in a proper place, is not, I think, to be charged with extreme vigilance or watchfulness against collision with other vessels, nor held to be always prepared for the instantaneous sounding of a bell. Less vigilance is required of a vessel at anchor. *The Lady Franklin*, 2 Low. 220. The general absence of such ringing of bells as would be looked for if the weather was very thick is entitled to considerable weight, I think, as evidence that whatever thickness of weather existed was for so brief a period as not to have given occasion for bells to be rung, in the exercise of ordinary prudence. In the several years that have elapsed since the collision it is not impossible, also, that the thickness of the weather may have become somewhat exaggerated in the recollection of the witnesses on the part of the ferry-boat; and some important differences in their testimony and other circumstances of proved mistake have on the whole satisfied me that, as the main fault was very clearly on the part of the ferry-boat, there is not sufficiently satisfactory evidence of negligence to make the Survivor also legally responsible for the collision. If, moreover, the weather was as thick as alleged, it is not evident, and scarcely appears probable, that, considering the heading, the backing, and the drifting of the Rockaway after the embarrassment caused her by the Martha's crossing her bows, she would have received aid from a bell if rung from the Survivor. Her pilot had not lost his bearings; he knew the position of the Survivor and Louisa Coipel, and must have known his own position very approximately from the Martha's course. He does not claim to have been misled by the absence of the bell, and I doubt that the bell, if rung, would have made any difference in the result. *McCready* v. *Goldsmith*, 18 How. 89, 92.

In the case of Slocomb a reference may be taken to compute the damages to the Survivor, if the parties do not agree, and the cross-libel must be dismissed, with costs.

THE ECHO, etc.

(*District Court, S. D. New York.* January 21, 1884.

1. COLLISION—NEGLIGENCE—BURDEN OF PROOF—CUSTOM.
   Where a boat properly moored receives damage from another colliding with her, the latter is presumptively liable for the damages, and the burden of proof is upon her to clear herself from fault.
2. SAME—LINE ACROSS CHANNEL.
   The temporary use of a line or warp stretched across a narrow stream in the mooring and handling of vessels is not necessarily unlawful.
3. SAME—CUSTOM.
   Where a tug-boat coming down Newtown creek discovered such a line ahead of her, and upon backing to avoid it, ran into the libelant's boat, *held*, that the burden of proof was upon the tug-boat to show that the line was used improperly, or that any proper signals were omitted; *held, also*, that in view of the

local usage the tug-boat should have been more cautious in her approach, and kept further away from the libelant's boat, and was therefore chargeable with the damage.

Collision.

Beebe, Wilcox & Hobbs, for libelant.

Edwin G. Davis, for claimant.

BROWN, J. On December 21, 1880, the libelant's canal-boat Van Vleet, laden with coal, was lying at the Long Island railroad dock, in Newtown creek, a short distance above the bridge, moored outside of two other canal-boats. At dusk, about 5 P. M. of that day, the weather being clear, the steam-tug Echo was coming down the creek on a course which would carry her about 25 feet outside of the Van Vleet. When she had come within about 30 feet of the stern of the Van Vleet her pilot saw a line stretched across the creek a short distance below the canal-boat, running from a schooner on one side to the opposite shore, and ranging about 10 or 12 feet above the water. The pilot immediately stopped and reversed his propeller to avoid running into the line. In doing so, the Echo not being entirely manageable in backing, swung her bows towards the canal boat and inflicted a blow, causing some damage, for which this libel was filed. The owner of the Echo subsequently agreed to pay for certain repairs, but the terms of the agreement being afterwards a subject of dispute, no settlement was effected.

