THE DREW, etc.

(*District Court, S. D. New York.* December 30, 1884.)

1. RIVER NAVIGATION—PASSING VESSELS—SWELL AND SUCTION.
A steam-boat passing in the vicinity of other craft in shallow water is bound to use all reasonable precautions to avoid doing them injury from the known suction and swell she causes. Other boats are also bound to avoid places dangerously near the usual track of such steamers.

2. SAME—CASE STATED.
The libelant's barge was moored along spiles near the eastern side of the Hudson, at Castleton, in shallow water, where the bottom was stony. The usual practice was to move such boats before the time of the passage of large steamers, but, having got aground, the libelant's barge could not be removed. The steamer D., coming down about 9 P. M., and perceiving signals by shaking lanterns and other evidence of difficulty ahead, slowed, but did not pass any further to the westward, which she might easily have done, and, when abreast of the barge, she resumed her former speed; and the suction and swell from her passing caused a break in the bottom of the barge. *Held*, that the D. was chargeable with fault in not doing all that was reasonably within her power to avoid doing injury, and that the barge was also in fault in being allowed to ground and remain in a place known to be dangerous; and the damages were therefore divided.

In Admiralty.

Hyland & Zabriskie, for libelant.

W. P. Prentice, for claimants.

BROWN, J. In May, 1883, the libelant's barge Greenback was moored about half a mile below Castleton along-side of three bunches of spiles about 20 feet distant from the bulk-head or dike which there forms the eastern shore of the Hudson river. During the day she had been loaded with ice, and had grounded so as not to permit of her being taken away by a tug, as was intended. About 9 o'clock in the evening the large steamer, the Drew, passed down in her usual course about 100 yards outside of the barge. The water being shallow, the considerable suction and swell accompanying her passage caused a sudden lifting and settling of the barge, enough to make a somewhat heavy shock. Ten minutes afterwards the barge was found rapidly filling with water, from which she sank. Subsequent examination disclosed two holes or breaks in her bottom a little forward of amid-ships. This libel was filed to recover the damages, charging that they were caused by the negligence and improper management of the Drew in passing. The evidence shows that the bottom where the barge was moored was not soft or even, but that some stones had been washed there from broken-down portions of the dyke a little above. It is possible, also, that there were some remains of the ends of broken spiles, though the evidence on this point is less conclusive. The stones, however, were sufficient to make it dangerous for the barge to lie with any considerable part of her weight resting upon the bottom. Had the water fallen low enough to cause a considerable portion of the weight of the barge with her cargo to rest

on such stones after grounding, it would be quite possible that the holes in the bottom might have been occasioned by this cause, wholly independent of the passing of the Drew. But the proof hardly warrants this supposition. The libelant testifies that the barge was not aground forward, although the contrary is stated by the pilot of the tug, who endeavored to move her. It is evident that the barge was but slightly aground; that is, that the water was almost sufficient to float her, and hence sustained most of her weight. The leak was discovered very shortly after the Drew passed, and after the heavy fall of the barge upon the bottom, in connection with the swell and suction, and I cannot doubt that this was the immediate cause of the damage.

The place where the barge was moored was not a proper place for her to remain in, either aground or while the Drew was passing, when the water was so low that the ordinary suction and swell would be likely to cause her to strike the bottom. The danger was evidently known to the libelant. His arrangement with the tug was a definite one,—that the barge should be removed from this place before the time for the large boats to pass. The tug was there for the purpose of removing this barge accordingly, and was prevented only by her being aground. This was clearly the fault and at the risk of the libelant, or those representing him in charge of the barge. The water there was shallow, and the channel in which the Drew would pass was only some 500 or 600 feet wide. It was in a place where such boats had been in the habit of mooring only temporarily, and was known to be improper to remain in while large steamers were passing. The primary fault for this injury was, therefore, on the part of those having charge of the barge.

