

sel to the Sandford. After the tugs so began to tow, no more water was thrown upon the Anderson by either of them. When the Anderson was got outside of the slip the hawser from the Roussel to her parted, and she was left adrift, with the fire on her not extinguished. She was carried by the tide into the slip next north of pier 37, and up near the bulkhead, and there the fire on her was got under control by water played on her by men belonging to the fire department of the city. Two steam-tugs, the Indian and the Excelsior, then took her in tow, also throwing water on her, and carried her to Hoboken, where the fire was finally extinguished. The Anderson and her cargo were more exposed to the force of the wind in the position in which she was left adrift than in her former position in the slip from which she was removed. There was no other cause than the will of those in charge of the Sandford and the Roussel which prevented them from going again to the assistance of the Anderson at the time they left her adrift. They continued to assist the Lone Star, and paid no more attention to the Anderson. What had been done by them in their efforts to save the Anderson and her cargo was not part of a continuous salvage service which culminated in the extinguishment of the fire. They were not compelled to desist from their efforts by the arising of greater perils or of unforeseen contingencies, but they voluntarily abandoned the Anderson and her cargo.

On the foregoing facts, I find, as conclusions of law, that neither the Sandford nor the Roussel is entitled to any compensation as salvage in respect of either the Anderson or her cargo, and that the libel in each case must be dismissed, with costs of the district court to the claimants of the Anderson, in the suit against her, taxed at \$129.80, and with costs of the district court to the claimants of the cotton, in the suit against it, taxed at \$120.65, and with costs of this court to the respective claimants, to be taxed.

FOWLER *et al.* v. THE BERTRAM L. TOWNSEND.¹

(District Court, E. D. New York. July 27, 1888.)

SHIPPING—DAMAGE TO CARGO—PERILS OF THE SEA.

On the evidence, *held*, that the damage to a cargo of sugar on the schooner Bertram L. Townsend, to recover for which this suit was brought, was caused by a peril of the sea, and not by neglect on the part of the ship, and that the libel should accordingly be dismissed.

In Admiralty.

J. Adriance Bush, for libellant.

Wing, Shoudy & Putnam, for claimant.

BENEDICT, J. This is an action to recover for damage to a cargo of sugar while being transported in the schooner Bertram L. Townsend.

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

The schooner arrived in the port of New York in May, 1885, and delivered a cargo of sugar in hogsheads and bags, part of which were damaged by sea-water. The libellant charges improper stowage of the cargo, unseaworthiness of the vessel because insufficiently calked, and that her limbers were permitted to be clogged with sand. The answer admits the shipment, the charter-party, bills of lading, and payment of the freight; and avers that the cargo was well stowed, that the vessel was tight, staunch, and seaworthy. That during the voyage she encountered very heavy and severe weather, with high seas, in which she labored heavily, shipped much water, became strained and damaged, and that the damage to the cargo was caused by perils of the sea. On the trial the libellant abandoned all charges in regard to the stowage of the cargo, and expressly admitted good stowage. This left but two questions for discussion—*First*, whether the schooner was in good seaworthy condition as to repairs and calking when she undertook the voyage; and, *second*, whether damage to the sugar arose from her limbers being allowed to become clogged up by the negligence of the master of the schooner. Upon these two questions much evidence has been taken. An examination of it has satisfied me that the damage in question must be attributable to the peril of the sea, and not to neglect on the part of the ship. The libel is accordingly dismissed, with costs.

BEHRENS v. THE FURNESSIA.¹

(District Court, S. D. New York. June 1, 1888.)

SHIPPING—CARRIAGE OF PASSENGERS—PERSONAL INJURIES—UNGUARDED HATCH.

Libellant, a steerage passenger on the steam-ship F., in coming down from the deck to go to his quarters, fell through the fore hatch in the lower between-decks, breaking his leg, for which injury this suit was brought. The hatch was ordinarily kept covered, and passengers were in the habit of walking over it. On the occasion in question the hatch had probably been opened to bring up provisions, but there was no light to enable libellant to see whether the hatch was open, nor was there any rail or guard around it. The libellant testified that he had never seen the hatch open, and did not know that it was liable to be open. No caution had ever been given the passengers in regard to the hatch. *Held*, that the vessel was liable for libellant's injury, his damages being fixed at \$1,600.²

In Admiralty. Libel for damages.

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

²If a common carrier of passengers omits any reasonably practicable precaution tending to insure the safety of the passengers, the omission is such negligence as will make him liable to a passenger who, without fault himself, is injured thereby. *Anderson v. Scholey*, (Ind.) 17 N. E. Rep. 125. See note, *Id.*

See, also, as to the liability of common carriers for injuries to passengers, resulting from the carrier's failure to use the proper degree of care, *Merwin v. Railway Co.*, 1 N. Y. Supp. 267; *Dougherty v. Railroad Co.*, (Mo.) 8 S. W. Rep. 900, and note; *Graham v. Railway Co.*, (Minn.) 33 N. W. Rep. 312; *Railroad Co. v. Pillsbury*, (Ill.) 14 N. E. Rep. 22, and note.