

left at the coal-dock, but they were motions that could easily be misinterpreted, and it was very evident that no one on the tug understood them.

One or two other witnesses not on the boat saw some motions while the tug was in the bay, or going through the piers, but they did not know their meaning. As bearing upon the extent of the effort made to stop the tug, it should be remembered that when the danger was imminent at Ford's shoals, little difficulty was experienced in making the tugmen hear, although in circumstances far more disadvantageous. In view of all the evidence it can hardly be said that any vigorous, determined effort was made to have the tug turn back after the threatened danger was discovered. The impression left is that Bach thought he could go through safely, and, having made a feeble remonstrance, concluded to take the risk. After they had been on the lake for an hour, or an hour and a half, it became very dark. Nothing indicating inevitable disaster had happened while it was yet light. If there had been a light on the boat they could have signaled the tug when the Collier broke away, when the horse-bridge went off; indeed, when the first indication that there was danger of the boat becoming water-logged appeared. How can it be said that in all this there was no fault? If the tug had known the truth regarding the tow before all hope was abandoned, might she not have averted the accident, or at least have saved a large part of the cargo? Upon the facts developed, the law imputed to the libelants the negligence of those having charge of the canal-boat; so much was virtually conceded on the argument, and the case was tried upon that theory. But in any event, having reference solely to the libelants' own conduct, enough has been established to warrant the application of the admiralty rule before averted to, and which obtains in cases of mutual fault.

There should be a decree for the libelant for \$2,523.94.

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### THE GREENPOINT.

(District Court, S. D. New York. October 22, 1883.)

#### 1. COLLISION—WHARF—MOORING TOO NEAR—LINES SLIPPING—PASSING STEAMERS.

In a river where steamers are frequently passing it is negligence and carelessness in one vessel to moor unnecessarily at the end of a wharf or bulk-head, within two or three feet of another vessel, whereby they are liable to be brought into collision through the surging and swaying caused by the waves of passing steamers.

#### 2. SAME—CASE STATED.

Where, under the above circumstances, a collision occurred in the East river, between the sterns of two vessels, and the evidence indicated that there was unnecessary slack line, or some slipping of the lines, *held*, both were chargeable with fault.

In Admiralty.

*Beebe & Wilcox*, for libelant.

*Goodrich, Deady & Platt*, for claimant.

BROWN, J. On the fourth of December, 1880, the schooner *Cloilde*, owned by the libelant, was moored, bows down stream, alongside of the bulk-head at Hunter's Point, in the East river. The lighter *Greenpoint*, at the same time, was moored next above the schooner, with her bows up the river. The steamer *Sylvan Stream*, at about 4 P. M., passed up the river at full speed, within a hundred feet of the bulk-head, and through the swell of the waves thus caused the sterns of the two vessels above named collided, by which the stern of the libelant's schooner was considerably injured; to recover damages for which this action is brought. On the part of the libelant it is claimed that, before the steamer passed, the schooner and the lighter were separated by a space of from 15 to 25 feet, and that the collision arose from the slipping of the lines by which the lighter was fastened to the bulk-head, so that she drifted down with the strong tide and struck the schooner's stern. The claimant's evidence tends to show that there was no slipping of the lines, but that the two boats were moored with their sterns so near to each other that the collision arose from the surging and swaying of the two boats in the swell of the waves caused by the steamer's passing.

The place where these vessels were moored being one where steamers are in the habit of passing frequently, both were bound to take all necessary precautions against injury to each other from the ordinary commotion in the water thereby occasioned, and from the liability to surge and sway from their positions.

The evidence shows that the lighter had previously discharged a portion of her cargo, consisting of iron rails, upon the same wharf or bulk-head, and had been ordered by the wharfinger to move further down for the purpose of discharging the rest. The schooner, which lay below, had at the same time been required to move further down to give room for the lighter, and had done so. While engaged in fastening, the schooner's men were requested by the men from the lighter to move further down and more out of the way; but they did not do so. The place where the lighter was fastened was the place designated by the wharfinger. Several witnesses on the part of the lighter testify that the sterns were not more than from two to four feet apart. The lighter's rail was from one to two feet below the level of the bulk-head, and the rail of the schooner was much higher from the water than that of the lighter. Not only several witnesses on the part of the claimant, but one of the principal witnesses of the libelant, show that the injury to the schooner was occasioned by the stern of the schooner dropping down, as it were, upon the stern of the lighter, breaking off the former's taffrail, starting the plank-shear, and loosening the rudder-post. This description of the way in which the injury was done shows that it took place through the rise

and fall of the vessels from the swell of the steamer's waves. And this confirms, very clearly, it seems to me, the testimony of the claimant's witnesses, that the sterns of the two boats were moored very near to each other. Had the accident arisen from the surging of the boats, causing the lines of the lighter to become loosened, so as to suffer her to drift down with the tide from 15 to 25 feet, the swell of the waves from the steamer would have passed off before the lighter could have drifted down to the schooner, and the blow of the collision in that case would have been a horizontal blow, and not a perpendicular one, as described by the witnesses.