The liability of the Drew depends upon the question whether she used all the care and diligence which were reasonably incumbent upon her to avoid doing injury. *The Daniel Drew*, 13 Blatchf. 523. The liability, however, to do damage to boats lying in shallow waters through the swell and suction of her passage is a familiar fact. In passing Castleton, where such boats ordinarily lie, the practice is to slow down in order to diminish this danger. After passing Castleton, and before reaching the place where the libelant's barge lay, it was usual to proceed at the ordinary speed of that region. In this case the pilot of the Drew, seeing the lights of the barge ahead, and that they were moving, continued his slow rate until abreast of the barge, when he resumed his former usual speed. The libelant's testimony, that the Drew approached at her usual speed, is, I think, disproved by the claimants' witnesses. I cannot doubt, however, that as the Drew approached, signals requiring special caution on her part were given from the barge by shaking a lantern repeatedly. The libelant's witnesses testify that this was done three separate times before the Drew reached her. The pilot of the Drew could not have failed to understand, from the ordinary lights of the barge which he

saw before him, and which showed the barge in a dangerous place, that care in passing her was necessary; and that he did so understand, is evident from his continuing under a slow bell longer than usual. The only question in the case is whether this was all that was incumbent upon him, considering that he knew the shallowness of the water there, and the danger to this barge through the suction and the swell which the Drew might cause in passing her. The tug, shortly before the Drew reached the place, had steamed away, though she was of lighter draught than the barge, because her pilot knew that it was dangerous for the tug to remain there. The pilot of the Drew saw her steam away, leaving the barge in her dangerous situation, and the signals by shaking the lantern on the barge were clearly visible to the Drew. The pilot of the latter was familar with the shallowness of the stream at this point, and with the liability of the Drew to do damage to boats aground or nearly so, and that it was not usual for barges to be there during the passage of large steamers. With this knowledge, and seeing the lights of the barge in this improper and dangerous situation, and seeing the tug steaming away as the Drew approached, and the barge shaking her lantern, I think the pilot of the Drew is fairly chargeable with notice that something unusual was the matter; that the barge was in a dangerous and helpless condition; and that it was necessary for the steamer to do all that was reasonably within her power to diminish the danger from the suction and the swell incident to her passage. This was the only danger that could exist under the circumstances. The Drew knew this, and knew, therefore, that it was to avert this danger that these signals and warnings were given.

The evidence shows that the steamer might, without any difficulty, and without any danger to herself, have gone a hundred yards further west than she did, and so much more distant, therefore, from the barge; and also that she increased her speed as soon as she got abreast of the barge, instead of waiting until the diverging line of her swell had passed the barge. Since these additional precautions were perfectly within the power of the Drew, and since the danger of the barge, and the necessity of caution, were sufficiently made manifest by all the circumstances of the case, I must hold the Drew chargeable with fault. Being sufficiently notified of the particular danger to the barge from her swell and suction, the Drew cannot be absolved simply because she employed one means, viz., slowing, for averting the danger. She was bound to use, not merely one means, but all reasonable means in her power that might be in fact necessary to avoid the particular danger made known to her. Knowing the extent of her swell, she was bound to go far enough off to prevent injury from it, when there was plenty of room for her to do so without danger to herself; and to postpone any increase of that swell through an increase of her speed until she had passed the barge so far that her retreating and diverging swell could no longer affect the barge.

Had these additional precautions been taken, I think no injury to the barge would have happened.

In the case of *The Daniel Drew*, above cited, (13 Blatchf. 523,) where the respective rights and obligations of such steamers under somewhat analogous circumstances are carefully considered, the court, in absolving the steamer, makes special mention of the fact that "the Drew passed as near the eastern shore as it was safe for her to go;" and also that the tow in that case had given no signals to the steamer; and at page 528 it is clearly indicated that it is only when the passing vessel "has no reason to apprehend that she will do an injury," that she is to be held not responsible for such injuries as arise in her ordinary navigation. The circumstances of the present case are essentially the opposite in the particulars there emphasized. The master of the Drew here did have knowledge, not only that the barge was in a dangerous position, but of the particular danger to be apprehended. He received signals of danger and could not have misinterpreted them; and in the two particulars I have mentioned he did not use the means easily within his power to avoid doing injury. Such neglect has, I think, been always held, and for the protection of life and property ought always to be held, a fault sufficient to charge the vessel with responsibility for the loss. *The Morrisania*, 13 Blatchf. 512; *The C. H. Northam*, 7 Ben. 249; *The Syracuse*, 9 Wall. 672.

