

by the supreme court that the master has no more an apparent unlimited authority to sign bills of lading than he has to sign bills of sale of the ship. See, also, *Pollard v. Vinton*, 105 U. S. 7. His authority is to sign bills of lading of the usual tenor and description, consisting of a receipt for the amount shipped, subject to explanation, and a contract to deliver in the usual form at the port of destination. Such a contract the master has undoubtedly the right to sign, but he has no right to sign such contract before the cargo is laden on board. In this case there is no question of *bona fide* indorsement, and I think it very clear that the stipulation, while it may perhaps bind the master personally, is not obligatory upon the vessel.

The libellant is entitled to a decree for the residue of his freight.

THE A. R. WEEKS *v.* THE EPHRUESSI.

THE EPHRUESSI *v.* THE A. R. WEEKS.

(*District Court, E. D. Pennsylvania. January 29, 1886.*)

COLLISION—UNUSUAL CARE—DAMAGES.

Where a collision results from want of due care upon the part of a vessel, she is liable in damages.

In Admiralty.

Henry R. Edmunds, for the A. R. Weeks.

John L. Lane, for the Ephruessi.

BUTLER, J. The schooner had the right of way. It was therefore the bark's duty to keep off. She did not; and, in the absence of exculpatory proof, must be held to have been in fault. I find no such proof. The schooner kept her course, as was her duty, and the bark was unembarrassed. Why she did not keep off is sufficiently explained by the testimony and report of the pilot. In addition, however, to the want of care in controlling her course, of which he speaks, I think there was imprudence in approaching so near the schooner before taking measures to go under her stern. While the condition of the wind and tide, and character of the channel, presented no obstacle to the control of the bark tending to excuse her,—none which should not have been foreseen and provided against,—the circumstances were such as to call for unusual care. The failure to observe this care caused the accident.

A decree must be entered in favor of the schooner for full damages and costs, in each case. I find no evidence that she was guilty of contributory fault. It was her duty to hold her course until she saw

¹ Reported by C. B. Taylor, Esq., of the Philadelphia bar.

that collision was imminent. She was justified in expecting the bark to go under her stern. She had no reason to expect that this vessel would cease paying off; that she would come so close as to lose the benefit of the wind, and drift with the tide. When she discovered the danger, there was no time to avoid it. A failure to do the right thing under such circumstances is not a fault. It does not appear, however, that anything could have been done to avoid the result.

THE Z. L. ADAMS.

NICKERSON *v.* MONTGOMERY.

(*District Court, S. D. New York. November, 1885.*)

1. DISCHARGE OF CARGO—BILL OF LADING—USAGE OF TRADE—DEMURRAGE.

When a bill of lading fixes no time for the discharge of the cargo, the duty of a consignee is to use due diligence in procuring a berth, and to discharge, according to the custom of the trade; and for failure to exercise such diligence, demurrage is recoverable.

2. SAME—UPON THE FACTS ONE DAY'S DEMURRAGE ALLOWED.

The schooner *Z. L. Adams* arrived in New York, June 28th or 29th; and the respondents, to whom the cargo was sold, "to arrive," knowing that the facilities of their private pier were inadequate, began, on July 1st, to make inquiries for a suitable place of discharge. The inquiries were continued over the 2d and 3d, when a berth was found. Sunday and July 4th intervened. The vessel arrived at her berth on the 6th, and finished unloading on the 10th. The evidence showed four days to be a reasonable period for the discharge. *Held*, the respondents were chargeable with one day's demurrage.—June 30th,—as they showed no reason for deferring their inquiries for another berth until July 1st.

In Admiralty.

Beebe, Wilcox & Hobbes, for libelants.

Geo. A. Black, (*Scudder & Carter*), for respondents.

BROWN, J. This action was brought to recover damages in the nature of demurrage for delay in unloading the schooner *Z. L. Adams*, which arrived with a cargo of 360 tons of ice, consigned to F. H. Smith, on June 28 or 29, 1880. Prior to arrival, the ice had been twice sold, to arrive, and was received by Montgomery & Co., the second vendees.

As the bill of lading fixed no period for the discharge of the cargo, the only obligation of the consignee, or his vendee, was to use due diligence in procuring a berth and to discharge, according to the custom of the trade.

The usage in respect to the discharge of ice, as a very perishable cargo, is no doubt somewhat peculiar. By the necessities of the case it must be discharged either into carts for immediate distribution at retail, as seems by the evidence to be most usual with vessels arriving in the summer season, or else sold to the wholesale dealers for