The canal-boat being moored at a proper place, and no fault chargeable against her, she is presumptively entitled to the damages inflicted by another boat colliding with her. *New York, etc.*, v. *Rumball*, 21 How. 385; *The Bridgeport*, 7 Blatchf. 361; *Pierce* v. *Lang*, 1 Low. 65; *The Lincoln*, Id. 46; *The John Adams*, 1 Cliff. 404, 413; *The City of New York*, 8 Blatchf. 194; *The Rockaway*, *ante*, 449. On the part of the Echo, it is urged that she ought not to be held liable, on the ground that the stretching of a line across the creek, a thoroughfare for vessels, was the real wrong which caused the collision; that there was no previous notice given of the existence of the line, available to the Echo; that it was seen as soon as it could be perceived; and that there was no subsequent fault in the handling of the tug. If the evidence sustained this view a different question might be presented; but it is a familiar fact, and it was proved on the trial, that the use of lines stretched across the creek was a usual and customary thing for the purpose of handling and moving vessels of a considerable size which go above the bridge, and that the temporary use of such lines is necessary for that purpose, in that narrow channel-way. 1 Pars. Shipp. & Adm. 547. It cannot be assumed, therefore, that this line was wrongfully across the stream at the moment when the pilot of the Echo discovered it, and no evidence was given showing the omission of any customary signals. The burden of proof to show that the line was wrongfully there was upon the Echo. Nothing was proved, however, beyond the bare fact of the

line being there, and, under the custom proved, that is not presumptively unlawful. The custom of stretching lines across the stream for this purpose imposes the duty upon tugs navigating that part of the creek to observe carefully, and to regulate their speed and distance from other craft with reference to such a contingency. There was plenty of room for the tug to have gone further from the canal-boat. The pilot of the Echo had not been accustomed to navigate in Newtown creek, and the accident in question, doubtless, arose from his want of familiarity with the usage of stretching lines across the creek. This does not exempt the Echo from responsibility, and the defense in this respect cannot be sustained. Nor upon the evidence of the pilot himself can I sustain the claim that the blow was a light one, or such only as may rightfully occur in the ordinary rubbing of boats passing along-side each other. *The Chas. R. Stone*, 9 Ben. 182. It was plainly a considerable blow, and did not arise in the course of the ordinary, usual, and prudent handling of such boats.

I see no reason in this case to doubt the fairness of the bill presented for the repairs, detention, and expenses of the vessel. These are proved to amount to $97, which, with interest to this date, makes $115, for which the libelant is entitled to a decree, with costs.

THE SWAN.

(*District Court, S. D. New York.* February 1, 1884.)

1. SHIPPING—OBSTRUCTION TO NAVIGATION—ROPE ACROSS CHANNEL—DAMAGE—PROXIMATE CAUSE.

   A rope stretched across the archway of a bridge and over the principal channel of a navigable river, and remaining 24 hours, is an unlawful obstruction of navigation.

2. SAME—WHEN JUSTIFIABLE.

   Wherever such rope or warp may be used, it is justifiable only for a temporary purpose, those who use it making provision for loosening it to allow vessels to pass, and giving timely notice of its existence.

3. SAME—CASE STATED.

   Where a rope was stretched across the west archway of High bridge, for the purpose of keeping a canal-boat a few feet distant from the abutment of the bridge where there were sunken spiles, and the boat might have been breasted off equally well by the use of planks upon the wharf, and the passenger steamer S., after landing within 150 feet of the abutment, proceeded with the flood-tide through the main channel, no notice being given of the rope which was under the water in the middle, and visible only where the ends came from beneath the surface, and those on the boat being unable to loosen it at once, and in the strong tide it being dangerous for the S. to remain in contact with the rope, *held*, that the use of the line in this case was unnecessary and was an unlawful obstruction; that the cutting of the rope by those on the steamer was lawful; and that the steamer was not liable for any damage subsequently sustained by the canal-boat. *Held, also*, upon the facts, that the damage to the canal-boat from settling upon the spiles arose after a considerable interval, during which the boat might have been breasted off from the spiles; that the cutting of the line was not the proximate cause of the injury; and that on these grounds also the libel should be dismissed.

