

The court below adopted a view more liberal to the consignee. It is plain that until February 3d the master of the Sutton was ready to deliver his cargo, and could have made delivery at any one of the docks of the consignee; but the court found, and the proofs sustain the finding, that the master of the Sutton was induced to delay proceeding to the Shop dock for the convenience of the consignee, and waited at a place as near that dock as he could get, in pursuance of the instructions of the consignee, until the ice prevented him from reaching it. He then offered to discharge at another of the docks named in the bill of lading, which was then accessible; but permission to do so was refused by the consignee. Under such circumstances it is not open to fair doubt that the consignee took the risk of any detention of the ship by *vis major* while it was waiting to get access to the Shop dock. *Tapscott v. Balfour*, L. R. 8 C. P. 46; *Jones v. Adamson*, 35 Law T. (N.S.) 287. The consignee cannot be heard to allege that the master was in fault for complying with its own instructions, or that the libelants are in any different position than they would be in if the detention of the Sutton had occurred at Shop dock after she had reached that place.

The decree of the district court is affirmed, with interest and costs.

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PHENIX INS. CO. *v.* CHADBOURNE, Adm'r, and others.

(Circuit Court, D. Massachusetts. 1887.)

SHIP-OWNERS—LIABILITY FOR AGENT'S ADVANCES—PAYMENT—INSURANCE.

The agents of the owners of a vessel advanced, at the owners' request and for their benefit, the money necessary to enable the vessel to make a voyage, and took out a policy of insurance to secure the amount advanced. The vessel was lost, and the insurance money collected by the agents. *Held*, that the receipt of the money extinguished and satisfied the debt, and that neither under an assignment to the insurance company, nor under the doctrine of subrogation, could the company maintain an action against the owners to recover the amount from them.

The facts in this case were that the vessel was in Georgia, and it became necessary to raise money to put the vessel in condition to make a voyage to South America. Parsons & Loud, of New York, were agents of the owners, and advanced the money, taking out a policy of insurance to secure the amount thus advanced. The vessel was lost, and the insurance money collected by Parsons & Loud, and the plaintiff took an assignment of the claim. The defendant Chadbourne is administrator of the estate of Nehemiah Gibson.

*C. T. Russell, Jr.*, for libellant.

*F. Dodge*, for respondents.

NELSON, J. It is perfectly clear, from the facts agreed upon in this case, that the insurance on the advances made by Parsons & Loud on the

credit of the vessel and freight were effected at the defendants' request, at their cost, and for their benefit, and that Parsons & Loud were bound by their contract with the defendants to apply the insurance money, when received, to the payment of the debt incurred on account of the advances. The receipt of the insurance money by Parsons & Loud, therefore, operated at once as an extinguishment of the debt, and they could thereafter have maintained no action against the defendants for its recovery. The debt having been thus satisfied, nothing, of course, passed by the formal assignment of the claim by Parsons & Loud to the libelant. For the same reason, by paying the loss the libelant acquired no right by way of subrogation to enforce the debt against the defendants. It could not, by paying the loss, get by subrogation a right which the assured did not possess, and it makes no difference that it had no notice of the arrangement between Parsons & Loud and the defendants when it issued the policy. All this has become settled law in this court by the recent decision of the supreme court in *Phoenix Ins. Co. v. Erie & Western Transp. Co.*, 117 U. S. 312, 6 Sup. Ct. Rep. 750, 1176.

Libel dismissed, with costs.

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THE MINNIE.

THE DORIS.

GEDNEY and others v. THE MINNIE and another.

(Circuit Court, D. Connecticut. June 24, 1887.)

**ADMIRALTY—TOW AND STEAMER PASSING IN NARROW CHANNEL—NEGLIGENCE.**

While the steam-tug M., with two barges, made fast on each side, was passing through the north channel, between the Sunken Meadows and the Middle Ground, beyond Hell Gate, the steamer D. passed on the starboard side at full speed, and caused the M. and her tow to sheer so that the outside barge on the port side ran upon the rocks of the Sunken Meadows, and was sunk. The channel is between 300 and 400 feet wide. The M., on entering, chose a course close to the Sunken Meadows, and was making less than three miles through the water. The D., then about 500 feet astern, blew one whistle, indicating she proposed to pass the tow on the starboard side, to which the M. made no reply. The D. continued her course, making about 10 miles through the water, and passed within 25 feet of the M., on the starboard side. The M. sheered to port, and, although the helms of the tug and barges were ported, she was unable to keep the outside barge off the rocks. *Held*, that the M. was in fault in choosing a course so close to the Sunken Meadows as to be unsafe, and in not answering the signal of the D. in protest of her passing in the channel as proposed; and that the D. was in fault in passing the M. in a narrow channel at a high rate of speed, or in not waiting until the M. had got out of the channel; also that, as between the vessels and their stipulators, each must pay one-half of the amounts due the respective libelant and co-libelants, and, in case of default on the part of either vessel or her stipulators in the payment of her half, the deficiency must be made up by the other vessel and her stipulators.

Findings of Fact and Conclusions of Law by the Circuit Court.