Both, therefore, being found in fault, the libelant is entitled to one-half his damages, with costs.

THE NACOOCHEE, etc.

(*District Court, S. D. New York.* January 22, 1885.)

1. COLLISION—STEAMER AND SAILING VESSEL.
   A collision between a steam-vessel and a sailing vessel in a fog cannot be justified on the plea of inevitable accident, unless it appears that both parties have endeavored by all means in their power, with due care and a proper display of nautical skill, to prevent the collision.
2. SAME—DUTY OF STEAMER.
   A steamer is bound to make all available use of her helm, of her engines in backing, and of an alert lookout, and a moderate speed, in a fog, to avoid collision, together with special care, when known to be in the vicinity of the sailing vessel's course.
3. SAME—DUTY OF SAILING VESSEL.
   A sailing vessel is also bound, under rule 24, to change her course if she is in immediate danger and can thereby avoid collision, and is in fault for not doing so when she has sufficient time and opportunity after the course of the steamer is clearly fixed and visible.
4. SAME—CASE STATED.
   The steamer N., off Cape May, upon a course N. ½ E., in a fog, at about 1:30 P. M., passed the schooner L. T., sailing N. N. E., about 300 yards eastward of her. Each was seen from the other, and their horn and whistle were heard.

Half an hour afterwards the steamer, hearing cries of distress abeam, put about until she headed S. S. E., and shortly after heard the horn of the schooner, and at about the same time saw her sails about 300 yards distant, a little on her own starboard bow. She had been going half-speed all the time, making from 6 to 7 knots. She immediately reversed her engines. The schooner was struck on her port quarter, about 10 feet from the taffrail, and sunk a few moments afterwards. The steamer's lookout was not produced. He did not report the schooner at all, and the steamer's helm was not changed. *Held*, that the steamer was liable for not observing specially the precautions required by the known proximity of the schooner, for excess of speed, for want of proof of an alert lookout, and for not making any use of her helm to avoid the collision.

5. SAME—MUTUAL FAULT—DAMAGES DIVIDED.

It appearing that on the schooner there were 14 men below, including the officer in charge of the watch, and only two men on deck, viz., one at the wheel, and one forward doing double duty as lookout and blowing the horn, *held*, to be short-handed and negligent navigation in a fog. And it being clearly perceptible to those on the schooner, had the captain been on deck, that the steamer was going astern and not ahead, in time to have enabled the schooner by porting to have avoided the collision, *held*, that the schooner was also in fault for not porting, and the damages were divided.

In Admiralty.

S. Newell and *A. B. Swazey*, for libelants.

John E. Ward and *Wm. Wheeler*, for claimants.

BROWN, J. The libelants are the owners, officers, and crew of the fishing schooner Lizzie Thompson, which, on the sixteenth of April, 1883, was returning from the south with a full fare of fish. At about 2 o'clock of that day, it being clear overhead, but a thick fog below, as the schooner was sailing at about the rate of four knots upon a course N. N. E., with the wind S. S. E., she was run into by the steamer Nacoochee, which struck her aft of the main chains, on the port quarter, about 10 feet from the taffrail, causing her to sink a few minutes afterwards. The steamer Nacoochee is a propeller of about 3,000 tons burden, and about 300 feet long. She was bound from Savannah to New York. At about 1:30 P. M. she was upon her usual course of N. ½ E., off Cape May, about 10 miles to the S. E. of the Five Fathom light-ship, and going at "half-speed," under one bell, when she overhauled the schooner, and passed to the eastward of her at a distance of two or three hundred yards. The fog-horn of the schooner was heard upon the steamer, and the steamer's whistle was heard upon the schooner. At about 2 o'clock, the steamer having up to that time kept her previous course of N. ½ E., repeated cries of distress were thought to be heard by the captain, and others on board the steamer, on their starboard beam. After some conference with respect to these cries, and several persons agreeing as to their apparent character, the steamer's helm was put hard to port, and she swung round until she reached a course of S. S. E., when her helm was steadied; and about that time, or very shortly afterwards, the schooner's fog-horn was heard, and her sails, almost at the same time, appeared through the fog a little on the steamer's starboard bow, apparently two or three hundred yards distant. Orders were immediately given by the captain to stop and reverse at full speed, and these orders were obeyed. No

