The allegation in the libel is that during the 12 hours the towing lasted the sea was continuously rising and the wind getting stronger, and the severity of the weather such that great care was required, and at 6:30 the wind had increased to a gale, and the seas running exceedingly high, so that the hawser had to be cast off. But the proof of the claimants convinces me that when the hawser was cast off, although there was some little more wind and sea than in the morning, the increase was slight, and that the speed of the towing had not noticeably diminished. The log-book of the Gaudaloupe does not support the statements of the libel; the entries being, "at 6:30 P. M., *weather cloudy; strong north-east wind.*" At 1 A. M., during the night following, "*cloudy weather, moderate north-east wind, and small sea.*" The barometer had remained high, without marked change.

The proof leads me to the conclusion that Capt. Nickerson ordered the hawser to be cast off, not on account of any change in the weather, as the libel alleges, but because he began to repent of the undertaking, and to return to his original idea that his duty to the owners of his steamer, and to the owners of the cotton, required him to make all speed to New York, and not to run the risk of being obliged either to delay 10 or 12 hours in the Chesapeake for coal, or to go to sea from there with a very scant supply. I do not think it was the weather which changed, but his mind.

Taking Capt. Nickerson's own version of the agreement,—that if he would take hold and tow, and had to let go, he would be paid for what towing he did,—I do not think the libelant's case is made out. It must have been intended that he was to continue to tow until, from some change of circumstances, he was compelled to let go, not merely so long as he might continue to think it for the interest of his owners. Otherwise it would have been folly for Capt. Barwise to agree to pay the high rate usually allowed for such towage merely to be left in a position no better than he was at first, and it would have been misleading on the part of Capt. Nickerson to have undertaken such a service.

The conduct of Capt. Nickerson, upon observing the signals of distress, in going out of his course, and in lying by the Algitha during the night, evinced a highly commendable spirit, and it is with hesitation that I deny all compensation for their delay, and for the 12 hours' towing; but as the Algitha, without any stress of weather, was left by him as helpless, and in at least as unfavorable a position, as where he found her, if not in a worse one; and as he abandoned her without any communication or consultation with her master; and as I find that the contract, regarded simply as a towage contract, was not performed,—I do not think it is a case in which there should be any recovery. Services to vessels in distress should be encouraged, but not such as voluntarily leave the disabled vessel in the same plight. I think the duty of the court is well indicated by Judge BENEDICT in

The Edam, 13 FED. REP. 140. Speaking of the frequency with which it now happens that steamers are left, by accidents to their machinery at sea, wholly dependent on other steamers for relief, he says:

"It appears a duty owing by the courts of admiralty to the public to give a reward sufficiently liberal to induce the master of any steamer to overcome all unwillingness to assume additional labor, to put aside his desire to make a direct and quick passage, even to disregard the express instructions of his owners, in favor of the request of another steamer disabled at sea to be towed to a place of safety."

Libel dismissed, *without costs* to either party.

THE RHODE ISLAND.

THE EBEN FISHER.

(*District Court, S. D. New York.* July 18, 1883.)

1. COLLISION—STEAMER—MODERATE SPEED IN FOG.
   Fifteen miles an hour in a dense fog, in Long Island sound, is not a moderate speed in a steamer; and where, by moderate speed, a collision would have been avoided, the steamer *held* liable.
2. SAME—SAILING VESSELS.
   Although no express statute then required sailing vessels to slacken sail and go at a moderate speed in a fog, in a thoroughfare where other vessels must be expected to be met, such was, nevertheless, the duty of sailing vessels in the exercise of ordinary prudence in navigation. The new regulations require this.
3. SAME—SPEED AT NIGHT.
   A rate of speed at night and in a dense fog which is immoderate and excessive for a steamer, is less justifiable in a sailing vessel under the same circumstances, as she has less facilities for quickly stopping and changing her movements.
4. SAME—SCHOONER.
   A speed of seven miles an hour having been repeatedly held excessive in steamers in a dense fog, *held*, therefore, excessive in a schooner, and careless navigation, for which the schooner should be held in fault.
5. SAME—RULE 20.
   Rule 20, requiring steamers to keep out of the way of sailing vessels, cannot be construed to justify in sailing vessels a speed which would be deemed excessive as regards their duty to other sailing vessels which they are bound to avoid.
6. SAME—AMENDMENT OF PLEADINGS.
   Where the libel did not expressly charge excessive rate of speed in the schooner, but the facts appeared in the schooner's testimony, and there being no dispute about them, *held*, the pleadings should be deemed amended accordingly.
7. SAME—MUTUAL FAULT.
   Where a collision took place between the steamer R. I. and the schooner E. F., about 8 P. M., in a dense fog, in Long Island sound, at the commencement of the pilotage ground, where numerous other steamers and vessels should be expected to be met, and the steamer was going at the rate of 15 miles per hour, and the schooner sailing before the wind 7 miles per hour, and the collision would have been avoided had either been going at a more moderate speed, *held*, both were in fault.