only to say that I do not understand that it is necessary for a vessel at anchor to show a torch when it is clear that the approaching vessel, by a vigilant and proper lookout, could have seen her without a torch. Vessels at anchor in the night, with their own light properly set and burning, have a right to assume that an approaching vessel is obeying the law; that it has a proper lookout, and is taking the proper precautions to avoid a collision; and hence, when the watch on a vessel at anchor sees another vessel approaching at a distance of about three-quarters of a mile, and sees all her lights clearly and distinctly, he has the right to assume that the lookout on the approaching vessel sees his lights, and will in due time adopt the proper maneuver to pass clear of him. It is said, however, in behalf of the Avon, that the air was filled with smoke from the rolling-mills, so as to prevent the lookout on the Avon from seeing the barge's lights; but it hardly needs argument to demonstrate that, if a man standing on the deck of the barge could see all the lights of the Avon as she approached him, it was equally feasible for the lookout on the Avon to have seen the lights on the barge. If the rays of light from the green, red, and white lanterns of the Avon were clearly seen on the barge from the time she headed down the harbor, as is most abundantly proven, then there is absolutely no reason why a competent and vigilant lookout on the Avon should not have seen the barge's lights. That there was some smoke on the bay must from the proof be taken as an established fact, but it is evident that this smoke did not materially obscure the lights on the Avon nor the barge; for men on tugs out in the bay in the vicinity of the barge saw the Avon's lights and the city lights from the time she headed down the harbor, while the life-saving station men from the station at the end of the piers, and the men on the tug inside the piers, plainly saw the lights on the barge. Indeed, I can hardly conceive that smoke from these rolling-mills, after drifting a mile and a half over the water, could have retained enough of its soot and body to have obstructed the view of lights opposite the mouth of the harbor; but, if it ever did so, I feel sure from the proof that it did not do so on this occasion, because if there was not smoke enough to obscure the lights of the Avon and prevent them from being seen from the barge and the tugs in the vicinity of the barge, then there was none to prevent the lookout from seeing the lights of the barge from the forward end of the upper deck of the Avon. And if the watch upon the barge had no difficulty in seeing the Avon's lights, he had the right to assume that the lookout on the Avon could and did see his light, and that a torch was not called for.

My own conclusion from the testimony of the respondent is that the lookout and perhaps the captain of the Avon were most culpably negligent, and that the collision arose from this neglect. It must be borne in mind that the Avon had touched at Milwaukee, on her way to Chicago, to land all or a portion of her freight. Her men and officers had all been hard at work for many hours putting off this freight.

Their supper had been delayed until after they left the deck at Milwaukee, and winded the vessel for the purpose of running down the harbor. Supper was then ready, and the mates both went to supper by the captain's direction, although it was the mate's watch, and Joyce, who seems to have been employed on the Avon as a watchman, lookout, and deck hand, being paid extra at the rate of 30 cents an hour for the time he worked as deck hand, was placed on duty as lookout. Joyce had been at work as deck hand helping to unload, and had not had his supper, and just what he was doing during the time the steamer was running down between the piers does not clearly appear from the proof; but, as the mate says, about the time she passed the outer ends of the piers, he (the mate) directed him to take his place as lookout, and told him to keep a bright lookout, and placed an opera-glass on the top of the pilot-house, and called the lookout's attention to it. Shortly after he was thus placed, but how many minutes it is impossible to say from the proof, Joyce seems to have seen one or more of the barge's lights with his naked eyes. Instead of reporting these at once to the captain, he attempted to examine them through the glass, found the glasses were not clean, wiped them and then looked again, and saw two lights, which proved afterwards to be the lights on the Scott. He then reported them to the captain, who, instead of giving any orders to avoid a collision, directed the lookout to bring him the glass. It was handed to the captain, who attempted to use it, found it needed adjusting to his eyes, adjusted it, and then was in the act of looking for the lights; when the lookout, who had gone forward, called out that the barge was right under their bows, whereupon the captain ordered the wheel to starboard, but before any substantial change of course had been effected, he ordered the wheel hard to port, and before she had swung a point to starboard the Avon struck the barge.

