

Case No. 4,703.

{3 Woods, 16.}¹

FAWCETT v. THE NATCHEZ.

Circuit Court, D. Louisiana.

Nov. Term, 1876.

SHIPPING—MISSISSIPPI RIVER NAVIGATION—RIGHT TO FOLLOW
CHANNEL—CRAFT MOORED TO BANKS—SWELL OF PASSING STEAMER.

1. Steamers and other water-craft navigating the Mississippi river have the right to follow the usual channels.
2. It is incumbent on those who have rafts, barges or other craft moored to the banks, to foresee and provide against accidents liable to be caused by the swell of passing steamers.

[Appeal from the district court of the United States for the district of Louisiana.]

The libel alleged that the libellant [Thomas Fawcett] was the owner of a barge loaded with 8,239 barrels of Pittsburgh coal, which was safely, securely and properly moored to the bank of the Mississippi river, at Willow Grove landing, in the upper part of the city of New Orleans; that the barge was well furnished with pumps and securely and properly braced from the bank, so as to prevent her being driven on shore by the swell raised by passing boats, and that she was manned with a competent and sufficient crew. That on the 8th of April, 1871, the steamer Natchez passed up the river and ran

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so near to said barge, that the swell she raised drove libelant's barge violently against the shore and against a sunken spar, which was forced through the side of the barge, making a large hole in her hull several feet below the water line, in consequence of which she sank in a few minutes and with her cargo worth \$4,144.88, was entirely lost to libelant, and for that sum he asked a decree. The answer alleged that when the Natchez passed the barge, she was in the usual channel for ascending steamers, where she had the right to be; that the coal barge was not properly and securely moored and fastened and properly braced from the bank, and that she was not moored at a safe and proper place, and that it was by reason of the careless and negligent manner in which the barge was moored and braced, and the improper place where she was moored, that she was driven upon the sunken spar and so broken as to sink, and that claimants were in no manner to blame for the injury and damage.

B. Egan, for libelant.

O. B. Singleton and E. H. Browne, for claimants.

WOODS, Circuit Judge. The evidence satisfies me that if due and usual diligence had been used in mooring the barge and bracing her from the bank, the accident which caused the loss of the barge could not have happened. It appears to be necessary, in order to keep barges moored at the bank from being violently driven on shore by the swell of passing boats, to brace them off from the bank with spars, and it is the invariable custom to do this.

It appears from the evidence of Charles Walker, one of libelant's witnesses, that before the Natchez passed up the river the coal-barge had, at the time of the passage of a small stern-wheel steamer, the Lessie Taylor, tripped one of her spars, and while the spar was in that condition the Natchez passed. The effect of the passing of the Natchez was to make a swell and swing the barge against the bank. This evidence is corroborated by the testimony of Charles Walker, also a witness for libelant.

Small stern-wheel steamers like the Taylor do not make sufficient commotion in the water to disturb the coal barges, if they are properly moored and braced. The bracing of the barge must have been defective or the spar would not have tripped and become useless by reason of the passing of the Taylor. Had the barge been skillfully and properly braced, her spars could not have been displaced, and the damage that was caused by the passing of the Natchez could not have occurred.

The Mississippi river is a public highway, open and free for the passage of all classes and sizes of water-craft They have the right to follow the usual channels, and it is incumbent on those who have rafts, barges or other water-craft moored to the banks to foresee and provide against accidents liable to result from the swell of passing steamers. *Williams v. Wilcox*, 8 Adol. & E. 314; *Morrison v. Thurman*, 17 B. Mon. 249; *Sherlock v. Bainbridge*, 41 Ind. 35. The Natchez was in the usual channel for ascending steamers.

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The proximate cause of the injury and damage was the carelessness and unskillfulness of those in charge of the mooring and bracing of the barge. The steamer was where she had the right to be. She did not transcend her own rights or invade those of others, and she cannot be held responsible for the injury. Libel dismissed.

¹ [Reported by Hon. William B. Woods, Circuit Judge, and here reprinted by permission.].