

ecuted for over a period of nine years, a plea of staleness of demand constitutes no defense."

In these cases I think that this court has gone to the verge of reason and equity in relieving parties who have slept upon their rights, but in each it will be observed that a potent factor was that the delay had not been injurious to the respondent. The circumstances had not changed. The party still held the money. Here the case is very different. The Harbor Protection Company deceased in 1876. Its assets were divided. Some of its partners or stockholders have become insolvent. One of the respondents here is liable, if at all, only as the purchaser and successor of one of the partners or stockholders. The respondents have paid out on similar claims to libelants more than they received of salvage money. Whether a claim will be held stale in admiralty does not depend so much upon lapse of time as upon change of circumstances affecting the rights and conditions of parties. Three months' time may render a claim stale, as where a lienholder has stood by and permitted a ship to pass into the hands of innocent purchasers, while perhaps three years would not be sufficient without change of ownership. Here both lapse of time and change of condition are factors, and I think it would be inequitable to hold the respondents liable, and this particularly in view of the fact that libelant has not simply remained silent as to his demands, but has openly, notoriously, and in writing renounced and denied his claims.

The assignment of May 5, 1879, may or not be valid as a transfer of libelant's claim for salvage in favor of the New Harbor Protection Company, but in favor of these respondents it should certainly have effect as an estoppel. And the same may be said as to the other acts and conduct of the libelant.

A decree will be entered dismissing the libel, with costs of both this and the district court.

THE GEORGE L. GARLICK.

THE WHITE FAWN.

(District Court, S. D. New York. February 12, 1884.)

1. COLLISION—ANSWERING SIGNALS.

A steam-tug, at rest in the stream preparing to land her tow, and in a place in the stream where she leaves room for other vessels to pass, being required by rule to answer signals from other vessels, is not required, in consequence of answering with two whistles a signal of two whistles given to her by another tug, to suspend the business in which she is engaged, and pull away to the left. Such response is only a signal of acquiescence with the other tug's signal, and an agreement that she will do nothing to embarrass the latter's passing to the left.

2. SAME—ACTS IN EXTREMIS.

Where a steam-tug put herself in the way between her tow and a schooner which was about to strike the tow, so as to fend off the schooner from the latter, and damage thereby resulted to the schooner, *held* justified as an act *in extremis*, to prevent a more injurious collision, for which the tug was not responsible.

In Admiralty.

Beebe & Wilcox, for libellant.

Owen & Gray, for the Garlick.

Goodrich, Deady & Platt, for the White Fawn.

BROWN, J. On the twelfth of May, 1881, the libellant's schooner *Telegraph*, in tow of the steam-tug *White Fawn*, upon a hawser of about 20 fathoms, came into collision near the middle of the East river, off about Fourteenth street, with the steam-tug *George L. Garlick*. The tide was flood, and the day clear. The *White Fawn*, with her tow, was proceeding nearly in the center of the river. The *Garlick* had previously been taking a bark of about 1,000 tons, not loaded, in tow, upon a hawser of about 50 fathoms, from Gowanus creek, bound for North Tenth street, Brooklyn. The *Garlick*, with her tow, had turned around, so as to be heading down river against the tide, and had slackened her hawser preparatory to taking it in, and going along-side the bark for the purpose of landing her, when a signal of two whistles was received from the *White Fawn*, then from an eighth to a quarter of a mile further down the river, to which the *Garlick* immediately replied with two whistles. The men who were at the time engaged in taking in the slack hawser of the *Garlick*, continued to do so until she was near the bows of the bark. At that time the *White Fawn* had crossed the bows of the *Garlick* to the westward, but the schooner in tow was not able to cross without a collision, and, in order to avoid a more injurious collision with the bark, the pilot of the *Garlick* started ahead to fend the schooner off from the bark, and thereby struck the starboard bow of the schooner with the port bow of the tug a considerable blow, from which some damage arose, to recover which this libel was filed against both tugs.

The evidence leaves no question in my mind that it was the duty of the *White Fawn* to keep out of the way of the *Garlick* and her tow. This duty rested upon her equally, whether the situation were regarded in reference to the heading of the two tugs, or in reference to their actual motion. In the former view it was the fifth situation, and the *Garlick* was on the starboard hand of the *White Fawn*. In reality, however, the *Garlick*, though headed down river, was taking in her hawser preparatory to going along-side of the bark in order to land her, and that was perceived and understood on the *White Fawn*; and while doing so, the *Garlick*, though headed down river, was drifting up river with the flood tide. Before turning around she had been going in the same direction as the *White Fawn*, and ahead of her. The *White Fawn* was the overtaking vessel, and might be so considered, after the *Garlick* had headed round, as before stated. The *Gar-*

lick first began to head round towards the Brooklyn shore, but she afterwards changed, and swung round to the westward. There was plenty of room for the White Fawn to have passed to the eastward of the Garlick, and nothing in the way of her doing so. Her pilot saw what the Garlick was doing, and understood it, and after the latter had headed round, and when the White Fawn's first signal of two whistles was given, there was still plenty of time and space for the White Fawn to have avoided her.

