

Case No. 4,263.  
[7 Ben. 70.]<sup>1</sup>

THE ECHO.

District Court, S. D. New York.

Dec., 1873.

TUG AND TOW—HAWSER.

A brig was towed out from a pier by a tug, by means of a hawser furnished by the brig. The tug controlled the brig, whose master and crew took no part in the work, except as directed by the master of the tug. The hawser parted, and the brig went foul of another vessel and received damages, to recover which she filed a libel against the tug. *Held*, that the tug was not responsible, as between herself and the brig, for the condition and strength of the hawser, and, as it was not shown to have been parted by negligence in the tug, she was not liable for the damages.

This libel was filed by Braddock Nickerson and others, owners of the brig John Shay, to recover damages for injuries sustained by the brig while being towed out of a pier at the foot of Seventh street, East river, in the harbor of New York, by the tug Echo. The brig was towed out by a line furnished by herself, and, while she was being towed out, the line parted, and she came in collision with a bark, which lay at the same pier. She alleged that she was under the charge and control of the tug alone, and that the collision was caused by negligence in the tug. This was denied by the tug.

E. H. Owen, for libellants.

W. R. Beebe, for claimant.

BLATCHFORD, District Judge. Assuming it to be true, as alleged in the libel, that, at the time of the injury to the brig, the tug was under the sole control of the master and crew of the tug, and that the master and crew of the brig took no part in the work of moving her, except as they were directed by the master of the tug. I am not satisfied that the libellants have made out the charge of the libel, that in moving the brig, those navigating the tug conducted the business so carelessly, negligently, and improperly, that the brig received the injury which happened to her. The weight of the evidence is, that it was the parting of the hawser between the brig and the tug which caused the rigging of the brig to foul with the yard of the bark. For the condition and strength of that hawser, the tug was not,

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as between herself and the brig, responsible, in the event of injury to the brig from the weakness of such hawser, whatever might have been the responsibility of the tug for the strength of such hawser, as between herself and vessels other than the brig, in the event of injury to them from the weakness of such hawser. The brig must bear herself all loss occurring to herself from the parting of such hawser, as it is not shown to have parted through any negligence on the part of the tug.

The libel must be dismissed, with costs.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and B. Lincoln Benedict, Esq., and here reprinted by permission.]