

charge of discharging and loading the ship, which cannot be attributed to the owners. *Dwyer v. Nat. Steam-ship Co. supra; The Germania*, 9 Ben. 356.

The actual negligence, however, was in removing a lamp which had hung near the foot of the ladder, and not replacing it. Rose testifies that he came down through the scuttle a short time before the plaintiff came back, found that the lamp had gone out, relighted it, and carried it aft. If that lamp had remained where it had been during the day, and had been lighted, it seems impossible that the accident should have happened; for the main hatch was forward of the scuttle, and the libelant's place of work was aft of the scuttle, and it must have been through some confusion caused by the want of light that he took the direction he did. This fault was committed by a fellow-workman who was employed on the very same job with the libelant, and the law is too well settled to be changed, excepting by congress or the supreme court, that the common employer is not liable for an injury occurring to a workman under such circumstances.

For these reasons I have felt bound to affirm the decree below. In consideration of the great hardship to the libelant, I suppose costs would not be asked against him from a court of admiralty.

Decree affirmed, without costs.

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### THE WOLVERTON.\*

(Circuit Court, E. D. Pennsylvania. June 27, 1882.)

#### ADMIRALTY—COLLISION—BURDEN OF PROOF ON LIBELANT.

The libelant must show that the vessels were approaching in the way he describes.

Libel by the master of Cross Creek Barge No. 5 against the tug Dr. John Wolverton, to recover damages for a collision. The testimony disclosed the following facts:

The Wolverton, having the barge Atlanta in tow astern by a hawser, started from Robert's stores, Brooklyn, bound for a dock in the North river. When near the Battery she met the tug Packer, with libelant's barge lashed to her port side, coming up the East river, after rounding the Battery. The Packer blew two whistles, indicating that she wished to go inside, or on the New York side of the Wolverton. To this the Wolverton made no reply, and immediately thereafter the libelant's barge struck the Atlanta, damaging

\*Reported by Frank P. Prichard, Esq., of the Philadelphia bar.

both vessels. Libelants claimed that the Wolverton was steering diagonally across the East river, so as to just clear the Battery in rounding it; and that she caused the collision by improperly attempting to cross the bows of the Packer, which was coming up the East river close to the shore. Respondents claimed that the Wolverton was proceeding down the East river close to the shore, being on the port side of the Packer, or nearer to the New York shore; that the Packer blew two whistles, to which the Wolverton did not reply, because the Packer immediately put her wheel to starboard and attempted to go across the Wolverton's bows, and that this latter movement caused the collision.

*E. D. McCarthy and Morton P. Henry, for libelant.*

*Alfred Driver, J. Warren Coulston, and H. R. Edmunds, for respondents.*

**BUTLER, D. J.** The burden of proof is on libelant. He must show that the vessels were approaching in the manner he describes, or submit to an adverse decree. If they were not thus approaching—if the respondent was not distinctly to starboard—the Packer could not expect her to pass on that side, and she was blameless in going where she did. Under such circumstances the Packer's signal was unimportant, and required no answer. Looking at the evidence on both sides it seems impossible to say that the vessels were approaching as the libelant asserts. It is quite as probable the respondent was directly ahead, or a little to port. I incline to think the weight of the evidence justifies a belief that she was, and that the collision resulted from the Packer's desire to run further in, on account of the tide, and improperly undertaking to do so. It is sufficient, however, that the libelant's position is not proved. As this view disposes of the case it would be unprofitable to discuss it further.

## THE T. L. WADSWORTH.

(District Court, E. D. New York. June 26, 1882.)

## VESSELS AND BOATS—LIEN FOR SUPPLIES.

Where family supplies and hay and oats were furnished by a dealer in Buffalo on board a canal-boat lying up there for the winter, and the boat, having departed before the bills were paid and come into the eastern district of New York, was there libelled by the provision dealer, claiming a lien upon the boat as for maritime supplies, and it appeared on trial that the horses and man were employed at work on the streets of Buffalo, and that the captain of the boat had not ordered the supplies, nor the woman who owned the boat, and whose husband was so at work on the streets with his horses, *held*, that the supplies were furnished on personal credit, and no lien on the boat arose out of the transaction.

*Beebe, Wilcox, & Hobbs*, for libelant.

*L. R. Stegman* and *E. G. Davis*, for respondent.

BENEDICT, D. J. The libelant cannot recover in this action for two reasons: *First*, The supplies in question were not ordered by the captain or the owner of the boat, but by David Hulsapper, husband of the master, and he, with his horses, was then employed in working on the streets of Buffalo for a contractor. The articles sued for were purchased for the food of this man's family, the food of his horses, and the food of a man hired to drive the horses in the streets of Buffalo during the time when David Hulsapper was so employed on the streets. They were not to enable the boat to earn freight, nor purchased for that purpose. No lien upon the boat arises out of provisions and stores furnished under such circumstances. In the *second* place, the bill sued for constitutes a part of an account of some \$200, run up by David Hulsapper during the time he was working for the contractor upon the streets; and while it is no doubt true that these items were placed in a separate account and charged to the boat, the whole account was furnished with knowledge that the boat was not running, and that Hulsapper and his horses were working on the streets, and the attendant circumstances were such as to indicate with sufficient certainty that the articles sued for were furnished on the personal credit of David Hulsapper, as confessedly was the rest of the account.

The libel is therefore dismissed, and with costs.