

WILSEY v. THE SHIP CELESTIAL EMPIRE and the TUG-BOAT SETH LOW.

*District Court, E. D. New York.*

May 26, 1880.

ADMIRALTY—NEGLIGENCE.—A ship coming up to a pier in the harbor of New York, in tow of a tug, was necessarily allowed to strike the side of a schooner, lying at the pier, in swinging into her berth. The touching was foreseen by those on the schooner, as well as on the ship, and fenders were put out. The schooner's rail was broken in and her side badly damaged, and the owner libelled both the ship and her tug. *Held*, that the tug was not liable, but the ship was liable for negligence, in placing her fender improperly, for the damage to the broken rail.

*Benedict, Taft & Benedict*, for libellant.

*S. M. Parsons and Beebe, Wilcox & Hobbs*, for defendants.

BENEDICT, D. J. There was no fault on the part of the tug Seth Low, and the libel must be dismissed as against that vessel, and with costs.

It was negligence on the part of the ship, when coming along-side the schooner, to permit a heavy fender to hang so that it caught upon the rail and not upon the hull of the schooner. I do not find that it was negligence on the part of the ship to come along-side the schooner with the force she did, and I am satisfied that coming as she did would have done no damage to a sound vessel, if the ship's fender had been arranged so as to take the schooner's side properly. But here lies the fault on the part of the ship. One of her heavy fenders was so hung that the whole weight of the ship was brought upon the rail of the schooner, instead of upon the schooner's side, and damage necessarily resulted. For the damage caused to the schooner by the pressure of the fender at the place where the rail was broken, I hold the ship to be liable.

Let a reference be had to ascertain the amount of that damage.

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