

confirmed to some extent by the captain's wife, who was in the cabin of the Fred. M. Laurence, and swears that she felt no collision and heard of no collision on the night in question. This testimony for the Laurence is claimed by the libelant to be overcome by the testimony of two other witnesses who were on board the Laurence on the night in question. A steersman on the Laurence, called by the libelant, testifies that on the night in question, being asleep in bed, he was awakened by a jar, and looking out of the window saw that the boat was at Little Falls. This testimony is in direct conflict with that of the captain's wife, who, being up and awake, could not fail to have observed a jar sufficient to awaken one abed and asleep.

Leaving out, then, the testimony of the wife and the steersman as balancing each other, there remains in opposition to the testimony of the captain and the steersman of the Laurence that of the driver of the Laurence, also called by the libelant, who swears positively that at the time and place stated in the libel the Laurence collided with the Idlewild. The credibility of this witness is seriously impaired by the fact that he testifies after an arrangement made with the libelant for his future employment on the libelant's boat; and he is contradicted, not only as to the fact of a collision, but in several important points of detail, by both the captain and the steersman of the Laurence. These contradictions are of such a character that the advocates agree that perjury has been committed on one side or the other.

There is, however, one fact not disputed, and sufficient to control the present decree. It is proved that one of the hands employed on board the Idlewild at the time of the collision knows whether the Laurence was the boat that did the damage, having ascertained the name of the colliding boat by inspection a very short time after the 637 collision. This witness is not called, nor is any excuse for his non

production given. The presumption, therefore, is that his testimony would not support the libelant's case, and in such a conflict this presumption is controlling.

The libel is accordingly dismissed, and with costs.

* Reported by It D. & Wyllys Benedict.

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