This action was brought to recover damages for injuries to the canal-boat C. B. Simon, on the fifteenth day of July, 1881, on the west side of the Harlem river, at High bridge, caused through a line by which she was fastened having been cut by those in charge of the steam-launch Swan. The Simon had arrived at High bridge the day previous, loaded with coal, and moored on the west side of the river, along-side of the bulk-head which extends northerly from the westerly abutment along the shore, and which is on a line flush with the inner side of the abutment. The canal-boat lay with her bows to the northward and her stern projected part way through the western archway of the bridge. Beneath the water and near the bottom were the remains of a crib extending around the abutment two or three feet from its base, the outer margin of which consists of spiles which had been cut off a foot or two above the bottom. To prevent boats moored along the bulk-head and the abutment from settling down upon these spiles at low water, they were usually fended off so as to be outside of the line of these sunken spiles. This was sometimes done by means of planking passing from the wharf to the boat, and sometimes by a line run from the end of the boat at the abutment and stretched across the western archway and fastened to a spike driven into the second abutment of the bridge not far from the surface of the water at high tide. The stern of the Simon was kept off by a line fastened in the manner last described. The Swan was a small steamer plying in the summer season between Harlem bridge and High bridge for the carriage of passengers. Her usual landing place at High bridge, upon the west side, was at a float, known as Riley's float, upon the western edge of the channel directly below, and about 150 feet southerly from the western abutment of the bridge. Her usual landing on the east shore was about the same distance above the bridge. The principal channel is under the western arch of the bridge, which is of about 70 feet span. The middle arch, though usually having about six feet of water at low tide, was much less used for passage. Around the second abutment there were loose stones extending some distance to the southward which interfered somewhat with the approach to the middle arch, and rendered a cross-ways approach to it dangerous; and under the eastern arch the water was too shoal for navigation. The ordinary course of the Swan upon her trips, both in going and coming, was through the western arch, not only by reason of the deeper water there, but especially, also, because upon the flood tide, after landing at Riley's float, the Swan could not in the short space between that and the bridge get far enough out into the river to make the middle passage without danger of running upon the rocks by the second abutment, except at great inconvenience and by special appliances which she did have aboard for first shoving her bows or her stern out into the river. After making her landing at Riley's float, upon her first trip on the fifteenth of July, the Swan proceeded in the manner usual at flood tide through the western arch-

way, and when close to it observed for the first time the line stretched across it, which in the middle was beneath the water and was visible only where the two ends came out above the surface. Shouts were given from the Swan to loosen the line, and some effort was made by the wife of the libelant on board of the boat to unfasten it there, but it was so secured that it could not be readily loosened, and the Swan having run afoul of it, and the captain apprehending danger both to the boat and passengers in the strong flood tide, after a few minutes ordered it cut, which was done. The canal-boat afterwards got upon the sunken spiles, which in the ebb tide made holes in her bottom, causing the injury for which this libel was filed.

J. A. Hyland, for libelant.

Edwin G. Davis, for claimant.

BROWN, J. There can be no doubt that the archway across which the line was stretched was the principal channel for navigation in the Harlem river, under High bridge. The landing at Riley's float has been in use for many years. The course from that landing, through the middle archway, upon a flood tide, would be attended by such obvious inconvenience and dangers as cannot rightfully be imposed upon persons entitled to navigate the river in the ordinary course of navigation. The line stretched across the western archway was, therefore, in my judgment, plainly an unreasonable obstruction to the navigation of the river, which could only be lawfully put there very temporarily, or at seasons when the channel was not in use for ordinary navigation. While such lines or warps may doubtless be used temporarily for mooring and handling vessels in rivers or harbors, they cannot be lawfully continued so as to form a permanent obstruction to navigation. Those who make use of them must be prepared to give seasonable notice of them to approaching vessels to avoid danger, and make seasonable provision for their passage.

In *Potter* v. *Pettis*, 2 R. I. 487, the court say:

"The plaintiffs had a right to extend their warp across the entire channel of the river, if there were no vessels passing, but on the approach of another vessel it was their duty to take notice of such approach, and to lower their warp so as to give ample space in the ordinary traveled part of the channel for her to pass, and to give timely notice of the space so left."

In *McCord* v. *The Tiber*, 6 Biss. 410, the court say:

"The respondent had no right to obstruct the channel with a line across it in that manner. * * * If it was for the safety of the boat to make a line fast to the shore, or to use a line attached to the shore as a necessary assistance in getting off the bar, she should have taken care to get it out of the way of all passing vessels, either by dropping it, so that they could pass over it safely, or by casting off one end. The obstruction not being removed so as to let this raft pass over or under it in safety, was manifestly illegal."

See 1 Pars. Adm. 547; *The Vancouver*, 2 Sawy. 381.

