inside timber-head of the stave-barge, and was made fast to an outside timber-head of the outer one of the six craft above mentioned. In consequence of this method of tying barge No. 48 it swung about on the line, particularly as tow-boats passed, causing swells. Witnesses of experience say that the barge required a stern-line, and that it should have been lashed tight at both ends, square up with the outside boat to which it was tied. Two witnesses who were on passing tow-boats observed that the barge was in danger, and so expressed themselves at the time. John A. Loper, who was at the landing between 9 and 10 o'clock that morning, says he saw no one there taking care of the boats; and it is a significant fact that the defendant company did not examine either Martin or Cain, nor any witness, to explain how the loss in question occurred. It however appears from the libelant's proofs that early on the afternoon, probably about 2 o'clock, barge No. 48 broke loose and was quickly swept down the river. The staves were altogether lost.

I am entirely satisfied from the evidence, and find the fact to be, that the barge was improperly and insecurely fastened, and hence broke loose, and that the staves were thus lost by reason of the culpable and inexcusable negligence of the defendant company and its employes. There was a clear lack of reasonable care on their part, in view of the then existing circumstances. In the course of its dealings with the libelant and others the uniform custom of the defendant company was to take care of its loaded barges, after arrival at its landing, until notice of the arrival had been given the consignees of the cargoes. Undoubtedly this was its duty under the transportation contract here, and until reasonable notice was given the libelant there was no delivery. Ang. Carr. § 313. There is no doubt that the libelant has a right to maintain this suit for the non-delivery of the staves. *Lawrence* v. *Minturn*, 17 How. 100. The rule is well established that a consignee may sue in a court of admiralty either in his own name or in the name of his principal. *McKinlay* v. *Morrish*, 21 How. 343. Moreover, it is in proof that this suit was instituted with the approval and by the direction of the consignor.

It appears from the pleadings and proofs that the number of staves was 67,197. It is also satisfactorily proved that their value at the time of their loss was $23 per thousand, and they had been sold at that price. Hence the libelant is entitled to recover on the basis of that quantity and price, less the agreed freight, with interest from December 25, 1879. Let a decree be drawn in favor of the libelant in accordance with these views.

THE MABEL, her Tackle, etc. (Three Cases.)

(District Court, D. California. December 15, 1884.)

SALVAGE SERVICE—BARKS IN ICE—COMPENSATION.

The whaling-bark Eliza became involved in the ice in the Arctic ocean near the Sea Horse islands in September, 1884, and her crew, after seven or eight days passed on the ice in trying to reach shore, returned to her. The bark Mabel had met with the same misfortune five or six miles from the Eliza, and had been abandoned by her crew, who succeeded in reaching the shore. A party of 16 seamen and a mate was sent to the Mabel on September 27th to obtain provisions, etc., to enable the crew to subsist through the winter. They remained on the Mabel over night, intending to return to the Eliza in the morning, but during the night the ice broke up, and they could not return. The barks, during the next day, drifted out of sight of each other. The Mabel was, with considerable risk and difficulty, navigated to Behring's straits *en route* for San Francisco, where, after three or four days, she fell in with the bark Rainbow, from which she obtained a chronometer, necessary clothing for the men, and the services of the fourth mate to assist in navigating her to San Francisco, where she arrived after a voyage of 38 days. The Eliza, which had escaped, preceded her by a few days. *Held* that, from the time they fell in with the Rainbow, their services in bringing the bark to San Francisco and restoring her to her owners was a salvage service, but that, under the circumstances, it was not a service of a high degree of merit, and that there should only be allowed to the seamen $60 each, to the mate of the Eliza and of the Rainbow $150 each, and to the Rainbow $100, with the amount of her bill of supplies.

W. H. Cook, for libelants, O. Serodino and others.

Milton Andros, for libelants, W. H. Walston and others.

Daniel T. Sullivan, for libelant R. A. Reed.

Page & Eells, for claimants.

