

do nothing to embarrass her. *The Garlick*, ante, 647. It did not mean that the Vanderbilt would leave her business and pull away to the left, in order to avoid the Payne. In acquiescing in the Payne's signal, the pilot of the Vanderbilt had the right to assume that the Payne had sufficient power and speed to pass to the left as proposed, if the former did nothing to embarrass her. Afterwards, when he saw the Payne's green light approaching rapidly with the sweep of the tide, he backed the Vanderbilt as far as possible; and the weight of evidence shows that the turn of the engines forward, made just before the collision, was only what was necessary to prevent a collision with the Vanderbilt's own tow. In that position, and under those circumstances, no mere change of the helm of the Vanderbilt, at the last moment, could have been of any avail in avoiding the collision. There was sufficient room to pass on the New York side, as is shown clearly by the fact that the Payne did afterwards pass inside, about 75 feet from the tow; so that the Vanderbilt was not called on either to give dissenting signals or any signals of danger. It must be inferred from the evidence that the pilot of the Payne either knew that the Vanderbilt was not under way, but only engaged in making up a tow, or else that she was very probably doing so; because the pilot of the Payne was familiar with the business of the Vanderbilt, and the making up of tows in that region, and, as he testifies, he noticed canal-boats moving about there.

I am obliged to hold, therefore, that the course of the Payne in going to the left was wholly at her own risk; that there was no fault in the Vanderbilt; and consequently that the libel against the latter must be dismissed, with costs, and a decree, with costs, directed against the Payne. A reference may be taken to compute the amount.

THE YEAGER.

(Circuit Court, D. Louisiana. April Term, 1880.)

COLLISION—DAMAGES—SATISFACTION OF LOSS BY INSURERS.

Damages caused by a collision may be recovered by the owners of the injured vessel in a proceeding against the vessel in fault, notwithstanding the fact that they have received satisfaction from the insurers for the damages sustained.

Appeal in Admiralty.

J. H. Kennard, W. W. Howe, and S. S. Prentiss, for libelant.

C. B. Singleton and R. H. Browne, for claimant.

WOODS, J. It is established by the decided weight of testimony that the damage sustained by the *Charles Morgan* was at least as great as the sum allowed by the district court. The question of

damage was twice referred to a commissioner in the district court, and his report, on which the decree of the district court was founded, appears to have been amply sustained by the evidence. The new evidence introduced in this court on the question of damages does not meet the evidence on which the commissioner based his report. I am of opinion that the damages sustained by the collision were correctly found by the district court. The defense that the insurance companies have paid Stein, the libelant, for the damages sustained by his steam-boat will not hold.

It was decided by the supreme court of the United States, in a case where a schooner was lost by a collision with a propeller, the latter being in fault, that the fact that the libelants had received satisfaction from the insurers for the schooner destroyed, furnished no ground of defense. *The Monticello v. Mollison*, 17 How. 152. See, also, *Althof v. Wolf*, 2 Hilt. 344, and cases there cited.

There must be a decree for libelant for the damages sustained by the collision, which are found to be \$2,087.27. To this must be added interest from the date of the decree in the district court, to-wit, March 20, 1879, and costs.

THE RICHARD VAUX, etc.

(District Court, S. D. New York. June 9, 1884.)

SEAMEN'S WAGES—SHIPPING ARTICLES—INTERLINEATIONS—REV. ST. § 4575.

Upon a dispute concerning the rate of a seaman's wages, where the shipping articles show alterations, a lesser rate being written over a larger, and the seaman testifies to the larger sum as the rate agreed on, and the evidence being evenly balanced, and the alteration not otherwise satisfactorily explained, *held*, the amount as first written should be allowed, in accordance with section 4575, as a salutary rule of practice, although that section is no longer in force as an express statute applicable to vessels engaged in the coasting trade

In Admiralty.

Hyland & Zabriskie, for libelant.

Alexander & Ash, for claimant.

BROWN, J. The libelant claims wages at the rate of \$22 per month; the claimant alleges that he shipped at the rate of \$15 a month. The crew consisted of the master, cook, and three seamen. The shipping articles show the libelant's signature, by his mark, and in the column containing the rate of wages the figures \$15 are written over the figures \$22, the latter being still very plainly distinguishable. Section 4575 of the Revised Statutes, sub. 4, provides that all such interlineations shall be deemed fraudulent alterations unless satisfactorily explained, etc. This provision was not in force as an express statute as respects the schooner in question, as she was in the

coastwise trade, and by the act of June 9, 1874, (18 St. at Large, p. 64, c. 260,) such vessels were excepted from the former provisions of that statute. I cannot doubt, however, that the principle of the statute is a salutary one, and should be followed as a sound rule where the evidence is conflicting. The libelant swears positively that he read the figures 22 when he signed his name to the articles; while it is claimed for the defense that the figures 22 were inadvertently written, and immediately corrected before the libelant put his mark to the articles. The appearance of the paper itself does not accord with the explanation given. It is evident the figures 22 were quite dry when the figures 15 were written over them. In the case of illiterate seamen, who are sought to be held by the shipping articles, it is but just that, in case of doubt and of alterations, every intendment should be made against those who write out the articles. If a line is filled out erroneously, a new line ought to be written which will be free from alteration and ambiguity.

In the utter contradiction which exists in this case, there is no important circumstance to support either side. It is simply one witness' testimony against the other. The object of requiring written articles was to avoid such disputes, and to protect the rights of seamen. This, I think, can only be done in such cases by adhering to the articles as they originally stand, unless the change before signature, and the seaman's knowledge of it, are conclusively proved. That has not been done here.

Decree for the libelant for \$13.14, with costs.

THE WANDERER.

(Circuit Court, D. Louisiana. April Term, 1880.)

SEAMEN'S WAGES—LIEN—DISCHARGE OF PURSER.

A purser who is employed, by a vessel making regular trips between two ports, for a year has a lien for his wages for the entire year, and may enforce such lien against the vessel if discharged without cause before the end of the term for which he was employed.

Appeal in Admiralty.

Joseph P. Hornor and Francis W. Baker, for libelant.

J. W. Gurley, Jr., for claimant.

WOODS, J. The case made by the libel is an action by a seaman to recover his wages. The libelant had made a contract of service for one year. He performed part of the contract, and was ready and willing to perform the residue, but was prevented by the master of the vessel, who discharged him without cause. He sues to recover the balance due on his salary for the year. If he performed