change was made in the steamer's helm, and the schooner kept her course. The steamer's forward motion was nearly stopped at the time of the collision, but not enough to prevent her penetrating two or three feet into the schooner, and sinking her, as above stated. In swinging about the steamer changed her course about 12 points. The evidence showed that, going full speed, under a hard a-port helm, she would complete a circle of about half a mile diameter. At half-speed such a circle would be somewhat larger. She would make this change of 12 points, therefore, at half-speed in some 5 or 6 minutes. This does not vary much from the general estimate of the steamer's witnesses that the cries were first heard about 15 minutes before the collision.

As there was nothing extraordinary in the circumstances under which this collision occurred, the wind being moderate, the sea calm, and nothing but fog to embarrass the navigation of the steamer, she must be held in fault, unless she satisfies the court by clear proof that she did all that was reasonably possible on her part to avoid the collision, or clearly shows the collision to have been the sole fault of the schooner. The plea of inevitable accident cannot be sustained, say the supreme court in the case of *The Clarita*, 23 Wall. 1, 13, "unless it appears that both parties have endeavored, by all means in their power, with due care and a proper display of nautical skill, to prevent the collision." *Union Steam-ship Co.* v. *New York & Va. S. S. Co.* 24 How. 307; *Sampson* v. *U. S.* 12 Ct. Cl. 480; *The Colorado*, 91 U. S. 692; *Maclaren* v. *Compagnie Francaise, etc.*, L. R. 9 App. Cas. 640, 647. In my judgment the steamer in this case does not satisfactorily clear herself of fault.

1. Her speed, as I feel bound to hold, was in excess of the "moderate speed," which, under rule 21, the circumstances required. There is some general evidence on her part that this speed was less than six knots, and that it was as little as would keep steerage-way upon her. I am not satisfied as to the exactness of this testimony. She was going under a single bell at "half-speed," with 30 revolutions of her wheel per minute; 62 revolutions would give her an average speed of about 14 knots. I think she was probably going not much less than 7 knots, which her propeller indicated; and, even if her speed was but 6 knots, she has not satisfactorily proved that this speed was necessary to keep her under control in a calm sea and a moderate wind. Mere general testimony that half speed is necessary to keep steerage-way is insufficient. This plea is frequently made; but it is not admitted to clear the vessel in the absence of more specific proof. If, at the speed she was running, she was not able to avoid running down a sailing vessel, visible 300 yards off, the speed was not "moderate," within the meaning of rule 21. *The Pennsylvania*, 19 Wall. 125; *The Eleanora*, 17 Blatchf. 88; *Leonard* v. *Whitwill*, 10 Ben. 647.

2. There is reason to believe that there was a failure of the look-out on the steamer to perform his duties. It is said that there was

a man on duty forward as lookout; but it does not appear that the schooner was reported by him at all. He had disappeared when the libel was filed one month afterwards, and has not been found; and his name, even, has not been discovered. If the fog was as dense as represented, the lookout ought to have been doubled. *The Colorado*, 91 U. S. 692, 698. Considering that the steamer was nearly stopped at the time of the collision, it may be reasonably inferred that, had the schooner been reported as soon as she could have been seen by an alert lookout forward, the steamer would have been stopped in time to avert the collision.

