

Appeal from a decree of the district court. The facts and the opinion of the district court are fully reported in 12 FED. REP. 219.

Henry G. Ward and *Morton P. Henry* for appellants.

John A. Toomey and *Henry R. Edmunds* for appellee.

McKENNAN, C. J. In the district court the schooner was adjudged to be in fault in omitting to exhibit the light required by the rules of navigation, and that adjudication is but faintly, if at all, contested here. Half damages were decreed against the steamer, on the ground that a globe light was swung from the stern of the schooner towards the steamer, which the latter ought to have seen, and thus have avoided the collision.

The side regulation lights on the schooner were confessedly invisible to the steamer, and the only warning she could have of the proximity of the schooner was the swinging of the globe light. That such a light was exhibited we regard as sufficiently proved, but whether in time to enable the steamer to adapt her movements to the emergency, is matter of very serious doubt. The schooner's witnesses, who were on her deck, testify that it was seasonably exhibited; while the captain, mate, wheelsman, and lookout on the steamer, who were on deck and affirm that they were observant, deny that they saw any light. It was the especial duty of the lookout to exercise constant vigilance, and it is not an unreasonable presumption that he was not unfaithful to his obligation. If the steamer was approaching the schooner dead astern, and the globe light was not shown until just before the steamer's helm was put a-port, the strong probability is that none of the persons on her deck could see the light over her bow. If it was exhibited eight or ten minutes before the collision, and as the schooner's witnesses testify, so that it must be inferred that the steamer saw it, her conduct can only be accounted for on the hypothesis of criminal recklessness or negligence, because a slight and perfectly practicable deflection from her course would have carried her safely astern of the schooner. This conclusion ought not to be adopted except under the pressure of preponderating proof; and especially as the motive of pecuniary interest, and of the safety of the vessel and of those on board of her, bears strongly against it.

In this connection we have not attached any weight to the testimony touching a declaration or statement by some one of the steamer's crew that he saw the globe light in time to avoid the collision, because we regard it as, at least, of questionable competency, (*The Seaton*, 2 W. Rob. 391; *The Empire State*, 1 Ben. 64; *Railroad Co. v. Brooks*, 57 Pa. St. 339; *Packet Co. v. Clough*, 20 Wall 528,) and

as inherently indefinite and unsatisfactory. But taking into consideration all the evidence, and giving to that on each side the weight to which it is fairly entitled, we are unable to conclude that the men on the steamer either saw the globe light, or that it was exhibited at such a time, in such a way, or under such circumstances, as that they ought to be presumed to have seen it. If the schooner had performed its duty by exhibiting the prescribed light, presumably it would have escaped injury. The burden is upon it to show that the cause was the misconduct or negligence of somebody else; and it must be borne upon no uncertain proof or doubtful conclusions. We cannot relieve it of the full consequences of its own dereliction by transferring them partly to another, whose culpability is problematical.

The libel must be dismissed with costs, and it is so decreed.

THE NEDERLAND.*

(Circuit Court, E. D. Pennsylvania. October 23, 1882.)

ADMIRALTY—COMMON CARRIER—NEGLIGENCE—INJURY TO PASSENGER.

In an action against a steam-ship to recover damages for injuries sustained by a passenger, unless it appears that the respondent failed in the exercise of that degree of care and diligence which the law requires of carriers of passengers, and that its negligence in this behalf was the cause of the libelant's injury, the latter cannot recover.

Appeal from a Decree of the District Court.

The facts and the opinion of the district court are fully reported in 7 FED. REP. 926.

D. Cowan, M. Veale, and J. Warren Coulston, for appellant.

Henry G. Ward and Morton P. Henry, for appellee.

MCKENNAN, C. J. This is an appeal from the decree of the district court dismissing a libel *in rem* for the recovery of damages for personal injuries received by the libelant on board the Belgian steamer *Nederland*, as the consequence of the alleged negligence of the officers and employes of said vessel.

The following facts are found as the result of the evidence:

(1) On the twenty-first of February, 1877, the libelant was a steerage passenger on the *Nederland*, on a voyage from Antwerp to Philadelphia.

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

(2) On that day the crew was ordered to handle the fore try-sail boom, preparatory to setting the fore try-sail. The libelant and a number of other passengers were sitting under the boom, and were directed by an officer to move away, which warning was expressed in three languages—English, German, and Belgian.

(3) All the passengers moved away except the libelant and another.

(4) While the crew were pulling up the boom by means of the port lift, the block which connected the tackle, by a swivel hook, with the eye-bolt in the deck gave way, and the boom coming down struck the libelant in the back, and inflicted permanent injuries upon him.

(5) The block was constructed of the material and after the manner of those in general use in foreign vessels, and was altogether suitable for the purpose for which it was used.

(6) A strong iron band was tightly bound around the block, and through it passed a swivel-hook, secured by a shoulder, which rested on the under side of the band, and between it and the top of the wooden block.

(7) The swivel-hook drew out of the iron band in which it was fastened, allowing the boom to fall and strike the libelant. This was owing to a latent defect in the shoulder, which could not be discovered by an exterior examination of the block, or without taking it all apart.

(8) On every trip of the vessel the blocks were all overhauled, the bolts and sheaves taken out and put in order, and the swivels seen to be in working condition.

(9) The place where the injury occurred to the libelant was not one of special danger. The only danger was such as might result to those in the way of the moving ropes and sails, and from the possible breaking of the machinery in the process of lifting the boom.

(10) Upon all the evidence in the case negligence contributory to the libelant's injury is not imputable to the respondent.

Unless it appears that the respondent failed in the exercise of that degree of care and diligence which the law requires of carriers of passengers, and that its negligence in this behalf was the cause of the libelant's injury, he cannot recover. As it is found that the respondent was not negligent in the performance of the full measure of his duty to the libelant, his libel must be dismissed, with costs; and it is so ordered.