In this case no attempt was made to give seasonable notice to the Swan of the existence of this line across the archway before she left Riley's float, or afterwards, until she was close upon it. Such a

line was not easily distinguishable, and the pilot of the Swan is not, so far as I can see, chargeable with any negligence in not perceiving it in time to avoid it. Those on the Simon could not loosen the line, though requested to do so. The Swan could not safely remain any length of time in contact with the line, and the only alternative was to cut it, as was done, which, under such circumstances, as I must hold, the captain had a legal right to do. There was no actual necessity for the use of this line by the Simon at all. The boat might have been breasted off by the use of planks, and that, as the laborer Dunn stated, has been latterly the more usual method. The line had been thus used by the Simon for 24 hours, forming a plainly illegal obstruction of the channel.

While, therefore, upon the ground above stated, I should be constrained to hold that any loss occasioned by the line's being cut was through the libelant's own fault, and not through any legal fault in the Swan, upon the other facts of the case, also, the weight of evidence seems to show that the damage to the boat was not the proximate result of cutting the line. It was high water that day at Governor's Island at about 10 minutes before 12, and it could not have been high water at High bridge until between 2 and 3. The libel states that the line was cut at about 11 o'clock, and the libelant so testified. The answer does not state the hour, but says that the flood tide was then about three-quarters full, which would place the time between 11 and 12. These statements in the pleadings, with other direct evidence in accord with them, should be held controlling, notwithstanding some contrary evidence which was given on the part of the libelant. While the tide, therefore, was rising rapidly, it was impossible that the injuries complained of could have arisen immediately after the line was cut. The discharge of coal continued until 3 o'clock, and until nearly that time the tide was rising; after that it fell, and the settling of the boat upon the spiles with the falling tide must have taken place at or after that time. During the interval there was abundant time for the libelant to take all necessary means to shove his boat off and out of the way of the sunken spiles. The libelant himself says the effort to get the boat off was *soon* after the line was cut,—from five to fifteen minutes afterwards. But the libel is so full of gross errors in its statement of facts as to detract much from the credit to be given to the libelant's case, and I cannot accept as true the statement of some of the libelant's witnesses, that when the line was cut the boat immediately got upon the spiles and could not be removed.

On both grounds, therefore, the libel should be dismissed, with costs.

THE OLUF.[1]

(Circuit Court, E. D. Louisiana. December, 1883.)

1. CHARTER-PARTY—DEMURRAGE.
The words "providing for demurrage for every day, day by day," in a charter-party, are to be construed as running days, and not working days, and all days are to be counted, including rainy days, Sundays, and other holidays. *Lindsay* v. *Cusimano*, 12 FED. REP. 503, 504, followed.

2. SAME.
The words "weather permitting," in the charter-party in this case, apply to the time to be taken for unloading, and not to the time of the detention of the vessel by the default of consignees.

Admiralty Appeal.

E. H. Farrar, for libelants.

W. S. Benedict, for respondents.

PARDEE, J. Libel for demurrage under charter-party, containing this clause on the subject:

"It is agreed that the lay days for loading and discharging shall be as follows, (if not sooner dispatched:) commencing from the time the vessel is ready to receive or discharge cargo; cargo to be delivered to the vessel in quantity of not less than 15,000 feet per day, and to discharge as fast as the vessel can deliver to company's lighters, weather permitting. And that for each and every day's detention, by default of said party of the second part, or agent, twenty-five dollars per day, day by day, shall be paid by said party of the second part, or agent, to the said party of the first part, or agent."

The evidence shows that the cargo could have been discharged in 10 working days had ordinary dispatch been used. And this was expressly agreed to by the agent of consignees. It is also shown and agreed that the lay days commenced September 26th, and expired October 27th, from which time the bark was detained by default of the respondents. The only question remaining is whether, under the contract, demurrage was to be paid for running days or only for working days. It seems to me that the contract is perfectly plain: "And that for each and every day's detention, * * * twenty-five dollars per day, day by day, shall be paid." The vessel should have been discharged October 27th.

As this court had occasion to say in another case:

"All delays after that date were the result of the negligence of the respondent, and whether it 'rained or shined,' was Sunday or weekday, he should pay demurrage for every day thereafter, until the ship was discharged." *Lindsay* v. *Cusimano*, 12 FED. REP. 504.

It seems that after the expiration of the lay days, and while demurrage was running, the storms were so violent at intervals that the bark was compelled to go to sea for safety, and this no less than six times; and one time the bark was kept outside some 10 days. It

[1] Reported by Joseph P. Hornor, Esq., of the New Orleans bar.