

terms. This can be done by reading it as intended to apply to causes of loss ejusdem generis with those particularized, and we think it exempts the carrier only from other causes of loss or damage of a like nature to those enumerated and beyond his control.

The cause of the loss or damage in this case was a very peculiar one. The detonators exploded while being handled carefully, and from no extraneous cause. As this court stated in its certificate to the supreme court:

"They were made in Germany, and were packed according to the regulations prescribed by German law, adopted and enforced for the purpose of eliminating any risk or danger in handling or transporting them. When thus packed, the immunity from danger of any accidental explosion is supposed to be complete, and they are transported and handled like ordinary merchandise, by carriers and truckmen, without the use of any special precautions to avoid risk. They do not explode when subjected to violent shock, as when thrown from such a height above the ground as to shatter in fragments the cases in which they are packed. They were customarily stowed and transported in vessels like ordinary merchandise, indiscriminately with the other cargo; and until the present occurrence, although millions of cases have been shipped and carried to all parts of the world, no accident has happened so far as known."

By the explosion a large hole was made in the side of the ship, in consequence of which sea water rapidly entered and damaged the goods of the libellant stowed in the hold.

Such a cause of loss or damage does not seem to be of a like nature to any of the others mentioned in the bill of lading. It was one so uncommon and unique in its character as to be as dissimilar as any which could be conceived. We conclude that the libellant is entitled to a decree.

The decree of the district court is accordingly reversed, with costs, and with instructions to ascertain the amount of the libellant's damages, and decree accordingly, with costs of the district court.

MADDOCK v. AMERICAN SUGAR-REFINING CO.

(District Court, D. Massachusetts. December 17, 1898.)

No. 594.

SHIPPING—BILL OF LADING—LIABILITY OF VESSEL FOR SHORTAGE IN CARGO.

A vessel is not liable for a shortage in the number of bags of sugar set out in the bill of lading signed by the master, although such bill and the sugar represented by it have passed to a bona fide purchaser, where no fraud is charged, and it is conceded that all the sugar actually received on board, or which came into the hands of the master, was delivered.

This is a libel in admiralty by Henry Maddock against the American Sugar-Refining Company to recover a balance due for freight.

Convers & Kirlin and Carver & Blodgett, for libellant.

Russell & Russell, for respondent.

LOWELL, J. The libellant, who is the owner of the steamship *Salamanca*, seeks to recover the balance of freight due for the carriage of sugar on the steamship from Cuba to Boston. The respondent was the purchaser of the sugar, and seeks to offset against the unpaid balance the value of 37 bags of sugar. The bills of lading, signed by the master of the *Salamanca* and assigned to the respondent, acknowledge the receipt on board the *Salamanca* of 11,640 bags, and the respondent paid value for this number of bags to the shipper; whereas the respondent contends that only 11,603 bags were delivered to it in Boston. It is admitted, however, that all the bags received on board, whatever the number, were duly delivered. As the case is presented, I have to determine if the vessel is liable for the shortage in the number of bags of sugar set out in the bill of lading, when the bill of lading and the sugar represented by it have passed to a bona fide purchaser. No fraud is charged against any one,—master, owner, shipper, or vendee.

The great weight of authority, both in England and in this country, seems to hold that the vessel is not liable in the case above stated. See *The Freeman*, 18 How. 182; *Pollard v. Vinton*, 105 U. S. 7; *Railway Co. v. McFadden*, 154 U. S. 155, 14 Sup. Ct. 990; *Jessel v. Bath*, L. R. 2 Exch. 267; *Sears v. Wingate*, 3 Allen, 103; *The Loon*, 7 Blatchf. 244, Fed. Cas. No. 8,499; *Robinson v. Railroad Co.*, 9 Fed. 129; 1 Pars. Shipp. & Adm. 187; *McLachlan*, Shipp. 394; *Legg. Bills Lad.* 62. Several cases in New York to the contrary effect are admittedly opposed to cases which the supreme court has cited with entire approval. It is contended, indeed, that though the vessel be not liable for a shortage in weight, upon the ground that it is difficult, if not impossible, to weigh a cargo exactly, yet that the vessel is liable for a shortage in the number of cases or packages or other separate articles, inasmuch as these may be definitely counted. Without discussing if the exact number of more than 10,000 bags of sugar can be ascertained more accurately than the weight of a cargo of coal, I find nothing in the authorities to support the distinction urged.