The way in which the damage arose shows, therefore, that it occurred during the few moments while the first few high waves were passing, and without any considerable drifting of the lighter downwards; and I accept, therefore, the libellant's account of the distance of the two vessels apart after they were moved. The defendant's evidence probably mistakes, and gives the distance apart before they were moved.

I must hold the schooner in fault for having moored so near to the lighter. The lighter was moored where she was directed; the schooner had abundant room below, was requested to move further off, and no reason existed for her not doing so. In the rise and fall of the tide some play in the position of the lighter was unavoidable, unless the lines were constantly changed and refastened—a burden which the schooner had no right to impose unnecessarily upon the lighter. And it was plain negligence in the schooner to fasten without reason so near to the lighter that a little slack line in the rise and fall of the tide, or a slight slipping or stretching of the lines, under the strain of the swaying from passing waves, would bring the sterns into collision.

Considerable testimony was given in regard to the mode in which the lines from the lighter were arranged for fastening. She had no spring lines, such as might have been used, and which would have retained her in a more stable position. She had one line running from each side of the bow and fastened to the spile on the pier, some 20 feet forward, and two other lines, one from each corner of the stern, fastened to a spile about 20 feet aft. While spring lines would have given somewhat more steadiness, and I should have held it negligence not to adopt that mode of fastening if essential, I am not satisfied of such insufficiency of the mode of fastening adopted as to charge the lighter with negligence on that ground alone. The evidence, however, establishes that the lines either slipped somewhat, or else had become considerably slackened before the steamer passed, or else were not properly secured. One of the claimant's witnesses, immediately after the collision, hauled in some slack line. He states it as only some 10 or 12 inches slack,—an estimate which might easily be considerably underrated. The distance of two or three feet apart, which the claimant gives, is too great, it seems to me, to be

accounted for by any justifiable amount of slack line in that situation; and some negligence, either in too great slack or in insufficient fastening, must therefore be imputed to the lighter. The danger from passing steamers being well known to both, I hold that neither exercised the caution and vigilance necessary to avoid injury to each other,—the schooner in unnecessarily, and contrary to warning from the lighter, putting herself in the lighter's way; and the latter for some inattention to her lines.

The libelant is, therefore, entitled to one-half his damages, with costs, and a reference may be taken to compute the amount.

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### THE MARY BRADFORD.<sup>1</sup>

(District Court, E. D. New York. June 28, 1883.)

#### BILL OF LADING—MASTER'S COPY—DELIVERY.

Where the master of a vessel executed bills of lading in quadruplicate, though there was no provision in the charter of the vessel for the execution of bills of lading, and delivered three of them to the shipper, who hypothecated them to secure advances made him, and the master then carried the fourth copy, duly indorsed, to the consignee of the vessel at the end of the voyage, and afterwards delivered the cargo to him on presentation of this bill of lading, *held*, that the master had authority to sign bills of lading, and that the master's copy was, in legal effect, a simple memorandum for his convenience, and not a contract by which the goods were to be delivered, and that the vessel was liable to the holder of the hypothecated bills of lading for the amount of the advances.

#### In Admiralty.

This was an action upon a bill of lading alleged to have been given by the master of the schooner *Mary Bradford*, for goods shipped on the schooner at *Nickerie, Surinam, Dutch Guiana*, to be transported to *New York*. The bill of lading being executed in quadruplicate, the master kept one copy and delivered the other three to *R. J. Carbin*, the shipper, by whom they were assigned to the libelant the *Surinam Bank* as security for the payment of a bill of exchange drawn on *W. L. Carbin*, at *New York*, for \$4,800, which bill of exchange was never paid. The claimants alleged that at the time of the signing of the bills of lading the vessel was under a charter to *W. L. Carbin*, in which there was no provision for the signing or delivery of any bills of lading by the master; but that he did execute them and give them to *R. J. Carbin*, who indorsed one of them to *W. L. Carbin* and sent it to him at *New York* by the master. By virtue of this bill of lading the cargo was entered at the custom-house by *W. L. Carbin*, and was delivered to him. The master alleged that it was not till after the vessel had

<sup>1</sup> Reported by *R. D. & Wyllys Benedict*, of the *New York bar*.