

Case No. 2,690.

THE C. H. NORTHAM.

{13 Blatchf. 31.}<sup>1</sup>

Circuit Court, E. D. New York.

Feb. 9, 1875.<sup>2</sup>

NEGLIGENT NAVIGATION—DAMAGES FROM SWELL.

1. A tug, with five boats in tow behind her, in two tiers, three in the first tier, and two in the second tier, was passing up the narrow part of a harbor, when a side-wheel steamboat, going in the same direction, went by the tug and her tow. In doing so, her suction dragged back the boats in the second tier, so as to break some of their lines, and then the swell she created drove them against the sterns of the boats in the first tier, so that the middle boat in the first tier was damaged: *Held*, If the steamboat desired to pass at the speed she had maintained up to the time she created the swell, she ought to have passed at a greater distance.
2. If the width of the channel was such that she could not pass at a greater distance, she should have reduced her speed in due season to prevent so heavy a swell.

[Cited in *The Massachusetts*, Case No. 9,258; *Andus v. The Saratoga*, 1 Fed. 733; *The Minnie*, 20 Fed. 544; *The Rhode Island*, 24 Fed. 295.]

This was an appeal from a decree of the district court [for the eastern district of New York], in admiralty, in a case of collision. The opinion of the district court—Benedict, J.—was as follows:

[See Case No. 2,689.]<sup>3</sup>

Wilcox & Hobbs, for libellant.

Owen, Nash & Gray, for claimants.

WOODRUFF, Circuit Judge. I am of opinion that the evidence in this case shows very clearly the want of proper care on the part of those controlling the navigation of the C. H. Northam, and that the tug and her tow were without fault. The steamboat was, of course, at liberty, to pass the tow. If she would pass at the speed she had maintained to the time when she created the swell that

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caused the injury, she should have passed at a greater distance. If the width of the channel was such that she could not pass at a greater distance, she should have reduced her speed in due season to prevent so heavy a swell. I think the proof fully sustains the views stated in the opinion of the district judge. Let a decree be entered for the libellant, with costs.

<sup>1</sup> [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]

<sup>2</sup> [Affirming Case No. 2,689.]

<sup>3</sup> [In the original report, the opinion of the district court, as given in Case No. 2,689, is here set out in full.]