned the tugs upon the ground of their negligence in leaving the Kills with the tow in the then state of the weather. The evidence in the record is very conflicting, and consists almost wholly of the testimony of those who were on board the vessels. The case presents the issue of fact whether, in view of the storm indications, it was consistent with the exercise of reasonable discretion on the part of those in command of the tugs to proceed beyond the shelter of the Kills to the exposed waters of the bay. The disaster which befell the voyage supplies the knowledge that comes after the event, but it does not necessarily impeach the judgment of those who decided previously that it was safe to start. They are not to be charged with negligence unless they made a decision which nautical experience and good seamanship would condemn as presumably inexpedient and unjustifiable at the time, and under the particular circumstances. On the other hand, they are not to be vindicated merely because they may have erred honestly. They are to be exonerated if they acted with an honest intent to do their duty, and in the exercise of the reasonable discretion of experienced navigators. *The Hercules*, 19 C. C. A. 496, 73 Fed. 255. Applying this rule of liability, we are not justified in disturbing the conclusion of the court below. All the witnesses were examined in the presence of the district judge, and, as to all questions of fact depending upon the credit to be given to their observations, we should defer to his judgment, and better opportunity to criticise their intelligence and apparent veracity. All the witnesses for the libellant were boatmen, who were familiar with the voyage, and had many times made voyages with vessels in tow of tugs across the bay. They testified that the wind had been blowing 25 miles an hour during the afternoon,—sometimes harder, and sometimes less,—but that, when the flotilla was about leaving the Kills, it was blowing 30 miles an hour, that the bay was rough with whitecaps, and, as the flotilla entered it, the boats jumped and rolled heavily. According to the record of the weather bureau, showing the velocity and direction of the wind in the vicinity, it was blowing from the west or northwest during the preceding afternoon, and throughout the night,—between 10 and 11 o'clock of the preceding evening, at 22 miles an hour; between 11 and 12 o'clock, at 16 miles an hour; and between 12 and 1 a. m., at 31 miles an hour. Storm signals had been displayed in the afternoon, and were maintained throughout the night. These signals were visible across the bay. The district judge was of the opinion that a wind of 31 miles an hour was a dangerous one for such a tow to meet upon the waters of the bay, and in this opinion we coincide. We cannot accept the theory of the tugs, that the wind had abated when they put out from the Kills. It did abate temporarily during the following hour, and then increased again; but it was more violent when the flotilla started than it was when the vessels foundered,

or at any other period of the voyage. The utter indifference manifested by the tug master in command of the flotilla while the vessels that were lost, and others, were in distress, is suggestive, and permits an inference of his recklessness which reflects upon the character of his judgment in concluding to leave the Kills. The circumstances attending the foundering of the Annie and Lucy sufficiently account for the disaster to her, without necessitating very critical inquiry into the question of her seaworthiness. The argumentative suggestion of her unseaworthiness has very little evidence to support it. The decrees are affirmed, with interest and costs.

GINN et al. v. OGDENSBURG TRANSIT CO.

(Circuit Court of Appeals, Seventh Circuit. March 16, 1898.)

No. 445.

SHIPPING—LIMITATION IN BILL OF LADING.

A stipulation in a bill of lading against liability for loss or damage, unless "the action in which said claim shall be sought to be enforced shall be brought within three months after said loss or damage occurs," is forbidden by no rule of law, nor by any consideration of public policy, and, like any other term of the agreement, will be presumed to have had the full assent of both parties, and will be regarded as reasonable, unless the contrary be made apparent.

Appeal from the District Court of the United States for the Northern Division of the Northern District of Illinois.

Robert Rae, for appellants.

Charles E. Kremer, for appellee.

Before WOODS, JENKINS, and SHOWALTER, Circuit Judges.

WOODS, Circuit Judge. This appeal is from a decree of the district court dismissing a libel, whereby it was sought to recover damages for injury to a consignment of school books while in course of transportation by the propeller John R. Langdon from the port of Ogdensburg to Chicago. The bill of lading, a copy of which was annexed to the libel, besides other conditions designed to limit the carrier's common-law liability, contained a stipulation against liability "in any case or event, unless written claim for the loss or damage shall be made to the person or party sought to be made liable within thirty days, and the action in which said claim shall be sought to be enforced shall be brought within three months after said loss or damage occurs." This libel was not brought until after the lapse of little less than a year from the date of the injury, and for that reason was dismissed. An amendment to the libel, added after the filing of the answer, alleges "that the conditions in the bill of lading," referred to in the answer, were in no manner assented to by the libelants at the time of the receipt of the bill of lading; that they had no knowledge of the contents thereof, either at the time of the shipment of their property, or at the time of loss, or at any time prior to the filing of the answer; and that they never agreed to be bound by the same. Otherwise than this,