The engineer and captain say the steamer was running under check, and not to exceed four miles an hour. If so, it would have taken about seven minutes to have run from the ends of the piers to the barge, as at four miles an hour it would take fifteen minutes to run a mile, and seven and a half minutes to run half a mile. There was certainly ample time for Joyce, the lookout, to have surveyed the entire bay, and taken in all the surroundings, long before the steamer had passed half the distance from the piers to the barge. What he was doing during this time he does not say; but I think I am justified in inferring that the mate having laid the field or opera-glass on the top of the pilot-house, Joyce left his post as lookout, made his way to the hurricane deck where he could reach the glass, and then went back to his place; but whether he went after the glass, after he had seen the barge's light by the naked eye, we do not know; but this does appear, that the mate, after he had directed Joyce to take his station as lookout, brought the glass from his room, put it on the top of the pilot-house, and called Joyce's attention to it. Joyce may have

at once left his station and gone for the glass, or may not have gone for it until after he saw the lights. In the mean time the steamer was running at the rate of four miles, and perhaps faster, towards the barge. Then, after Joyce had made out the lights, he wiped the glasses, and, we must presume, adjusted them to his eyes, and then reported the lights to the captain. The captain ordered the glass handed to himself, and, after taking time to adjust the glasses to his eyes, gave orders to starboard and then to port the wheel. Here was time enough lost, which, if properly employed, would have avoided a collision; for a steamer like the Avon, in a still night, would readily have swung clear of this vessel, by being properly maneuvered, in going from two to four hundred feet. If Joyce was fit for the duty of lookout, he ought to have been able to have seen the lights on the barge without the aid of a field or night glass. It may, I think, be safely assumed that any man who needs a night-glass to enable him to discover lights in time to avoid a collision is unfit for a lookout. His own natural vision should be sufficient to enable him to perform all the duties of a lookout. The night-glass is part of the outfit of the officer of the deck, and not of the lookout's. The men on the tugs, at the life-saving station, and on the deck of the barge, all saw the city lights, the lights in the bay, the Avon's lights, and the barge's lights without difficulty, and I can, therefore, see no reason why a glass should have been called into requisition to aid the lookout on the Avon. It seems to me to have been a fatal hindrance. While the lookout was getting it from the place where the mate had laid it, adjusting it to his eyes, wiping the glasses at each end, and while the captain was calling the lookout from his place to bring him the glass, the steamer was steadily and surely passing over the brief half-mile between the ends of the pier and the barge, and by the time the glass had told these men what their naked eyes, if vigilantly used, should have revealed to them, it was too late to avoid the collision.

It seems to me that Joyce, fatigued by his extra labors as deck hand in unloading freight, went sluggishly, and perhaps stupidly, to his duty as lookout; that he was not alert and watchful, as he should have been, but delayed and hesitated when he should promptly have given the alarm on the first discovery of the barge's lights; and the captain, for some inexplicable reason, instead of acting on the first information, and either stopping or backing, allowed his boat to keep on her course, while he deliberately attempted to scrutinize the lights reported to him, by the aid of the glass. If there was smoke enough to embarrass him, or render his vision uncertain, which it does not seem to have done for any one else in that locality at the same time, so much the more reason for increased caution on his part. I cannot, therefore, see that there was any fault on the part of the barge which contributed to this collision. If the night had been foggy, so as to make it doubtful to those on the barge whether the barge lights would be seen by those in charge of the Avon, it might have been their duty

to show a torch; but when there was no circumstance to justify the fear that their lights were not or could not be seen on the Avon, there was no occasion for such a precaution; and if, as already said, the lights of the Avon had been plainly and continuously in sight from the barge, then they could have had no reason to suspect that their lights would not be seen on the Avon. Seeing the Avon's lights, although she was coming directly towards the barge, and knowing that his own anchor light was properly placed and burning, the officer on watch upon the barge would naturally have supposed that the Avon would change her course in time to clear him; and at the time when it became evident that there was imminent danger of a collision, the officer of the watch on the barge caught a lighted lantern from the deck-house and waved it along the deck of the barge, to indicate danger. And comment is made by the respondent's counsel because he did not then show a torch; but it is apparent that the display of a torch at that time would have availed nothing, because the captain and lookout of the Avon at that time had become fully aware of their proximity to the barge, and knew then all that the torch could tell them, but too late to avoid the collision. The commissioner found that the fault for the collision was wholly with the Avon, and found the libelants entitled to recover the amount of the two policies paid, as charged in the libel, together with interest since such payment. The exceptions to his report are overruled, the report confirmed, and decree as recommended by the report.

The Rio Grande.

(*District Court, S. D. New York.* January 29, 1885.)