3. The steamer had cause for special caution in reference to this schooner. Only about half an hour previous the steamer had passed her and hauled to the westward; and when the steamer nearly doubled upon her course so as to go S. S. E., it was evident that she would again cross the schooner's track, and that the schooner could not be far from her. This knowledge of the schooner's proximity, and that her track would be crossed very soon, bound the steamer to special precautions to avoid her; but no special precautions were observed.

4. I am not satisfied in another respect, namely, that the steamer, upon reversing her engine, did not change her helm at all. She was still moving forward through the water, and at first was going at the rate of at least six knots; and, though a change of helm on a propeller, when the screw is backing, has much less effect than on a side-wheel steamer when backing while the ship is still moving ahead, it has never been proved before me in any case, and was not proved in this case, that a change of helm would have had no effect whatever, so long as the vessel had forward motion. The steamer struck the schooner about 10 feet only from the taffrail. A very slight change of the steamer's course to starboard would have avoided the schooner altogether. She was bound, therefore, to change her helm, in order to obtain whatever help that change might have given her. I cannot resist the conviction that by so doing this collision would have been averted.

On these grounds I must hold that the steamer has not cleared herself from responsibility by showing that she did all that was reasonably within her power "to keep out of the way," as rule 20 requires. I cannot, however, exempt the schooner from blame. There were 16 men aboard. All except two were below, including the captain and mate. There was but one man forward, who was charged with the double duties of a lookout and of blowing the horn; and but one man astern, a youth of 20 only, at the wheel. This was too short-handed, and was clearly negligent navigation in a fog. *The Eleanora*, 17 Blatchf. 103. The captain came on deck only when he heard the cry, "A steamer is coming into us!" When he got on deck, the steamer must have been near, for he says he saw no chance then to avoid a collision; yet the steamer must have been first visible from

a minute to a minute and a half before the collision. He says he told the wheels-man to keep her course; but during the half minute before the collision it was clear that the steamer could not be going ahead of the schooner. The captain of the steamer called out "to luff." The call was not heard. Had he ported, however, the schooner being small, of but 73 tons register, easily handled, and luffing quickly, I cannot doubt she would have gone clear. Had the captain or the mate, whoever was in charge of the watch, been upon deck at the post of duty when the steamer was first discovered or discoverable, some 300 yards distant, he would have had time to observe her course, and to perceive that she was going astern, and that by porting he could avoid her. Though rule 23, in general, requires a sailing vessel "to keep her course," it does not apply so as to justify running into another vessel when a change of helm will avoid her, and when there is clearly reasonable time and opportunity to do so. In that case, rule 24 requires a departure from rule 23 in order to avoid immediate danger. Section 4233; *The Anglo-Indian*, 2 Mar. Law Cas. 239; 1 Maude & P. Shipp. 604; *The Florence P. Hall*, 14 FED. REP. 408, 415; *The Negaunee*, 20 FED. REP. 918; *The C. C. Vanderbilt*, 1 Abb. Adm. 361; *The New Champion*, Id. 202.

These faults of the schooner I must consider, therefore, as directly contributing to this collision; and for this reason the schooner must also be held to blame, and entitled to receive but half her damages, with costs. An order of reference may be taken to ascertain the amount.

THE MARTINO CILENTO, etc.

(District Court, S. D. New York. January 5, 1885.

1. MARITIME LIEN—LIMITATION OF ACTIONS—STALE CLAIMS.
   Where no claims of subsequent purchasers, lienors, or incumbrancers are involved, a maritime lien for damages will not be deemed stale or barred by lapse of time, through a delay of two years in filing the libel, merely on the ground that some witnesses have in the mean time been lost by the respondents.
2. COLLISION AT PIER—PROJECTING BOAT.
   Where a bark fastened to spiles along a bulk-head within the slip was sought to be pulled out of the slip astern, but owing t · some neglect in clearing her head-lines her bows stuck fast and her side was swung round by the tide so as to collide with and injure the libelant's boat, which projected about 30 or 40 feet across the end of a short pier a little outside of the bark, *held*, that the bark was wholly at fault, and the projection beyond the end of the pier was not, under the circumstances, negligence in the libelant.

