

THE BARNSTABLE.

(Circuit Court of Appeals, First Circuit. May 11, 1899.)

No. 249.

SHIPPING—CONSTRUCTION OF CHARTER PARTY—RISK OF COLLISION.

A provision of a charter party that "the owners shall pay for insurance on the vessel," to be given any effect as between the parties, must be construed as requiring the owners to insure against all such losses as would otherwise fall on the charterer; and, where the owners failed to procure insurance, they made themselves insurers, and cannot cast upon the charterer the burden of paying damages recovered against the vessel for collision, against which they might have insured.

Appeal from the District Court of the United States for the District of Massachusetts.

J. Parker Kirlin, for appellant.

Charles T. Russell, for appellee.

Before PUTNAM, Circuit Judge, and WEBB and ALDRICH, District Judges.

WEBB, District Judge. Little need be added to the careful opinion of the district judge in this case (84 Fed. 895), which is a case of contract between the owners and the charterers of the steamship Barnstable. There can be no controversy as to the terms of the charter, for it is in writing and is in evidence. The difference relates to the twenty-second article of the charter, which is in these terms: "The owners shall pay for the insurance on the vessel." What are the obligations imposed by this provision of the contract?

In argument there has been some discussion concerning the mutual relations, under the charter, between the parties. The owners contend that the charterers were bailees, and held to all the liability of bailees, and this contention the charterers controvert. We do not think that the determination of that question will aid in the decision of the case; for whether or not, in the full and strict sense, the charterers were bailees, they would be, independently of this insurance clause, chargeable with some of the risks of the ship, while the owners would bear others. Assumption by the owners of insurance against risks affecting themselves alone would be of no advantage to the charterers, who would, in no event, be answerable for losses arising from such risks, and had no interest in insurance against such losses. The insertion of this clause in the charter has no meaning unless it be to make such insurance as would profit the charterers, which could only be effected by insurance against losses which would fall upon them, against all risks attaching to them. This insurance clause must have been intended for their protection, and could have been understood by them in no other way, and the agreement of the owners was not to partially, but wholly, protect them, and to relieve them of the expense of insuring themselves. In effect, it said to the charterers: "Your only responsibility will be to pay the hire of

the ship; all other things shall be our care and at our charge." If, having so agreed, they chose to take the hazard of loss, and to save the cost of a policy, they made themselves insurers, and, after the loss, cannot throw it upon the charterers. The decree of the district court is affirmed, with interest, and the costs of this court are adjudged to the Boston Fruit Company, appellee.

ULSTER S. S. CO., Limited, v. CAPE FEAR TOWING & TRANSPORTATION CO. et al.

(Circuit Court of Appeals, Fifth Circuit. March 28, 1899.)

No. 744.

1. SALVAGE—SERVICES.

Services of tugs in towing a steamer from an offshore sand bar, on which she had grounded, in connection with their carrying out the steamer's anchors to enable her to assist in getting off the bar, are in the nature of salvage services, authorizing compensation on that basis.

2. SAME—COMPENSATION.

An allowance of \$13,000 for salvage services in getting a steamer off a sand bar should be reduced 50 per cent., though the steamer was worth \$300,000, the value of the tugs employed being only \$18,000, all the services being rendered under the direction and control of the master of the steamer, the real services which put her afloat being, in the main, rendered by herself, operated by the master and crew, it appearing probable, the good weather continuing, that without the services of the tugs the master would have successfully floated her through the use of his own crew and appliances, no risk being incurred by the salvors, and the tugs being exposed to no danger, the skill shown in rendering the services being of the ordinary kind, the labor being the ordinary employment of the tugs and persons engaged, the time employed being less than a day, and it appearing that extraordinary awards were given by the decree to members of the crews of the tugs, such as \$300 to cooks and firemen, who performed no services out of their usual routine, and whose wages were \$1 a day.

3. SAME—ALLOWANCE TO CREWS.

Where salvage services which occupied less than a day are of the lowest order, and the crews of the tugs perform only services in the ordinary course of employment, the award to them should not be more than two months' pay.

Appeal from the District Court of the United States for the Eastern District of Louisiana.

On September 24, 1897, at 7:20 a. m., the British steamship Torr Head, bound on a voyage from New Orleans to Belfast, drawing about 25 feet of water astern, grounded on the Frying Pan Shoals off the coast of North Carolina, near the mouth of Cape Fear river, between five and six miles inside of the light-ship there stationed, and about a mile east-northeast from the black buoy. She had been swept out of her course about 40 miles by an abnormal setting of the Gulf Stream to the south and west, caused by a hurricane that had passed over the locality a day or two before. Frying Pan Shoals are described in the United States Coast Pilot as especially dangerous to navigation "on account of the great distance they make out from the shore," and "on account of their distance from the land, and the strong tidal currents which set across them in strong winds." They are said to consist "generally of sand,