

JACOBS AND OTHERS V. OUSATONIC WATER  
Co.

*Circuit Court, D. Connecticut.*      January 5, 1882.

1. FINDINGS—AFFIRMANCE ON WRIT OF ERROR.

Where the finding of facts by the district judge is warranted by the proofs, and the new testimony put in this court does not substantially change the facts found, *held*, that the libel be dismissed, with costs.

On Writ of Error.

*A. S. Cushman*, for libellants.

*David Torrance*, for respondents.

BLATCHFORD, C. J. The finding of facts by the district judge in his decision in this case is warranted by the proofs, and the new testimony put in this court does not substantially change the facts so found. The conclusion that on those facts the respondent is not liable must follow.

The libel alleges that the schooner hauled up to and occupied the berth at the derrick provided for the unloading of her cargo of coal, and at the place where she had on previous voyages safely laid for the purpose of discharging her cargoes, and that the respondent was bound to keep that berth safe, but had, by dredging, rendered it unsafe, without notice to or knowledge by the libellants or the master. The master moored where he did without instructions or directions from any one in the employ of the respondent, and without the knowledge of any one in the employ of the respondent. The berth at the wharf, for the distance the respondent was bound to excavate, and had excavated, was safe, and would have been safe for this schooner. Her stern extended below the lower end of the wharf to a distance at least one-third greater, and from that to one-half greater, than ever before. The depth of water at her stern was so

little that if it had been ascertained by her master that fact would necessarily have indicated danger to him in lying there over low tide, even with the depth at the front of the wharf such as it was before the additional excavation was made. Movement of his stern outwardly and securing it there would have insured safety as it was.

The libel is dismissed, with the costs of the district court, taxed at \$130.70, and with costs to the respondent in this court.

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