I do not discover in the evidence any legal fault on the part of the Garlick. At the time of the collision, and for some considerable time previous, she had been floating with the tide. After heading round against the tide she was taking in her hawser, preparing to go alongside the bark for the purpose of landing. This it was proper for her to do in the open river, where she occasioned no obstruction to other vessels; she was not navigating at the time, but drifting; and this was obvious to the pilot of the White Fawn. It is urged that her answer to the whistles given by the White Fawn obligated her to go to port under a starboard helm. I do not perceive the ground of any such obligation. She was required to answer the White Fawn's two whistles, and she did so. She was also bound "to keep her course," and her course was then simply drifting. All that her answer meant was that she assented to the White Fawn's passing to the left, and that she would do nothing to embarrass the White Fawn or her tow in passing on that side. The evidence shows that she did not do anything to embarrass her. The answer did not require her to tighten her hawser and pull off to the eastward, instead of remaining still and drifting as she was doing. The responsibility of undertaking to pass to the left rested wholly upon the White Fawn; and so long as the Garlick was not going ahead, and was in no way embarrassing the movements of the White Fawn or her tow, the fault in not keeping out of the way rested upon the latter.

The movement of the Garlick at the last moment, to prevent a more injurious collision between the schooner and the bark, was an act *in extremis*, rendered necessary by the previous fault of the White Fawn. I am satisfied that it did not increase the inevitable damage of the impending collision, and it is therefore no fault and no ground of damage against the Garlick.

The libel should therefore be dismissed as against the Garlick, with costs, and a decree entered against the White Fawn, with costs, with a reference to compute the amount of the damage.

THE WM. H. PAYNE.

THE VANDERBILT.

(District Court, S. D. New York. June 11, 1884.)

1. COLLISION—TUG AND TOW—EAST RIVER.

A steam-tug has a right to remain stationary in the East river, or nearly so, while making up a tow in the usual place, leaving room for vessels to pass on either side.

2. SAME—ANSWERING SIGNALS.

An assenting response of two whistles to a previous signal of two whistles from another tug imposes on the former no duty to move away to the left, and she is not liable for a collision, unless fault in her management be proved.

3. SAME—CROSSING BOWS.

Where the steam-tug V. was making up a tow of canal-boats opposite piers 4 to 8, East river, about one quarter of the distance across from the New York shore, heading against a strong flood-tide and remained nearly stationary by frequent turns of her engine, and the steam-tug W. H. P., with four canal-boats in tow, two lashed upon each side of her, came round the Battery from the North river, about 400 feet from the shore, and the tugs, when first seen by each other, exhibited each to the other her red light a little on the port bow, and the W. H. P., instead of keeping to the right, with the set of the tide, and towards the middle of the river, where she was required by statute to go, gave a signal of two whistles to the V., to which the V. replied with two, and the W. H. P. thereupon crossed the bows of the V. to go between her and the New York shore, and in so doing the port quarter of her starboard tow struck the bows of the V., the latter having backed in the mean time as far as safe towards her own tow, *held*, the collision was solely the fault of the W. H. P., in going to the left rather than to the right, caused by miscalculation of either the distance of the V. or of the sweep of the flood-tide.

In Admiralty.

Edwin G. Davis, for libellant.

Ludlow Ogden, for Orient Mut. Ins. Co.

Jas. K. Hill, *Wing & Shoudy*, for the Wm. H. Payne.

Owen & Gray, for the Vanderbilt.

BROWN, J. The libel in this case was filed by the owner of the canal-boat Willis, in tow of the steam-tug Wm. H. Payne, to recover damages sustained by a collision with the steam-boat Vanderbilt, in the East river, on the evening of September 20, 1880. The Willis, with her cargo of 235 tons of coal, sank almost immediately after the collision, and the owners and insurers of the cargo have intervened for their interests.

The Vanderbilt, a powerful steamer about 300 feet long, was engaged in making up a tow of canal-boats in the East river, abreast of piers 4 to 8. Her witnesses describe her as lying about midway in the river; but I am satisfied from the evidence that she was not more than a quarter of the distance across from the New York shore. At the time of the collision there were about four or five tiers of canal-boats, four in each tier, already attached, and others still remained to be added. The tide was about half flood, and strong, running from two to three miles an hour. The Vanderbilt had a hawser about 100 feet long between her stern and the head tier of the tow. She had