

BRITISH COLUMBIA ADMIRALTY DISTRICT.

1916
Nov. 24

DONKIN CREEDEN LTD.,

V.

S.S. "CHICAGO MARU." (No. 2).

Shipping—Damage to cargo—Ventilation—"Accident of the seas."

A ship properly equipped for ventilation is not liable for damage to a cargo of grain by over heating caused by decreasing the ventilation during inclement weather when good seamanship made that necessary; the damage was an "accident of the seas" within the meaning of the bill of lading.

The Thrunsoe, [1897] P. 301, followed.

ACTION for damages to a cargo of grain.

Tried before Martin, L.J., at Vancouver, B.C., March 29, 30 and July 6, 1916.

S.S. Taylor, K.C., for plaintiff; *Bodwell*, K.C., and *Mayers*, for defendant.

MARTIN, L. J. (November 24, 1916) delivered judgment.

This is an action to recover the sum of \$1,793.10 for damages to a consignment of 1,112 bags of Manchurian maize shipped on or about March 30, 1915, by the Japanese S.S. "Chicago Maru," owned by the Osaka Shoson Kaisha, ((i.e. the Osaka Mercantile S.S. Co.), from Kobe to Vancouver. Upon arrival, on or about April 21, 1915, in Vancouver, *via* Victoria, B.C., and Seattle, U.S.A., it was discovered that 957 of the bags were in a damaged condition, being badly heated and mouldy and they had to be sold at a low price in consequence. In the plaintiffs' particulars it is alleged that "the cause of the deterioration of the cargo was the improper stowage of the same, causing insufficient ventilation." Other questions were discussed, but as this is the principal one I shall first address myself to it.

The total number of 1,112 bags were "shipped in apparent good order and condition" at Kobe as the defendant's bill

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of lading recites, and were stowed as shewn by the ship's stowage plan, in two separate lots: a small one of 155 bags at the bottom of No. 2 hold, fairly well forward, which suffered no damage, and a large one of 957 at the stern in No. 5 hold. This is deposed to be the best place on the ship because it is far from the engines and has the side of the ship on each side (as shewn on the blue print, ex. 6) and is on top of the tunnel recess and opens forward towards No. 5 'tween deck hatch. This hatch is ventilated with four ventilators, two on each side, *i.e.*, two in the fore and two in the after part, which go through the 'tween decks. The cargo was loaded under the superintendence of the chief officer, who is now employed on another ship and is not available as a witness. The master, Keichi Hori, has no personal knowledge of the actual stowage of this cargo and deposed only as to the general custom of the ship. He said there were additional wood ventilators on board at the time, but could not speak as to their use on this occasion, though they were used when the ship had a full cargo of maize, or in hot climates, but there was no necessity for them in the North Pacific ordinarily. According to the evidence of John H. Ryan, the supercargo, who superintended the unloading of the cargo at Vancouver, he is positive he saw at least one set of these wooden ventilators on either side of the ship, stowed fore and aft, at the place in question, which would beyond all doubt afford sufficient ventilation. In some respects his evidence lacked particularity, but not in and this, and I do not feel justified in disregarding it. In bad weather the outer ventilators would be closed, the master testifies, and as a matter of precaution they were supposed to be always closed in the evening. The master could not say exactly how often they were closed on this voyage, but he could remember doing so "about two or three times."

In his examination *de bene esse* the master describes the voyage as "not so rough. . . . Just the kind of trip I would expect," which means what would be expected at that season in those latitudes by a skilled mariner. Undoubtedly some exceptionally heavy weather was encountered at one part of the voyage as appears by the log and the protest made at Seattle on April 21, 1915, put in by the plaintiff, *viz.*: on the 5th, 6th, 8th, and 9th of April.

on which last day, after the wind force reached the maximum, 10, at midnight on the 8th, and so continued for four hours, "the sea became much higher than the ship ever experienced," though this was her 24th voyage east. The log at midnight of the 8th records, "whole gale and ugly weather, high sea causing ship to labour and strain. Shipping much water constantly and flooded at times;" and at 4 a.m. on the 9th: "Heavy seas washing over all constantly." The "rough sea" continued, the log states, up to 8 p.m. of the 9th, after which it abated for a short time, but recurred at midnight of the 9th, and prevailed on the following day gained (on Eastward voyages) of the same date, and after being fine most of the 10th, began to be rough in the evening of that day, continuing till the evening on the 11th and afternoon of the 12th (when "shipping much water at times" is noted) and midnight, and 4 a.m. and noon and afternoon on the 13th; and again most of the 14th, after which moderate seas prevailed till the arrival at Victoria on April 17.

The ship sailed from Kobe on April 1, and it is noted, in the log on April 3, 8 a.m., "Opened all hatches and ventilator cover(s) for ventilation," and 8 p.m., "Left the hatches open through the night." On April 5, at 6 a.m., "Put all hatches (on) as taking spray on deck." On the 7th, at 8 a.m., "Opened all hatches;" on the 8th, at noon, "Shut all hatches." On the 10th, at 6 a.m., "Opened all hatches for ventilation;" on the 12th, at 9 a.m., "Shut all hatches." These are the only entries relating to ventilation which I can find after a careful perusal of the log throughout the whole voyage, from which it clearly appears that there must have been many occasions which required the shutting of the hatches and covering the ventilators, with canvas covers, and appropriate action must have been taken thereon from time to time by the watch officer all of which would not necessarily be entered in the log.

After a careful consideration of the whole evidence I can only come to the conclusion that the cargo was properly stowed, and that the system of ventilation was sufficient for ordinary purposes, and that the heating of the maize, assuming it to have been in real and not merely "apparent good order and condition" when shipped was caused by

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the stoppage of ventilation which, as a matter of good seamanship, was a matter of necessity imposed by the state of the weather. This brings the case within the exception "accidents of the seas" contained in the bill of lading according to the decision in *The Thrunscoc*,¹ wherein a certain portion of the cargo, oats and maize in bulk, stowed low down in the centre of the ship and nearest to the engine had been damaged owing to the interruption, during a storm, of the ventilation which was otherwise sufficient, and it was held that the ship was not liable in such circumstances. And it was later and further held in *Rowson v. Atlantic Transport Co.*,² that the Harter Act (1893, 52nd Congress Sess. 2, ch. 105, invoked herein, under cl. 21 of the bill of lading) did not apply where the ship was "in all respects seaworthy and properly manned, equipped and supplied," as I find this ship to be.

It therefore becomes unnecessary to consider the other questions raised; such as that relating to the real condition of the maize when shipped at Kobe, and I shall only observe in regard to this that the master, whose evidence was relied upon by the plaintiff, had, it was clear, practically no personal knowledge thereof, the shipment having been left to the superintendence of the chief officer, who is not available, as already noted; and even when the bags arrived at Vancouver the damage was not apparent outwardly. The meaning of such statements in bills of lading as "shipped in good order and well conditioned," and "weight and contents unknown" (which are also to be found in this bill of lading) "and apparent good order," had been considered in e.g., *The Peter der Grosse*³ and *Crawford v. Allan Line S.S. Co.*,⁴ to which I refer.

Action dismissed.

¹ [1897] P. 301.

² [1903] 2 K.B. 666.

(1875), 1 P.D. 414.

⁴ [1912] A.C. 130.