HOFFMAN, J. In the month of September last, towards the close of the whaling season, the bark Eliza, while endeavoring to make her way out of the Arctic ocean, became involved in the ice in the vicinity of the Sea Horse islands. At the distance of from five to six miles from her was the bark Mabel, which, having been overtaken by a similar misfortune, had been abandoned by her crew, who, as was afterwards ascertained, had succeeded in reaching the shore. The master of the Eliza, renouncing all hope of extricating his vessel, attempted to secure the safety of himself and his crew by the same expedient. After some seven or eight days passed on the ice, and in endeavoring to find clear water, the party (with the exception of four of the number) "seeing no hope ahead," returned to the Eliza. Four of the seamen were so disabled by swollen feet and fatigue that they took refuge on board the deserted Mabel. The master, believing that his only chance of safety lay in being able to survive the rigors and dangers of an arctic winter on board his own vessel, promptly addressed himself to making such preparations for his long imprisonment as were possible. With this view a party was sent to the Mabel to bring from her such provisions as could be transported. On their return the men asked permission to make a second trip for the same object. This having been given, they started for the Mabel on

the afternoon of September 27th, intending to remain on the Mabel all night and to return to the Eliza in the morning. During the night noises were heard, which appeared to indicate that the ice was moving or breaking up, and in the morning they found that the ice had broken up between the Mabel and the Eliza, and that between the two vessels a lane of broken ice and water had opened. As they had no boats, their return to the Eliza was hopelessly cut off. The two vessels were still in sight of each other, but as the day wore on they continued to drift in opposite directions, and towards night-fall were out of sight of each other. During the next day the Mabel remained fast in the ice, but on the day after, the men, 19 in number, under the orders of Mr. Reed, first mate of the Eliza, succeeded, after unshackling the chains of her anchors, etc., in navigating her into clear water. Her course was then directed to Behring's straits, *en route* for San Francisco, but the navigation was not unattended with risk, as she had no chronometer, and Mr. Reed's acquaintance with navigation was, as he himself admits, "limited." Some three or four days afterwards, when the Mabel had reached Behring's straits, she fell in with the bark Rainbow, from which she obtained a supply of clothing for the men, of which they stood in need, a chronometer, and the services of Mr. Walston, fourth mate of the Rainbow, who joined the Mabel to assist Mr. Reed in navigating her to San Francisco, where she safely arrived after a voyage of 38 days. The Eliza, which had also effected her escape, had preceded her by a few days.

It was not denied at the bar that the service performed by Mr. Reed and his men constituted a salvage service. Whatever weight should be given to a consideration of the motives with which they originally went on board the Mabel, and of the circumstances which prevented their return to their own ship and compelled them to risk their lives upon the chance of saving the Mabel, yet from the moment when, by falling in with the Rainbow, on board of which they safely would have been secured, their service in bringing the vessel to this port, and restoring her to her owners, was unquestionably a salvage service; but it was not, in my opinion, a service of a high degree of merit. When the salvors went on board the Mabel they had no thought whatever of saving her. The sole object was to add to their chances of surviving the rigors of an arctic winter, which they had then no hope of escaping, by replenishing the stores of the Eliza. Mr. Reed declares very emphatically that he would have returned to the Eliza had it been practicable. That they saved the Mabel, and that but for them she would have been lost, is undeniable. But they saved her under circumstances which, without the exercise of any volition on their part, had indissolubly bound up the preservation of their own lives with the safety of the vessel. Their conduct up to the time of making the Rainbow must have been the same, though they had known they were not to receive any pecuniary recompense whatever.

The case of *The Two Friends*, 2 Wm. Rob. 349, has been referred

to as bearing, in some of its details, a close resemblance to the case at bar. In *The Two Friends* the salvors had been obliged to abandon their own vessel, which had struck upon a reef, and they were making for the island of Cuba in the long-boat or jolly-boat, "having secured a sufficiency of provisions, some sails, and a compass, and having further provided themselves with two coils of rope, for the purpose of saving their lives." When about 35 miles from Havana they fell in with the Two Friends, which had also struck upon a reef, and had been abandoned by her crew. She was at once boarded by the salvors, who, after weighing her anchors and throwing overboard a part of her cargo, "succeeded in getting the vessel to sea, pursuing a course towards England, because they had no information as to the destination of the vessel, and from the description on her stern they were led to suppose that she belonged to the island of Jersey." The vessel reached Dartmouth after a voyage of from 25 to 30 days. The value of the property was £1,237. The court allowed £300. In the protest it is stated that they acted "for the benefit of the ship and cargo, and of all persons interested in the same, and for the preservation of their own lives." The case does not disclose what were the circumstances which constituted the danger to the lives of a boat's crew provided with sails, provisions, and a compass in a tropical sea, and 35 miles distant from Havana. But admitting that the desire to secure their own safety in some degree influenced their conduct, it is, I think, evident that the service was substantially a salvage service, wholly unlike the involuntary and compulsory service performed by the libelants in getting the Mabel out of the ice and taking her to Behring's straits.

