

Case No. 7,298.  
[9 Ben. 181.]<sup>2</sup>

THE JESSIE RUSSELL.

District Court, E. D. New York.

June, 1877.

DAMAGE—TOG AND TOW—STALE CLAIM.

Where a tug was taking a boat through a drawbridge, and the boat struck one of the piers and damage ensued, to recover for which action was not brought till after three years had elapsed, and the ownership of part of the tug had gone into hands of other parties without notice, and material evidence lost: *Held*, that the delay in enforcing the right of action for recovery was not justified, and the claim must be *held* to have become stale.

In admiralty.

BENEDICT, District Judge. This is an action to recover the value of a canal boat, alleged to have been sunk through the negligence of the tug Jessie Russell while towing her through a bridge on Newtown creek.

The time when the accident is said to have occurred was September 20, 1873. The action was commenced July, 1876. The reasons assigned for this great delay are not satisfactory to my mind, and during this period a part of the boat has changed hands, and, at the time of commencing the suit, was owned by an innocent party who had bought without notice.

By reason of the delay it has been rendered impossible to present to the court evidence in regard to the condition of the canal boat at the time, that would have been easily found if the action had been brought soon after the boat had sunk. The actual condition of the boat is a material question in the enquiry.

I am, therefore, of the opinion that under the circumstances of this case, the demand should be held to have become stale, and for that reason not enforceable in this court. Libel dismissed, but without costs.

<sup>2</sup> [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.]