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## Judge Estee Passes On Admiralty Case.

### DEFINES RIGHTS OF SHIPPERS

#### Muck Chai, Who Claimed Collector's Office Was Not Open, Ordered Deported.

Judge Estee rendered a decision yesterday morning in favor of the respondents in the libel suit of McInerney vs. the bark C. D. Bryant, giving at the same time some interesting rulings as to the relative rights of shippers, and ship-owners.

There is one other case still pending as a result of the burning of the Bryant, the Pearson & Potter Co., but it is not known what disposition will be made of it.

The following is the ruling of the court, omitting the references to previous decisions:

It appears that the American bark "C. D. Bryant," libellee herein, whereof one P. Colly is Master, and J. Kentfield & Co., intervenors and claimants, are owners, was on the 18th day of June, 1901, lying in the port of San Francisco, and bound for the port of Honolulu, having on board at that time, twenty-six packages of merchandise, belonging to libellant, to wit: one case of clothing and twenty-five cases of shoes, and also having on board certain other cargo mostly machinery, the property of other people.

That thereafter, said bark sailed for the port of Honolulu with said merchandise aboard where she arrived on or about the 3d day of July, 1901; that on Sunday morning the 7th day of July, 1901, a fire broke out near the forward hatch of said vessel, where the aforesaid merchandise was stowed, and by reason of said fire, large quantities of water were poured into the hold of said vessel, and the bark was finally scuttled by the Captain, in order to extinguish the fire, the ship then settled down, filled with water, the fire was extinguished and after the hatches were pumped out the water was pumped out of the vessel. In the meantime this cargo was seriously injured by the water and fire. There is no contest as to the fact of the injury or the amount thereof. The goods were sold at auction bringing three hundred and ninety-nine dollars, the owners paying at the same time \$22.50 freight thereon.

Libellants bring this action in rem against the ship alleging damage in the sum of eleven hundred dollars for the failure to deliver the said merchandise "in good order and condition" and alleging that by reason of the careless, negligent and improper care and custody of the said merchandise, and the want of proper care on the part of the master of the said ship, its officers, crew and persons employed by him or them, the said merchandise was consumed by fire and ruined by water. The owners of the said vessel through Captain Colly, the Master, claim exemption by reason of the fact that the goods were injured by fire and that the fire was not caused by the "design or neglect" of the owners of the vessel or of the officers or crew thereof, and that whatever loss or deterioration claimed, that the same was done without the privity or knowledge of the owners or charterers or the officers or crew of the vessel; they also claim a further exemption by reason of a clause in the bills of lading that there would be no liability upon the part of the vessel, her owner or owners or charterers for damage or loss or injury to the goods, and navigation of whatsoever kind or nature" alleging that the loss to the goods was caused by a "danger of the sea" within the meaning of the clauses aforesaid.

1. This ship is a common carrier for hire and the owner of all goods on the vessel is primarily entitled to have reasonable care exercised by the said carrier whether in port or not. In this case the ship is liable for the value of these goods unless they were lost by the act of God, or public enemies, or the fault of the shipper, or by reason of some exception mentioned in the bills of lading, or under the provision of Section 4282 to 4287 of the Revised Statutes of the United States or of the so-called Harter Act of March, 1893. (Vol. 27 U. S. Stats. P. 445.)

2. The question is were the goods damaged or lost by a fire which would exempt the owners under the provisions of Section 4282 of the Revised Statutes which reads as follows: "No owner of any vessel shall be held liable to answer for or make good to any person, any loss or damage which may happen to any merchandise whatsoever which shall be shipped, taken in or put on board any such vessel, by reason or by means of any fire happening to or on board the vessel, unless such fire is caused by the 'design or neglect' of such owner."

It seems the ship came into the port of Honolulu all right, was brought up to the wharf properly and so far as the testimony shows was well equipped, manned and provisioned for the voyage to Honolulu, and in a sea-worthy condition, and only suffered injury by reason of the fire first discovered by the carpenter of the ship about five o'clock on the morning of the 7th of July, 1901. The Captain had been out on the evening before the fire, until 11 o'clock p. m. when he came aboard. The two mates were then in their berths asleep. No watch was kept on board the vessel although the Captain testified that "that night was the second mate's turn aboard." There was a ladder down the side of the ship so that any one could get on board and the Captain testified that after he had turned in he heard two men come aboard and also heard them walking on the deck; but it does not appear that he either got up or made any attempt to investigate who they were or what they wanted.

It further appears that in the cargo were several barrels of beer and cases of barrels of whiskey and that they were covered up with one or two tiers of baled hay; that on the morning of the fire and after it was well under way, four of the crew left the ship, two of them in an intoxicated condition.