The appraised value of the property saved is $5,392.25. But from this must be deducted the sum due the Rainbow for the clothes furnished the salvors. Mr. Walston, fourth mate of the Rainbow, must, I think, be considered a co-salvor. The large number of the salvors (19, not including the mate) will reduce the amount of their distributive shares. But I do not feel at liberty, on that account, to enhance the estimate of the value of the service. Eight or nine men would have been abundantly sufficient for the navigation of the vessel. The large number on board must have sensibly diminished the arduousness of their labors. At the time the master of the Rainbow permitted Mr. Walston to go on board the Mabel, the cruise of the former vessel had not been finished. She proposed to continue it for a week or 10 days longer. By parting with her fourth mate she not only lost his services, but by his absence one of her four boats became unavailable. In point of fact she took no more whales, but, had any been sighted, the absence of Mr. Walston might have occasioned a serious loss. I think the Rainbow is entitled to some compensation.

I think myself justified in slightly exceeding the percentage on the value of the property saved, allowed by Dr. Lushington in *The Two*

Friends, in view of the high rate of wages which obtains on this coast as compared with that prevailing in England 40 years ago. Had the imminent peril to which the salvors were exposed been voluntarily encountered in a gallant attempt to save the lives or property of others, I should have been greatly influenced by it. I shall allow to each of the seamen the sum of $60; to Mr. Reed and Mr. Walston $150 each; and to the Rainbow $100, together with the amount of her bill for supplies. The costs to be paid by the claimants.

THE REBA, etc.

(*District Court, S. D. New York.* November 10, 1884.)

1. COLLISION IN SLIP—HALF DAMAGES.
   The tug R., in towing the schooner M. into a slip filled with ice, passed a canal-boat moored in the slip and caused a break in the planking of the canal-boat, either through direct contact with the schooner or through the crush of ice between them. *Held*, immaterial from which cause the break arose, the blow being more violent than could be justified as an ordinary contact in putting boats in place, and that the tug was responsible for the damage; but it appearing further that the boat was old and not sound, and no notice of her weakness being given on the approach of the tug and schooner, *held*, that this was negligence in the libelant, and that he should, therefore, recover but half his damages.
2. SAME—FURTHER DAMAGE.
   The canal-boat having been towed to Hoboken for repairs, and there moored upon sloping flats, and having broken from her moorings through insufficient lines and slid down with the ebb-tide, and thereby run against some floating spiles, causing her further damage, *held*, that the latter damage, arising proximately from an independent act of negligence, was not chargeable against the tug as damages arising out of the previous collision in the slip.

In Admiralty.

J. A. Hyland, for libelants.

Anson B. Stewart, for claimants.

BROWN, J. On the morning of the eighth of March, 1881, the canal-boat J. C. Heath, owned by the libelants, was discharging coal along the southerly side of the pier at the foot of Fifty-first street. The slip was filled with drift-ice, which was somewhat frozen together the night previous. The schooner Manhattan, desiring to obtain a berth inside of the canal-boat, employed the steam-tug Reba to take her in. The tug first broke up the ice in the slip to some extent, then took the schooner upon her port side and towed her slowly into place ahead of the canal-boat, proceeding in a somewhat diagonal direction towards the upper side of the slip, and giving an inward swing to the stern of the schooner when she had nearly passed the canal-boat. The mate of the schooner held a fender in his hand, and as the schooner passed along he walked aft, prepared to make use of the fender if necessary. The captain was near the stern of the schooner, and both he and the

mate testify that the schooner at no time came nearer than a foot from the bow of the canal-boat, and that the fender was not in fact used. Several witnesses, however, from the canal-boat, and two laborers who were shoveling coal near the bow of the boat, all testify that there was a considerable blow given to the canal-boat, and a sudden crash, followed by an immediate heavy leak of the boat, which had not leaked before. One plank was bent and mashed in near the bow. Shortly afterwards, to prevent sinking, the canal-boat was towed to the flats at Hoboken, and moored along-side the dock, where she was fastened by lines. As the tide ebbed, the lines gave way and she slid out into the stream. In doing so, one or two additional holes were made in her side, apparently from coming in contact with floating spiles, one of which was run through her side and found fastened in it when she was afterwards raised.

