

schooner by the steam-boat Thomas P. Way. The collision occurred in Newark bay, near the buoy, which is located just below the draw in the long railroad bridge over Newark bay. It was day-light at the time, with nothing to obstruct the vision of those on board the respective vessels. The tide was flood. The Thomas P. Way was bound down the river, and the Wesley Stoney was bound up the river, having a loaded scow on her starboard side, and the libelant's schooner on her port side. When the Wesley Stoney rounded the light-house, the Thomas P. Way was about at the west passage of the draw. This passage is the passage usually employed by vessels moving up, as well as down, the river. In view of this usage, under the circumstances proved, it was the duty of the Thomas P. Way, upon passing the draw, to bear to eastward, and allow the tug to pass her to the west, and so through the west passage of the draw. The tug, after passing the light-house, gave the Thomas P. Way a signal of two whistles, and kept on, no further east than the middle of the channel. This course enabled her to enter the west draw, and gave the Thomas P. Way room, after passing the draw, to go to the east, and pass the tug to the east side. The Thomas P. Way made no reply to the signal of the tug, and maintained a course that brought her in contact with the libelant's schooner, not far above the buoy, and no further east than the middle of the channel. As the vessels approached, and danger of collision appeared, the tug again gave a signal of two whistles, to which she received no reply, and in a very short time the collision occurred. The decisive question of the case, as it appears to me, is whether the Thomas P. Way went to east as far as she should, and as soon as she should, after passing the draw. Upon this question my decision is adverse to the Thomas P. Way. The neglect of the Thomas P. Way in this particular was a fault, and the sole cause of the collision that ensued.

The decree must therefore be that the libelant recover his damages of the Thomas P. Way, and that the libel as against the Stoney be dismissed, with costs.

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### Post and others v. KOCH and others.<sup>1</sup>

(District Court, E. D. New York. December 14, 1886.)

#### 1. CARRIERS—OF PASSENGERS—DUTY AS TO LANDING.

A carrier's contract with his passengers includes the landing of them in the usual and safe way.

#### 2. SAME—INJUNCTION—IMPOSSIBILITY OF LANDING—OBLIGATION OF CARRIER.

Where a steam-boat was prevented by injunction from landing at the only dock at Sands Point, *held*, that she was under no obligation to her charterers to take passengers to Sands Point, and leave the charterers to provide a way of getting the passengers ashore.

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

## 8. CHARTER-PARTY—GUARANTY—WIFE OF CHARTERER—LIABILITY OF WIFE.

The wife of one of the charterers guaranteed the faithful performance of the charter, but without charging her separate estate. *Held*, on breach of the charter, that she could not be held liable on her guaranty.

In Admiralty.

*Benedict, Taft & Benedict*, for libelants.

*Geo. H. Fletcher*, for respondents.

BENEDICT, J. A breach of the charter-party is plainly proved. No legal ground for the defendants' refusal to perform the charter is shown. It is proved that the libelants refused to send the boat with passengers to Sands Point on Sunday, the twenty-second of June, 1884; but the service on the libelants of an injunction, forbidding them from landing the boat on Sunday, at the only landing place at Sands Point, justified the libelants in refusing to take passengers for Sands Point on Sunday; and such action by the libelants afforded no legal ground for the defendants' refusal to perform their contract. The defendants are mistaken in supposing that, because the injunction forbade nothing more than the landing of the boat at Harper's dock at Sands Point, they had the right to insist that the boat should take on board passengers for Sands Point on Sunday, and proceed with them to Sands Point, leaving the charterers to provide a way of getting the passengers ashore at Sands Point at some place other than Harper's dock. Landing is part of the contract with a passenger. A breach of the passenger contract, rendering the boat liable for damages, would have been committed had the boat taken aboard for Sands Point passengers who could not be there landed in the usual and safe way. And that no passengers could have been so landed at Sands Point is proved by the fact that Harper's dock was the only dock there, and the use of that had been prevented by the injunction.

The liability of the defendants John Koch and Peter Hults, for the damages resulting from the breach of the charter, is therefore made out. As to the defendant Betsey M. Hults, I am unable to see that she can be held liable, notwithstanding the fact proved that the libelants have her written guaranty for the faithful performance of the charter-party by the other defendants. Betsey M. Hults was, at the time of the making of this guaranty, the wife of the defendant Peter H. Hults, living with him as such. She had no interest in the charter, nor in the business in which the boat was engaged, and there is nothing, either in her written contract, or in the circumstances attending its execution, upon which to base a finding that she intended to bind her separate estate. The libel, as against Betsey M. Hults, must therefore be dismissed, with costs. Against the other two defendants the libelants may enter a decree for \$9,378.13, there being some testimony that the libelants' damages amounted to that sum. But if the defendants desire the libelants to prove their damages more fully upon a reference, such reference will be ordered.

THE POLYNESIA.<sup>1</sup>KLIPSTEIN *v.* THE POLYNESIA.

(District Court, E. D. New York. January 4, 1887.)

## 1. CARRIERS—OF GOODS BY VESSEL—DAMAGE TO CARGO—PRESUMPTION AS TO UNDAMAGED PORTION OF CARGO.

Proof that some part of a cargo endured the voyage without damage does not raise the presumption that damage to another part of the same cargo during the same voyage was occasioned by bad stowage.

## 2. SAME—BILL OF LADING—EXCEPTION—PERILS OF THE SEA—STATEMENT OF CASE.

Casks of indigo auxiliary, belonging to libelant, were injured during a voyage in the steam-ship P. Other casks in the same tier, similarly stowed, were uninjured. The bill of lading excepted damage from perils of the sea. Claimant proved the encountering by the ship of weather sufficiently heavy to warrant the conclusion that the cause of damage was the motion of the ship. *Held*, that libelant could not recover, if the cause of the damage was weakness in the casks. If the cause was strain resulting from the motion of the ship, the exception in the bill of lading would relieve the ship from liability, in the absence of proof of bad stowage. Libelant did not prove bad stowage. *Held*, therefore, that he could not recover.

In Admiralty.

*George A. Black*, for libelant.

*Ullo, Ruebsamen & Hubbe*, for claimants.

BENEDICT, J. This is an action to recover for failure to deliver two barrels of indigo auxiliary according to the bill of lading. The libelant proved a shipment of 14 barrels, containing indigo auxiliary, under an ordinary bill of lading, containing an exception of perils of the seas, and that, on arrival, two of the barrels were found to be broken, and the contents damaged. The claimant proved the encountering by the ship during the voyage of weather sufficiently heavy to warrant, in my opinion, the conclusion that the immediate cause of the breakage of the barrels in question was the motion of the ship in the heavy weather. This proof from the claimant shifted the burden to the libelant, to show that this result of the motion of the ship would have been prevented by the exercise of due care in the stowage of the casks. *Clarke v. Barnwell*, 12 How. 272.

At the trial it was contended that the libelant must recover, because the claimant had not shown that the ship encountered weather sufficiently heavy to cause well-stowed casks to break loose; but, on the contrary, from the fact that the other casks in the same tier did not break loose, it appeared that the weather encountered was not sufficiently heavy to cause well-stowed casks to break loose. I do not understand the law to be that proof that some part of a cargo endured the voyage without damage raises the presumption that damage to another part of the same cargo during the same voyage was occasioned by bad stowage. Motion

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.