

Case No. 6,392.
[8 Ben. 263. J¹

THE HERALD, ETC.

District Court, S. D. New York.

Dec., 1875.

COLLISION IN THE HUDSON RIVER—TUB BOAT AND TOW.

1. The barge A. was towed by the steamboat H. astern at the end of two hawsers, being steered by her own helm. In passing the steamer C. and a fleet of twenty-five canal-boats, which she was towing up the river astern of her, the barge took a sheer towards the canal-boats and came in collision with one of them, while the H. and two boats which she had alongside, passed clear of all. In a suit brought against the H., the C. and the A., to recover for the damages sustained by the canal-boat: *Held*, that, under the circumstances, it was for the A. to establish that this sheer was caused by some fault on the part of the H.

[Cited in *The Ciampa Emilia*, 46 Fed. 867.]

2. No fault was shown to have been committed by either the H. or the C, and the A. must be held solely responsible for the damages.

This was a libel by Louis Mayer, owner of the canal-boat Late and Early, to recover for the damages sustained by her being sunk on the night of the 1st of August, 1874, in the Hudson river, just below Hudson. The Late and Early was one of twenty-five boats which were being towed up the river by the steamer Connecticut, arranged in five or six tiers, the Late and Early being the outside boat on the port side of the second tier. The steamboat Herald was coming down the river, having two canal-boats on each side, and towing astern an ice-barge called the Arctic, at the end of two hawsers of about forty fathoms in length, and this ice-barge was brought in contact with the Late and Early, causing her to sink. Mayer filed his libel against the two steamboats and the ice-barge, charging that they were all guilty of negligence which caused the collision—the Connecticut, in that she was too close to the west side of the channel and should have stopped sooner to allow the Herald and her tow to pass; the Herald, in running at too great a rate of speed and in towing the barge on so long a hawser; and the Arctic in being so towed, and in not being properly steered, so that she sheered to the eastward against the Late and Early. Separate answers were put in on behalf of each of the vessels, denying the faults charged upon them respectively.

Beebe, Wilcox & Hobbs, for libellant.

Benedict, Taft & Benedict, for the Herald.

C. Van Santvoord, for the Connecticut.

H. N. Beach, for the Arctic.

BLATCHFORD, District Judge. Although the motive power which gave the barge her forward movement was in the Herald, and she was being towed at some distance astern of the Herald, by lines from the stern of the Herald, yet she was being guided by the movement of her own rudder, controlled by the will and discretion of her own captain, who was at the wheel in her pilot house. The barge struck the boat that was in front of the libellant's boat, and drove the former against the latter, and thus caused the injury complained of. It is plain that the barge took a sheer and went out of her proper course. Under the circumstances, it is for her to establish that the sheer was caused by some fault on the part of the Herald. This is not done; nor is any fault shown on the part of the Connecticut. The libel is dismissed as to the Herald and the Connecticut, and a decree will be entered in favor of the libellant against the barge, with a reference to ascertain the damages sustained by the libellant.

¹ [Reported by Robert D. Benedict, Esq. and Benj. Lincoln Benedict, Esq., and here reprinted! by permission.]