There can be no question upon the evidence that the sudden leak, while the canal-boat was lying at the Fifty-first street pier, was caused by the Manhattan's breaking the plank in the canal-boat's bow. It is immaterial whether this was done by the fender or by the crush of ice between them. From the explicit testimony of those on board the Manhattan, and from their better opportunities for observation, I am disposed to credit their testimony that the break in the plank of the canal-boat's bow was not caused by the pressure of the fender, but by the ice. One of the witnesses speaks of the ice as soft, but all agree that it was five or six inches thick, and it was so hard as to require breaking up by the tug before the schooner could be brought in. One of the laborers who was shoveling coal was knocked down by the violence of the blow; and this blow was probably caused by the swing given to the schooner's stern when she had nearly passed the canal-boat.

A tug undertaking to land another vessel must be held answerable for injuries occasioned by any careless handling of her tow, or by the jamming of vessels beyond such ordinary contacts as are usual and consistent with careful handling in getting boats in place. The danger to other boats from the crush of ice is as manifest as that from direct collision; and in going amid ice, past vessels already moored, other vessels are clearly bound to leave sufficient space, and to proceed with such care and moderate speed as to do no injury to boats of ordinary soundness. The swing of the schooner's stern in this case, approaching within one or two feet of the canal-boat's bow, was clearly sufficient to cause the ice to make the break in the bow, and the leak complained of. The blow, I think, is clearly proved to be such as is unjustifiable, whether inflicted upon a new boat or an old one, and the Reba must accordingly be held liable. The canal-boat had, however, been long in service. Pieces of her timbers, produced in court, taken by the hand from each of the holes by a credible witness, were so decayed and rotten as to be easily broken with the fingers. Upon this evidence I cannot regard the canal-boat in this case

as fit to encounter the ordinary contacts with other vessels to which she was necessarily exposed in this harbor; and I must treat it as negligence in her owners to navigate her amid ice, and to expose her to the increased hazards arising therefrom, without special notice to other vessels approaching her to keep away on account of her weak condition. *The Syracuse*, 18 FED. REP. 828. I allow the canal-boat, therefore, but one-half of the damages arising from her injury in the slip. The injury from the spiles, when she broke loose from the parting of her lines at Hoboken, arose from an independent act of negligence in the use of lines insufficient to hold her in place. That was in no way the natural, necessary, or immediate consequence of the previous injury in the slip, or of her necessary transfer to the flats at Hoboken. The injuries at Hoboken are too remote to be fairly attributed to the leak caused in New York, and no recovery, therefore, can be had for those. *Grand Trunk Ry. Co.* v. *Griffin*, 21 FED. REP. 733. It is difficult to understand how the floating spiles at Hoboken could be driven through the side of the canal-boat in the manner described by the witnesses; but this circumstance seems to confirm the evidence of the weak condition of the boat.

At the trial full proof was not taken of the extent of the damages. From what appears it is probable that the damages to the canal-boat, arising from the injury at the Fifty-first street slip, would not exceed, including towage and the delay for repairs, $200. To avoid further expense in so small a matter I will allow the libelant to take a decree for $100, with interest from March 8, 1881, with costs; except that if either of the parties be dissatisfied therewith, they may take the usual order of reference to ascertain the exact damage, at the risk of paying the costs of the reference, unless a more favorable recovery be had.

THE ALASKA, etc.

(*District Court, S. D. New York.* November 28, 1884.)

1. COLLISION—VIGILANCE—STEAMER TO STOP AND BACK—FLASH-LIGHT—NEGLECT—DAMAGES DIVIDED.

Navigation at a very high rate of speed imposes upon a steamer the duty of proportionately increased vigilance, and the avoidance of every alternative in navigation which involves or increases the risk of collision. Where there is risk of collision with a sailing vessel, the burden of proof is upon the steamer to justify her departure from rule 21 in not stopping and backing, or else she must be held in fault. The steam-ship A., 500 feet long, steaming W. by S. at the rate of 20 miles an hour, when off Nantucket came in collision about 60 feet from her stern with the bow of the brig C., sailing close-hauled about S. The A.'s lights were seen from the brig at a considerable distance. On the steamer, though three officers were on the bridge and two men on the lookout, the brig's red light was not seen until about a minute before the collision. The brig's witnesses testified that a torch-light was exhibited at her waist from 5 to 10 minutes before the collision; the steamer's witnesses testified that no