Salvage—Vessel on Fire—Award.

A steamer coming up the Atlantic coast loaded with cotton, about 6 P. M., found her cargo in the lower hold on fire. Her hatches were battened down, and her passengers put on board a bark, and she headed for the Delaware breakwater, where she intended to submerge her hold in shallow water. She arrived there about 7:30 next morning; and, on signals, a wrecking tug and schooner at work there came to her assistance with a steam-pump, the captain designing to use it in an attempt to throw water directly into the compartment where the smothered fire was. Through want of sufficient length of hose, and of sufficient power in the engine, it was found impossible to throw any water directly into the compartment where the fire was, but only into the between-decks, where it ran aft. Upon finding that no water could be thrown directly into the compartment where it was wanted, the master ordered the two sea-cocks in the ship opened, for the purpose of flooding her, as originally designed, and that the ship, which had previously anchored in about 25 feet of water, be taken by the pilot into 19 feet of water, which was done by the libelant's tug. This was accomplished by about 10 A. M. From that time, the tug resumed the pumping, and continued it till about 6:30 P. M., when the ship was grounded on an even keel, and the fire extinguished, having put into the steamer's hold during that time about one-fourth of the water necessary to submerge the hold. During 36 hours following, the ship was pumped out by other means, and then came

to New York. On arrival, it was found that the fire had destroyed part of the cotton, and charred the under side of the deck, in that compartment. The steamer, with cargo and freight, were worth $315,300. *Held*, that the time saved in submerging the hold by the amount of water put in by the salvors' pump could not have exceeded two or three hours; that, owing to the insufficiency of their apparatus to throw water directly on the fire, considerable time was lost in the abortive attempt to do so; that, as it turned out, probably no great difference would have resulted from the absence of the salvors' services, since the other means employed by the ship would have extinguished the fire a little later; that, under these circumstances, $3,500 are a sufficient and liberal salvage compensation for the various incidental services rendered by the libelants.

Salvage.

The libel claims salvage compensation for services rendered to the Rio Grande, at the Delaware breakwater, in extinguishing a fire in her lower hold, among some bales of cotton, on the seventeenth of May, 1882. The libelants are engaged in the salvage and wrecking business, and have vessels consisting of schooners and steam-tugs, with steam-pumps and other appliances for those purposes. The Rio Grande is a steam-propeller of 2,566 tons, 313 feet long, 39 feet beam, with three decks. Her lower hold is divided into three compartments,—two forward of the engine-room, and one aft. She was bound from Galveston to New York, and had in her lower hold some 800 bales of cotton. At about 6 P. M., on May 16th, when about 90 miles below the Delaware breakwater, some smoke was discovered issuing from the middle compartment of the lower hold. Her passengers were shortly after transferred to an Italian bark, which was overhauled, and the steamer was then immediately headed for the Delaware breakwater, the design of the captain being to reach shallow water where he could submerge the hold of the vessel. Two of the libelant's vessels, a steam-tug and a schooner, had been employed just outside of the breakwater in raising a wrecked vessel. About 7 o'clock on the morning of May 17th, the Rio Grande was seen a little outside of the breakwater approaching and signaling for assistance. The steam-tug immediately went to her, and the captain of the steamer, on learning that a schooner with a steam-pump was near, desired her assistance to pour water into the compartment where the fire was. The steam-tug immediately went back and brought the schooner with the steam-pump along-side the Rio Grande, which had then come to anchor in about four fathoms of water. The steam-pump was placed upon the steamer's deck at about 8 o'clock; but the hose being insufficient to reach the hatch below, through which it was desired that the water should be poured, some time was consumed in making wooden troughs to conduct the water. When these preparations were completed, and the pump set to work, it was found that the lift of water from the sea to the height of the steamer's deck was too great for the power of the steam-pump. The pump was, therefore, put back upon the deck of the schooner, which was much lower. From this position the water could only be introduced into the ship through the forward port-hole. For want of sufficient leading hose, the water

could not be carried down the hatch into the hold where it was needed, but could only be pumped into the between-decks.