It is clear that the fire originated in

the forward part of the vessel and it evidently commenced in the night. The forward hatch was off when the fire was discovered in the morning, and it would seem reasonable to suppose that it had not been put on since it was taken off the day before, or if put on, the officers of the vessel did not see that it was kept on, as should have been done, by the maintaining of a watch on board. No one could have reached the liquors in the hold of the vessel except through an open hatch and there being no watch this was easy to do, and especially so if the forward hatch was open. In the opinion of the Court it is quite as necessary to keep a watch on ship board when in port as when at sea, and particularly so when the hatches are opened and the cargo is exposed and in process of being removed.

The Court is satisfied that the fire was caused by the carelessness of the officers and crew of the vessel. Some of the crew evidently got at the cargo of liquors through the open hatch, which could not have occurred if a watch had been kept. Four seamen deserted on the morning of the fire and during its progress. Two if not all of them were under the influence of liquor when they left the ship and there is a strong presumption that they had obtained the whiskey or beer or both from the cargo, for it was early in the morning when they were first seen aboard the ship intoxicated. They evidently got at the cargo during the night time, and accidentally set the baled hay on fire in the hold of the vessel. The watch on the ship was necessary alike for the safety of the ship and its cargo, for the loss or injury to the one might and usually would include the loss or injury to the other as in this case where it appears the loss to the ship was 50 per cent of its value. And the lack of a watch was great negligence on the part of the Captain which was aggravated by the leaving of the hatch open, and this negligence was the greater by reason of the fact of the cargo being hay and very combustible.

In this case there is practically no testimony showing or tending to show that the owners by either their "design" or "neglect" caused this fire. The keeping of a watch is a part of the management of the vessel, for the mistakes in which the owner and the vessel are both exempt.

After the loss has been shown to have arisen by fire, the burden of proof is on those asserting the fire was caused by the neglect or design of the ship owner.

So it has been held that the owner is not responsible for the negligence of the officers of the ship. As has been said, this ship was well manned, equipped, and in a sea-worthy condition when it left the port of departure, and nothing to the contrary has been attempted to be shown upon the part of the libellants.

Referring again to Section 3 of the Harter Act, it is provided that after due diligence has been exercised to make a vessel in all respects sea-worthy, and properly manned, equipped and supplied, "neither the vessel, her owner or owners, agent or charterers shall become or be held responsible for damage or loss resulting from faults or errors in navigation or in the management of the vessel." \* \* \* or be held liable for loss arising from dangers of the sea. \* \* \*

It is evident that the words "management of the vessel" cannot refer to the navigation of the ship while at sea, because there is an especial clause as to that, but that it applies rather to a "fault or error" resulting from the management of the business of the ship or the discipline thereof, as in this case the failure to have a watch while in port, which concerned both the safety of the ship and its cargo; or the failure to do some thing which does not belong to the navigation or movement of the ship but which affects in some degree both the ship and the cargo.

The exceptions in this case are not found alone in the bills of lading, although they do stipulate to relieve the vessel "from the perils of the seas" but the proximate cause of the injury to the libellant's goods in this case did not arise from a peril of the sea but from fire while in port. The case of the G. R. Booth cited by counsel and found in 171 U. S. 401, is upon a careful examination not believed to be in point.

4. This action is a proceeding in rem and libellants urge strongly upon the Court that they are not asking any relief against the owners of the ship; that all they wish is a remedy against the ship itself, the offending thing. I fail to see the distinction made by counsel in this respect. A decision in favor of libellants against the ship and decreeing its sale for the payment of the amount of the judgment found due, would be simply a decree against the owner of the vessel, for if the ship is sold it is the property of the owner which is sold and he would in this case be punished for something of which the statute says he shall be exempt.

In conclusion I am of opinion that as the proximate cause of the injury to the libellant's goods was due to fire on board the C. D. Bryant, not shown to be due either to the "design or neglect" of the owners of said vessel, the negligence shown being that of the officers and men of the ship in the "management of the vessel," the owners are not responsible under Section 4282 of the Revised Statutes, and both the owners and the vessel are exempted under the terms of the third Section of the Harter Act, under the circumstances as shown in this case. Therefore the libel as to the vessel should be dismissed, and the same is hereby ordered dismissed without prejudice and without costs.

ESTEE, Judge.

ANOTHER CHINESE ORDERED DEPORTED.

An oral decision was rendered yesterday by Judge Estee in the case of Muck Chai, the Chinese who claimed that he had no certificate of registration because the collector's office had not been opened when the law went into effect. The court held that the contention was not good, as there was no evidence to show that Muck Chai had ever applied for a certificate. The usual order of deportation was made.

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