The decisions above quoted, and many others, are made to rest upon the principle that the master's apparent authority to bind the vessel and its owner does not extend to signing bills of lading for cargo not actually received on board, or, at any rate, delivered into his hands for shipment. I must confess that this reasoning seems to me not altogether satisfactory. I suppose that the statement of the bill of lading signed by the master is evidence of the receipt of the goods mentioned in it, even against the owner and the vessel. See *McLean v. Fleming*, L. R. 2 H. L. Sc. 128, 130; *Legg. Bills Lad.* 225; *Pars. Shipp. & Adm.* 197. It is hard to see how this can be so, if the master's authority extends only to goods actually received. If his authority be so limited, his receipt of the goods must first be proved, in order to show that he is authorized to certify that they have been received. Perhaps a better reason for the established doctrine may be that a bill of lading is not generally understood to be a representation to whomsoever it may concern that certain articles are in the hands of the carrier, but merely a receipt, which is, indeed, *prima facie*

evidence of the facts set out in it, but is also subject to contradiction as against even a bona fide holder thereof. Whatever be the grounds of the doctrine, however, I think it is established too firmly for this court to question it.

Decree in accordance with this opinion.

RED "R" S. S. CO., Limited, v. NORTH AMERICAN TRANSPORT CO.

(Circuit Court of Appeals, Second Circuit. December 7, 1898.)

No. 24.

1. SHIPPING—CONSTRUCTION OF CHARTER—COMPUTATION OF DISPATCH MONEY.

Under a charter specifying the number of days allowed for loading, exclusive of Sundays and holidays, and providing that dispatch money is to be allowed the charterer for "each running day or part of a day saved in loading," dispatch money is to be computed on the difference in time between the time the loading was actually completed and the vessel turned over to the master for the purpose of the voyage and the time when the lay days for loading would have expired under the charter, including Sundays or holidays occurring during such time.

2. SAME—DETENTION OF VESSEL BY CHARTERER.

Under a charter provision that, if the vessel should "be dispatched" in less time than was specified for loading, the charterers should be allowed dispatch money for each working day so saved, the charterers are not entitled to dispatch money for time elapsing after the vessel was actually loaded, but during which she was detained by their withholding her clearance papers without justifiable cause.

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

This was a libel by the Red "R" Steamship Company, Limited, against the North American Transport Company, to recover money claimed under a charter party. From the decision of the district court (84 Fed. 467), the respondent appeals.

Wilhelmus Mynderse, for appellant.

J. Parker Kirlin, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

SHIPMAN, Circuit Judge. This is an appeal by the respondent from the decree of the district court for the Southern district of New York. The important facts in the case were not in dispute. Those in regard to the first item which the libellant sought to recover are stated in Judge Brown's opinion (84 Fed. 467) as follows:

"The libel was filed to recover certain small balances alleged to be due to the libellant for the hire of the steamship William Storrs under two different charter parties, dated, the one July 26, 1893, and the other October 10, 1893. The items claimed consist of certain credits for dispatch moneys which, in settlement with the charterers, the master allowed to them as credits against the charter hire, for time saved in loading and in dispatching the vessel, less than the lay days specified in the charter. The charter of July provided that 'the lay days shall not commence until 7 a. m., on the morning after the steamer is ready to receive the cargo at the place of loading, notice being given before 12 o'clock on the day the steamer is ready. 15 running days, Sundays and holidays excepted, are allowed for loading. * * * Dispatch