

Case No. 7,324. THE J. L. HASBROUCK.

{5 Ben. 244;¹ 14 Int. Rev. Rec. 47.}

District Court, S. D. New York.

June, 1871.

TUG-BOAT AND TOW—OWNERS OF CARGO—NEGLIGENCE—APPORTIONMENT
OF DAMAGES.

1. Where a canal-boat loaded with grain was taken in tow, at New York, by a steamboat, to be towed up the Hudson river, but began to leak on the voyage up, and, oh arriving off Fort Montgomery,

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notes cast off from the steamboat in order to go to a dock, which, however, she failed to reach, and drifted off into the river and sank: *Held*, that, for any damage accruing to the canal-boat or her cargo before she was cast off, the owners of the canal-boat and of the cargo must, as respects the steamboat, bear their own losses, as that resulted from the unseaworthy condition of the canal-boat.

2. The steamboat was in fault in leaving the canal-boat, as she did, after she was cast off.
3. The canal-boat was in fault in not being Provided with an anchor, and in not using all her lines to get her into the dock.
4. The damages resulting to the canal-boat from the actual sinking of the canal-boat, over and above the damage it had sustained at the time it was cast off from the steamboat, must be apportioned between the owners of the canal-boat and the owners of the steamboat, and the damage resulting to the cargo from such sinking, must be apportioned between the owners of the cargo and the owners of the steamboat

[Cited in *The M. J. Cummings*, 18 Fed. 182.]

These were two actions, brought by Taylor and others, owners of the canal-boat Frank Curran, and Hicks and others, owners of a cargo of wheat on board, to recover for the loss of the boat and cargo. The boat was taken in tow at New York City, to be towed up the Hudson river to a place above Poughkeepsie, in the evening. She soon after began to leak, and in the morning the captain of the canal-boat requested to be cast off. The canal-boat was being towed astern of a barge, which was also towed astern of the propeller on a hawser. When off Fort Montgomery the propeller ran in near a dock, and the order was given to the canal-boat to cast off, which was done, and the propeller went on up the river. The canal-boat did not reach the dock, she had no anchor on board, her master attempted to get a line to the dock, but failed, and she was carried by the tide out into the middle of the river, where she sank, and was totally lost, with her cargo.

C. Donohue and J. K. Hill, for libellants.

R. D. Benedict and W. J. Haskett, for claimants.

BLATCHFORD, District Judge. For any damage to the canal-boat or her cargo up to the time of the arrival of the propeller and her tows off Fort Montgomery dock, the owners of the canal-boat and the owners of her cargo must, as respects the propeller, bear their own losses. Such damage, on the evidence, was not caused by any negligence or fault on the part of the propeller, by towing at an undue rate of speed, or otherwise, but was caused by the leaky and unseaworthy condition of the canal-boat. The owners of the cargo, if they have a claim against anybody for such damage, must look for it to the owners of the canal-boat. For the actual sinking of the canal-boat off Fort Montgomery dock, and for the damage caused by such sinking to her cargo, over and beyond the damage it had sustained by water at the time the canal-boat was cast loose from the propeller, I think the propeller is shown to be responsible in part. The damage to the canal-boat, for which the propeller is so responsible in part, is the loss of such value as there was in the boat in the condition in which she was when she was cast off. But such damage

to the canal-boat must be shared by her owners, and such damage to the cargo must be shared by its owners. There was fault on the part of the canal-boat in not having an anchor for use, and in not using, off Fort Montgomery dock, all the lines there were on board. These faults, on the evidence, contributed to the sinking of the canal-boat and her cargo, although there was great negligence on the part of those in charge of the propeller in leaving the canal-boat as they did, after having stopped their vessel for the purpose of casting off the canal-boat, knowing, as they did, that she was being cast off because of some difficulty, her destination not having been reached. The faults of the canal-boat enure, as respects her cargo, to the benefit of the propeller, as against the owners of the cargo, in like manner as they enure, as respects the canal-boat herself, to the benefit of the propeller, as against the owners of the canal-boat. *Hay v. Le Neve*, 2 Shaw, App. 395; *The Milan*. 1 Lush. 388, 403; *The Atlas* [Case No. 633]. There must be an interlocutory decree in each suit, and an order of reference to compute the damages, in accordance with these views. The question of costs is reserved until the coming in of the reports.

{See Cases Nos. 7,325 and 7,326.}

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