In Admiralty.

J. A. Hyland, for libelant.

Ullo, Ruebsamen & Hubbe, for claimants.

BROWN, J. On the thirtieth of April, 1881, the libelant's canal-boat Manitoba was lying across the end of a short pier at the foot of

Pearl street, Brooklyn, her bows projecting some 30 or 40 feet below the end of the pier. The bark Martino Cilento had been lying in the slip immediately below, along-side the bulk-head, her bows being up river and near to the corner formed by the projection of the short pier, and therefore lapping somewhat the bows of the Manitoba, and but a short distance inside of her. For the purpose of moving the bark out into the stream, a steam-tug had attached a hawser to her stern; and upon a signal from those on board the bark, the steam-tug started up to pull her astern and out into the river, but through some mistake the bow-lines of the bark were either not cast off, or got caught upon the spile at her bows, and before she could get clear her side was swung upward by the tide against the libelant's boat and did some damage, for which this suit is brought.

The libel was not filed until April 17, 1883, nearly two years after the injury. By that time nearly all the persons who were on the bark at the time of the accident were beyond the reach of the vessel. The first mate, who was present at the time, was, however, procured and examined. While, under such circumstances, the libelant's evidence must be rigorously scrutinized, and interpreted against him on all doubtful points, and while some of the testimony presents points for criticism, I cannot, on the whole, doubt that some injury was caused to the libelant's boat; and that it arose wholly from the fact that the bow-line of the bark was not properly cast off, and that the bark must be held liable, therefore, for her negligence in this respect.

It is urged that the claim should not be entertained, on account of the lapse of two years before the libel was filed, most of the bark's witnesses in the mean time having passed beyond reach. It is shown that the bark during these two years had been in New York four different times, remaining from two to three weeks each time, and that the libelant, therefore, had opportunity to commence his suit earlier. For the libelant, it is shown that quite soon after the damage arose he placed his claim in the hands of his proctors, who reported to him that they were unable to find the bark; that he was afterwards absent from the state about a year; and that he caused the arrest of the vessel upon her first arrival here that became actually known to him. I do not know of any precedent for holding, nor do I think it would be reasonable to hold, that a claim is barred under such circumstances for no other reason than the possible loss of some testimony that might have been obtained by the respondents if the suit had been brought sooner. There has been no change in the ownership of the vessel, and there is no question of priority as respects subsequent lienors. In a suit *in personam* the owners would clearly be liable; and any loss or inconvenience through the difficulty of procuring all the evidence they might desire would be felt as much in a suit *in personam* as in this suit *in rem*. The difficulties arising from the partial loss of testimony through the discharge of seamen are of constant occurrence in admiralty causes; but these difficulties alone have never been

deemed a sufficient ground for limiting a libelant's lien to the period of his first or second opportunity of enforcing it. The cases cited by the claimant's counsel turn wholly upon the equities of subsequent purchasers or subsequent incumbrancers, and manifestly rest upon a wholly different principle. The case of *The Columbia*, 13 Blatchf. 521, illustrates the distinction. There, in a case of laches much greater than this, where there was no excuse for a delay of three and one-half years before the libel was filed, the libelant's claim was postponed to the intervening *mortgage*, but was sustained as against the owners, and a decree *in personam* rendered against them. See *The Bristol*, 11 FED. REP. 156, 163, and cases there cited.

