

side of Nes Rock, and on the prolongation of Twentieth street, New York city. It is 130 yards west of the central line of the channel, and on the following bearings: N. E. corner of Cob dock, (navy-yard,) S. by W.; Burnt Mill point, W. S. W. $\frac{1}{2}$ W.; S. E. corner of Bellevue hospital, N. N. W. The least water found over the rock was $12\frac{1}{2}$ feet." It is now marked by "a buoy with red and black horizontal stripes, which may be passed on either hand."

Incredible as the existence of such a rock without previous discovery might seem to be, in a pathway so long traversed by vessels of a sufficient draught to strike it, there can now be no doubt of the fact. Its distance from Nes Rock is 150 yards, or 450 feet, which is less than three lengths of the schooner, and agrees well with considerable of the testimony as to the location where this schooner struck. At that time there was probably about 16 feet of water over this pinnacle rock. The schooner probably grazed the north-easterly border of it, gliding off quickly and doing her some damage, but not breaking any hole in her bottom. There is no other known obstruction in the vicinity of the path of the schooner, as established by the evidence, that was not at this time more than $17\frac{1}{2}$ feet below the surface of the water; and from this fact, as well as from her distance from Nes Rock, I can have no doubt that the schooner struck upon the newly-discovered pinnacle rock. A pilot is not an insurer. He is only chargeable for negligence when he fails in due knowledge, care, or skill, or to avoid all obstructions which were known or ought to have been known to him. *The Margaret*, 94 U. S. 494; *The M. J. Cummings*, 18 FED. REP. 178; *The Niagara*, 20 FED. REP. 152. The course followed by him in this case was the customary one, and nearly in mid-channel. The existence of this obstruction was previously unknown. No fault can be ascribed to him in not knowing of its existence, and consequently he is not liable for the accident. The libel must therefore be dismissed; but, as the circumstances seemed to warrant the institution of the suit, the dismissal should, in this case, be without costs.

THE MAYUMBA. (Five Cases.)

(District Court, S. D. New York. July 25, 1884.)

COLLISION—TUG AND TOW—STEAMER UNINCUMBERED BOUND TO KEEP OUT OF THE WAY.

A steamer having easy and perfect command of her own movements is bound to keep out of the way of a cumbersome tow going slowly with the tide, where there is nothing in the way to prevent the steamer's doing so. The steamer M., coming up the bay, sighted a tug with a heavy tow on a hawser, going down, being altogether 800 feet long, and some two miles distant. She was at first

to the westward of the tow, but worked across to the eastward, and finally came in collision with the end of the port side of the tow. On contradictory evidence as to the place of collision, and whether the steamer was in motion or not, *held*, that the steamer had abundant room to avoid the tow on either side; and that whether she had stopped her engines or not, during a debate as to whether she should go to Red Hook or Brooklyn, she was equally at fault in not keeping out of the way of the tow.

In Admiralty.

E. D. McCarthy and *J. A. Hyland*, for libelants.

Goodrich, Deady & Platt, for claimants.

Brown, J. On the third of December, 1882, at about 11 A. M., as the steamer *Mayumba* was coming up from quarantine, when not far from *Bedloe's* island, she met a large tow going down, and came into collision with the port side of it, near the end of the tow, whereby several of the boats and their cargoes were damaged, on account of which the above six libels were filed. The day was clear; the bay unobstructed; the wind fresh from the N. W., blowing about 14 miles per hour; the tide, the last of the ebb; the tow, running at about the rate of 3 to 3½ knots per hour through the water. The tow consisted of some 30 boats, in 5 or 6 tiers, attached by hawsers about 80 feet long to the two tugs, *Wilbur* and *Halliard*, so that the whole length of the fleet was about 800 feet. The tow left *Jersey City* at about 9:40 A. M., bound for *Perth Amboy*, via the *Kills*. Its course was first across the *North river*, to near the *New York* shore; thence to the south-eastward, to avoid some incoming vessels; thence down stream past *Governor's* island, and about a quarter of a mile to the westward of *Castle William*; and thence heading W. S. W., crossing the channel somewhat to the westward, towards the *Jersey* shore, to the northward of *Robbins' reef*.

There is great conflict in the testimony as to the place of the collision. The substantial claim of the defense is that the *Mayumba* had run as far to the eastward as she could safely go, having got to the easterly line of the channel, and to the edge of the flats off *Red Hook*. Her captain testifies that when he saw the collision impending he directed her tug, the *Raymond*, to shove her bows further eastward, but that the pilot in charge countermanded his order, saying: "Don't do that, captain; we are ashore now." The pilot died before the trial, and his testimony was not previously taken, to confirm any inference which might naturally be drawn from this remark as to their proximity to the east line of the channel. The language attributed to him is in form an exaggeration; and there are so many inaccuracies in the master's testimony that the other proofs cannot be suffered to be outweighed by an alleged statement by the pilot of this character, not substantiated by his own oath as to his language or its truth. The other proofs leave no doubt in my mind that the tow, at the time of the collision, was not near the flats referred to; but abreast of a point somewhere between *Bedloe's* island and *Oyster* island, and at least a quarter of a mile to the westward of the east-

