

vessels that are sunk in shallow water, and can be raised at slight expense, but only to vessels sunk in deep water, or under other circumstances that afford no reasonable ground to believe that the vessel is worth raising and repairing. Such is not this case. The yacht was worth much more than the cost of raising and repairing. The libelant had no reason to suppose the contrary. He was therefore bound to raise and repair. I see no reason for relieving him from the loss that arose from his failure to discharge that obligation, and for imposing that loss upon the respondents; certainly none in this case, where the referee has found that his neglect to raise the boat was intentional, and was designed to compel the respondents to pay for a total loss, when the injury, and the circumstances of the sunken boat, were not such as legally bound them to do so. The increased injury that happened to the yacht after the lapse of a reasonable time to raise her was not the proximate result of the collision, but of the libelant's neglect to perform his own subsequent duty to raise her, and he must bear that loss. The additional cost to repair, caused by the delay in raising, viz., \$100, together with the interest thereon, should therefore be deducted from the amount reported due. In other respects the report is confirmed.

THE SNAP.¹

COKELEY and another v. THE SNAP.

(District Court, D. New Jersey. August 6, 1886.)

1. CARRIERS—OF GOODS—TRANSPORTATION—LIABILITY.

A carrier by land or water is responsible for the safe custody and due transportation of the goods which he contracts to carry.

2. TOWAGE—ABANDONMENT OF TOW—LOSS—GENERAL AVERAGE UNDER INSURANCE POLICY.

Where a tug willfully abandoned a barge, which sunk in consequence, damaging its cargo, the barge, as co-insurer with the insurance company, was liable for damages done to the cargo by the fault of the tug.

In Admiralty. Exceptions to commissioner's report.

Hyland & Zabriskie, for libelants.

Wallis & Edwards, for respondents.

WALES, J. I have considered these exceptions, and the points made by the respective proctors of the parties in support of and in opposition thereto.

The only exception that created any doubt was the one made to the item of \$57.58 for general average under the insurance policy

¹See opinion in same case, 24 Fed. Rep. 504.

as being too remote. The doctrine, however, is too well settled to admit of controversy, that a carrier by land or water is responsible for the safe custody and due transportation of the goods which he contracts to carry. *The Commerce*, 1 Black, 582. In this case the barge was liable for the damage done to the cargo by the fault of the tug. The barge, valued at \$150, was a co-insurer with the insurance company of the cargo, and liable for its proportion of the loss, and was compelled to pay this item in consequence of the willful abandonment on the part of the tug by which the former was exposed to the running ice, and sunk, and the cargo damaged. The charge, therefore, is not remote, but almost immediate and direct.

The exceptions are therefore overruled, and a decree will be entered for the libelants for the amount found by the commissioner, with costs.

GUIMARAI'S APPEAL.¹

CARACO'S APPEAL.

(*Circuit Court, E. D. Pennsylvania. April 22, 1886.*)

ADMIRALTY—APPEAL—EVIDENCE.

When, on an appeal, the questions involved are exclusively questions of fact, dependent upon conflicting testimony, the court will not discuss the evidence to enforce its views with reference to its weight and credibility.

In Admiralty.

John G. Johnson, for libelant and appellant.

Charles Gibbons, for respondent and appellant.

MCKENNAN, J. As the sum in controversy in each of these cases does not appear, by the record, to entitle either of the parties to an appeal, it is unnecessary for this court to make a detailed finding of facts; and as the questions involved in the cases are exclusively questions of fact, dependent upon conflicting testimony, it would not be profitable to discuss the evidence to enforce the views of the court in reference to its weight and credibility. It is sufficient to say that no error is discovered in the conclusions of the district court upon it, and the decree of that court, in each case, is affirmed, with costs.

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