

dents as this. One excuse offered for the omission was that it was not usual on the *Gwalia* to open the sluices when the tanks were being filled. This, certainly, was not a justification, as it showed an habitual failure to use the means and appliances furnished by the ship to prevent damage to cargo by water. Another excuse is that the ship lay by the stern, and the water would not have run off if the sluices had been open. I doubt if this was so, in point of fact; but if it was, the difficulty could easily have been remedied by filling the forward tanks first.

The evidence showed that the weak point of vessels of this class was in the tops of the ballast tanks. In heavy weather, especially when supporting cargo, these are likely to become strained, thus starting the rivets and opening the seams between the iron plates. After the severe gale experienced during the voyage, it was the plain duty of the master to use extreme care in filling the tanks; and as he used no care at all, I must hold the ship responsible for his negligence. I am of opinion that the claimants are entitled to have deducted from the freight the damage to the cargo.

Decree for the libelants for \$969.70, with interest from the filing of the libel, without costs.

THE GUILLERMO.¹

POST *v.* THE GUILLERMO.

(*District Court, S. D. New York. March 11, 1886.*)

PERSONAL INJURY—OPEN HATCH—NARROW AND DARK PASSAGE—NEGLIGENCE.

Where libelant, who was acting as roundsman to see that the night inspectors were at their post, went aboard the ship *G.*, and fell across an open hatch of the ship, which led to the coal-bunkers, and which was in a comparatively narrow passage-way where it was perfectly dark, and for his injuries brought suit against the vessel, *held*, that such leaving of the hatchway open was negligence on the part of the ship, in respect to the libelant, whose duties called him there; but negligence of a minor character, which, under other circumstances of doubt, did not warrant the allowance to the libelant of more than his actual loss, which was fixed at \$400.

In Admiralty.

Guy C. H. Corliss, for libelant.

Wheeler & Cortis, for claimants.

BROWN, J. On the twenty-eighth day of September, 1885, the libelant was acting as roundsman, whose duty it was to see that the night-inspectors on board ship were at their posts. On visiting the *Guillermo*

¹Reported by Edward G. Benedict, Esq., of the New York bar.

during the evening, the night-inspector not answering to his call, the libelant went on board to find him. In passing along a covered passage-way that was quite dark, he stumbled upon the coamings of a hatch leading to the coal-bunkers, and fell across it upon his left side, breaking four ribs and fracturing the fifth, upon one side of the coamings, and suffering considerable injury to his head from striking the coamings on the other side. His left hand and arm, as he testified, went down the open hatch, touching nothing, and his right arm extending across one side of the coamings prevented his falling through. On the part of the vessel there is evidence that at 3 or 4 o'clock p. m. the hatch was covered. There was no further occasion for opening it, so far as known; and the claimants contend that it was closed and not open at the time of the accident. The coamings were about 18 inches high. Although it would be possible that the libelant's arm might have projected outside of the coamings and thus have seemed to him to go down the opening, his testimony is to the contrary, and the severe injuries received by him would, it seems to me, be much less likely to have arisen from a covered hatch, where the coamings were 18 inches above the deck, than from an open hatch. I must hold, therefore, to his account of the accident, although not without some doubt.

The libelant went upon the ship lawfully and in discharge of his duties. The open hatch was not in the situation of the ordinary open hatches for a discharge of cargo, such as may be expected to remain open in port, and which persons going upon the ship must avoid at their peril. This hatch was in a comparatively narrow passage-way along the side of the ship. To leave it open in a covered passage-way, which was perfectly dark, I must hold negligence in respect to the libelant, whose duties called him there. *The Helios*, 12 Fed. Rep. 732. The negligence, however, was of a minor character; and, under the various circumstances of doubt that attend the case, I do not feel warranted in allowing more than the actual loss to the libelant, which I fix at \$400.

A decree for that sum may be entered, with costs.

THE HENRY SUTTON.¹

MANSON and others v. New York, N. H. & H. R. Co.

(District Court, D. Connecticut. March 16, 1886.)

1. DEMURRAGE—PLACE OF DISCHARGE NAMED IN BILL OF LADING.

Under the bill of lading the vessel was obliged to discharge her cargo at the Consolidated docks, New Haven. As the company had several docks at New Haven, the consignee had the right to select therefrom the one that he preferred, provided that the dock selected was accessible in a reasonable time, by reasonable means.

2. SAME—DELAY CAUSED BY ACCIDENTS OF NAVIGATION.

Under a bill of lading which requires delivery to be made at a named dock, arrival of the vessel at the dock is ordinarily a prerequisite to demurrage, and delays of the vessel within the port, for a considerable time, from accidents of navigation, without the fault of the consignee, do not require him to receive the freight at another place than that named in the bill of lading.

3. SAME—RECIPROCAL RIGHTS OF MASTER AND CONSIGNEE.

When an accessible dock has been designated, it is the duty of the vessel to employ a tug, or to use such reasonable means as may be necessary to enable her to arrive at the place of discharge; but if a delay takes place at the request of the consignee, he takes upon himself the risks incident to change of weather, and is liable for demurrage if the discharge is not effected within the time stipulated for in the bill of lading, provided the designated dock has become inaccessible, unless by the use of unreasonable means, for an unreasonable time, and the vessel is prevented by the consignee from unloading at its accessible dock.

In Admiralty.

John H. Whiting and Wm. K. Townsend, for libelants.

Johnson T. Platt, for respondent.

SHIPMAN, J. This is a libel *in personam* for demurrage. On January 21, 1885, the West Virginia Central & Pittsburgh Railway Company shipped, at Baltimore, on board the schooner Henry Sutton, of which Gilbert Manson was master and managing owner, and the other libelants were co-owners, 980 tons of coal of 2,240 pounds each, to be delivered to the New York, New Haven & Hartford Railroad Company at the "Consolidated Road Docks," New Haven, for a specified freight. The said railroad company is very commonly called the "Consolidated Road."

The bill of lading contained the following provision in regard to demurrage:

"And 24 hours after the arrival at the above-named port and notice thereof to the consignee named, there shall be allowed for receiving said cargo at the rate of one day, Sundays and legal holidays excepted, for every hundred tons thereof, after which the cargo consignee or assignee shall pay demurrage at the rate of eight cents per ton a day, Sundays and legal holidays not excepted, upon the full amount of cargo, as per this bill of lading, for each and every day's detention, and *pro rata* for parts and portions of a day beyond the days above specified, until the cargo is fully discharged, which freight and demurrage shall constitute a lien upon said cargo."

¹ Reported by Theodore M. Etting, Esq., of the Philadelphia bar.