erly line of the channel. The two tugs that had charge of the tow were fully able to handle it readily; it was not excessive or unusual in size; the wind was not more than a strong breeze, not approaching a gale; and there was no conceivable reason why the tow should have been along the easterly edge of the channel, but every reason to the contrary; since she was bound for the westerly side of the bay to the Kills, and all her witnesses state positively that she was not far from the middle of the channel, while the claimant's witnesses vary considerably in the position they give. I must hold, therefore, that there was plenty of room for the Mayumba to have gone on either side of the tow, as the libelant's witnesses testify.

The testimony of the Mayumba's own witnesses is contradictory as to whether the Mayumba was in motion or not at the time of the collision. The libelant's witnesses say that she was. It appears certain, however, that she was at first designed to land near Red Hook, and had been headed towards it, then crossing the tow's course, as the latter's witnesses testify; but that on account of the strong wind a debate ensued between her captain, her pilot, and the pilot of the tug-boat Raymond, which went down to help her, as to the advisability of going in to Red Hook, and that that design was abandoned, and that it was determined to go to Woodruff's stores, Brooklyn. This debate is stated to have lasted some 15 minutes, during which the Mayumba's speed was more or less checked. Some of her witnesses say that she was entirely stopped, and that while thus stopped the tow drifted down upon her. But whether her engines were stopped or not, I think she was equally at fault in getting and remaining in the way of the tow, when there was abundant room, as I find there was, on either side for her to have moved out of the way. The tow could not stop nor move much out of her course. The tug and tow were plainly visible several miles off; they were proceeding ahead at a moderate speed, and they did nothing to embarrass the Mayumba in keeping out of the way. If the latter was not bound under the rules to keep out of the way on account of her position, as alleged by the libelants, when near Robbins' reef, having the tow on her starboard hand, (which the Mayumba denies,) yet, from her perfect and easy command of her own motions, she was bound to keep away from the tow, when there was nothing to prevent her doing so. It clearly is no justification of her course to say that she steamed in front of the tug and tow, and then stopped until the latter drifted down upon her. It was her duty to exercise diligence in avoiding a collision, and I can see nothing to have prevented her easily doing so.

I cannot perceive any fault in the tug or tow, and consequently the Mayumba must be held liable. The true cause of the collision, as well as of many of the inaccuracies in the testimony of the Mayumba's most important witnesses, was, doubtless, the fact that they were so much occupied in discussing whether they should go to Red Hook or to Brooklyn that they paid too little attention to the tug and

to testify accurately concerning them, or to take timely measures to avoid them.

The libelants are entitled to decrees, with costs, and a reference to compute the amount of damages, if they are not agreed upon.

THE VELOX, her Tackle, etc., *ads.* WOSKE and others.

SAME *ads.* WILKINS and others.

In re Petition of RAYMOND and others *v.* The Proceeds of THE VELOX.

(*District Court, S. D. New York.* August 2, 1884.)

1. MARITIME LIENS—WAGES—TRAVELING EXPENSES—STEVEDORE'S SERVICES AND SHIP'S NECESSARIES—ORDER OF PRIORITY.

Seamen having shipped at Japan upon a Dutch vessel for a voyage to New York and back, and the voyage being broken up by a sale of the vessel in New York, *held*, that the liens of the master and seamen were regulated by the Code of the Netherlands, and that they were entitled, under the fifth rank of privilege, to priority out of the proceeds of the ship for the payment of their wages and "double advance" over liens for supplies and stevedore's services furnished in New York, which come under the sixth rank as ship's necessities. Traveling expenses were disallowed under the proofs.

2. SAME—DUTCH CODE—SHIP AND FREIGHT DISTINGUISHED.

The freight being also attached, and no express order of privilege on freight being established by the Dutch Code, *held*, under the equities of this case, that the freight should be shared *pro rata* by the ship-chandler and stevedore, and by the master and seamen for the residue of their claims not paid from the proceeds of the ship.

In Admiralty.

Jas. K. Hill, Wing & Shouby, for libelants, Woske and others.

Sidney Chubb, for libelants, Braker and others.

BROWN, J. The proceeds of the ship and freight being insufficient to satisfy all the liens, the respective claims must be discharged according to the priorities prescribed by the Commercial Code of the Netherlands, as the law of the country to which the ship belongs. Section 313 of that Code prescribes the order of paying liens "out of the proceeds of sea-going ships." This section does not, however, in terms include freight. By the general maritime law the freight is liable for wages and other charges incurred in earning it. Section 451 of the same Code declares the ship and freight specially liable for wages; but I have not been referred to any section of the Code which necessitates the same order of privilege upon the freight as upon the ship. The stevedore's services are as essential to the earning of freight as the seaman's previous services, and the former has an equal equity, therefore, with the latter. In the absence of any