

## SCHURTZ V. THE NEW YORK.

{N. Y. Times, June 1, 1855.}

Circuit Court, S. D. New York.

May 31, 1855.

## TOWAGE—LOSS OF BARGE—NEGLIGENCE.

{Appeal from the district court of the United States for the Southern district of New York.}

In admiralty.

Owen, Betts & Vose, for libellant.

Platt, Gerard & Buckley, for appellee.

NELSON, Circuit Justice. This libel was filed by the owner of the barge Hero, which was sunk in a storm on the North river on the night of the 2d of August, 1854, near Yonkers, while in the tow of the tug New York. She was loaded with 213 tons of coal, and was stationed in the middle of the front tier of the tow on the larboard side of the tug, which consisted of three boats. Several grounds are taken upon the proofs, which are voluminous, in the case, in order to establish gross negligence on the part of the master of the tug, under the circumstances of the violence of the storm in which the boat was lost,—such as that its position in the tow was an improper one; that the tug was moving at too great speed at the time; that she should have come to an anchor or detached the boat from the tug, so as to have prevented it from being drawn under and sunk.

We have looked into this case with a view of these several grounds of complaint against the conduct of the tug, and agree with the court below that neither of them is sustained by the proofs. On the contrary, the clear weight of the evidence is that the sinking of the barge is attributable either to the effect of the storm that prevailed without the fault of the tug, or to the negligence of the master in not properly securing the forecandle hatch, in consequence of which it was

forced open by the breaking of the water over, and letting it into her hold. This hatch, as described in the testimony, was covered with a box on combings rising from the deck, fitting tight, without any other fastening. The other two hatches were secured with hooks and staples, as this one should have been, or with bars properly fastened, which is better, and has since been adopted. The master of the barge, also, is not altogether free from blame, after the storm had arisen and danger apprehended, as he neglected to watch this ill-secured hatch after his attention had been called to it by some of the hands on the tug. We think the decree below, dismissing the libel, right, and affirm the decree.

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