There is no sufficient evidence to charge the canal-boat with negligence contributing to the damage. She was discharging, as is to be inferred, in the ordinary manner, by lying across the end of the pier; and, in order to discharge from her after-hatch, the boat had to be brought down so that her bows projected some 30 or 40 feet below the line of the pier. When the bark was about to be moved out by the tug, the circumstances of the situation were not such as to indicate any danger to the canal-boat, or naturally or reasonably to call upon her to remove from her position. That this was understood by both is to be inferred from the fact that no notice was given by the bark that she was about to remove, or that any further precautions were required on the part of the canal-boat. There was, in fact, plenty of room for the bark to be pulled out astern in the mode attempted, and no injury would have happened had the lines been properly cast off. The case is wholly different, therefore, from that of *The City of Paris*, 14 Blatchf. 531, where the tug-boat had notice of danger to herself, was improperly secured, and, by her own change of position, contributed to the collision. It is equally unlike the cases of *The Canima*, 17 FED. REP. 271, and *Shields* v. *The Mayor*, 18 FED. REP. 748, where the bows projected beyond the pier at which steamers were accustomed to land. Decree for the libelant, with costs.

THE ALVENA, etc.

(*District Court, S. D. New York.* December 30, 1884.)

SEAMEN'S WAGES—FORFEITURE—IMPROPER LANGUAGE—INSUBORDINATION—ARREST—DISCIPLINE—DESERTION, WHEN JUSTIFIABLE.

Where the second mate reported a seaman for disobedience to the captain, at the same time telling the captain that if the seaman was not discharged he would leave the ship, and the captain thereupon ordered the mate to go to his room, and consider himself under arrest for mutinous language, *held*, that the master's order was not cruel or oppressive treatment, but legitimate and proper correction mildly administered, and that the second mate, in afterwards deserting the ship, left without justifiable cause, and that his wages were forfeited.

In Admiralty,

Hyland & Zabriskie, for libelant.

McDaniel, Wheeler & Souther, for claimant.

BROWN, J. The libelant shipped as second officer on board the Alvena. In the course of the voyage, while at Port Antonio, he reported to the captain the fact of the disobedience of the mate's orders by one of the seamen. The second officer has authority to give orders to sailors, and it is expected that sailors shall obey them. When reporting the disobedience, the mate told the captain that if the seaman was not discharged he would not remain on the ship. The captain replied that that was mutinous language, and directed the mate to go to his room and consider himself under arrest. The mate, not long after, left the ship without the permission or knowledge of the master, taking his effects with him, and intending not to return; and the ship continued her voyage without him. The mate's language was clearly that of insubordination. It was the business of the captain to investigate the charge of disobedience, and to determine the matter according to his own judgment. The mate's language was, in effect, dictation to the captain what his decision must be, or that he (the mate) would otherwise leave the ship. This was plainly derogatory to the master's authority, and incompatible with proper subordination and discipline. The master's reply, and his direction that the mate go to his room and consider himself under arrest, were legitimate and appropriate rebuke, and correction mildly administered. The intelligence of the mate leaves him no excuse for his improper assumption to dictate to the master, through a threat of desertion if his wishes were not observed.

In behalf of the libelant it is urged that leaving the ship for justifiable cause is not such desertion as incurs a forfeiture of wages; and that cruel and oppressive treatment on the part of the master is justifiable cause for leaving. *Sherwood* v. *McIntosh*, 1 Ware, 109, 119; *The America*, Blatchf. & H. 185; 2 Pars. Shipp. & Adm. 98. It is urged that the captain's ordering the second mate to go to his room and to consider himself under arrest for such a cause, upon his reporting a seaman's disobedience, was cruel and oppressive treatment, within the principle above cited. But that principle is inapplicable here. When the seaman is held justified in leaving the ship, it is because the master is guilty of a gross abuse of his powers, and of a violation of the implied terms of his contract with the seaman, which are equivalent to a discharge. The cases in which this rule is applied are cases only where the personal safety of the seaman is in some degree threatened, or cases that involve such gross degradation as is clearly beyond the legitimate exercise of the master's authority. They do not apply to that mere wounding of self-love, and to that humiliation of a sensitive spirit, which are more or less involved in all disciplinary punishments, whether light or severe. The very efficacy of such punishment depends chiefly upon these moral and personal sensibilities.