The steamer was loaded about 3 feet lower at the stern, drawing 14 feet there and 11 feet forward. During the night previous from the time when the fire was discovered, the pumps were kept busily at work, pumping in water; but on account of the smoke and heat, and the rubber hose being also melted in attempting to get water down the hatch, and it being desired also to keep the hatch closed, lest the fire should break out, the water had not been pumped directly into the middle compartment, where the fire was; and what was pumped in, as I infer, went mostly astern, increasing her depth aft. Thus, the water pumped in by the libelants' steam-pump, and thrown upon the lower deck, ran directly aft instead of going down into the compartment where the fire was. The only communication from the between decks to the hold below, the hatches being battened down, was through the coal-bunkers, which were a little aft of amid-ships, on each side, and some six or eight feet from the sides of the ship. These holes could not be reached by the water until enough had been pumped in to raise the level of the water behind sufficient to reach the coal-bunkers. The water running down these holes, into the engine-room beneath, would reach the compartment forward of it through the sluice-ways, from four to six inches square, one on each side, which were opened at the bottom of the compartment bulk-head. The captain, on finding that no water could be introduced by the libelant's steam-pump directly upon the fire, reverted to his original plan of submerging the hold. He therefore, at about 9 A. M., opened the two sea-cocks in the engine-room at the bottom of the ship, one of which was six inches in diameter and the other twelve inches, ordered the fires to be drawn, and directed the pilot to take the vessel into three and a quarter fathoms of water. The libelant's tug was used for this purpose, though the steamer still had 25 pounds of steam in her boilers, and she was moved by the tug about half a mile, when she was again anchored, in 19 feet of water. This was accomplished by 10 o'clock, and from that time until about 6:30 P. M. the libelant's steam-pump, with occasional interruptions, continued pumping water into the between-decks, as before stated. Small boats were plying back and forth between the steamer and the shore during the day, and numerous telegrams were forwarded.

The libelants endeavored to procure additional hose for service, but were unable to do so. The steamer grounded astern at about 2 P. M., but her stem was still drawing only 11 feet. The captain of the steamer, by telegraph, procured the assistance of the steam-tug North America from Philadelphia, which had a more powerful steam-pump and better appliances. She arrived at about 4:30 o'clock in the afternoon, and pumped through hose running through the other forward port-hole and down the forward hatch into the forward compartment of the hold, until about half-past 6, when, by these various means

combined, the steamer's head was finally brought down so that she was aground fore and aft, the lower hold flooded, and the fire extinguished. The libelants claim that the fire was completely under control from and after 2 o'clock in the afternoon; that their services were efficient, both in putting out the fire and in bringing the steamer to shallow water, and also in removing to the upper deck cargo of considerable value from the after part of the between-decks, where it was in danger of injury from water. The libelants' tug, on the following day, also brought the passengers back from the bark to which they had been previously transferred. The North America was employed, but not the libelants' boat, in pumping out the steamer; and at 1 o'clock of the night of the 19th the steamer was able to get under way for New York, which she reached in safety the following afternoon. The respondents, while admitting the facts in the main, as above stated, contend that the libelants' services were of a very unimportant character, contributing little or nothing towards the safety of the vessel.

Benedict, Taft & Benedict, for libelants.

Butler, Stillman & Hubbard, for claimants.

BROWN, J. The services rendered by the libelants in this case were clearly salvage services. But the case is destitute of any circumstances that give these services any highly meritorious character. There was no danger to the salvors; no hazard of life or property on their part; no call for the exercise of daring, skill, enterprise, or gallantry; no deviation by the salving vessel to enlarge the risks of her owners, as in *Markham* v. *Simpson*, 22 FED. REP. 743–745. The steamer, with a smothered fire in her lower hold, was, doubtless, in danger; but the mode of relief, whereby ship and cargo were saved from large loss, was devised and pursued by her own captain, interrupted only for the space of a couple of hours to enable the libelants' steam-pump to make the effort to pump water into the compartment where the fire was; an attempt that proved ineffectual through the libelants' lack of sufficient appliances and a sufficiently powerful steam-pump. The fire in this case manifestly was not extinguished chiefly or directly by means of the libelants' pump; and in this most essential particular this case differs materially from the cases of *The Suliote*, 5 FED. REP. 99, and *The Connemara*, 108 U. S. 352; S. C. 2 Sup. Ct. Rep. 754. The libelants' pumping merely aided in flooding the hold, thereby hastening in some degree the putting out of the fire; but the principal part of the water taken aboard was clearly taken through the steamer's own sea-cocks, which were about five times the capacity of the libelants' pump.

The evidence furnishes *data* for determining, with approximate correctness, the proportion of water introduced by the libelants' aid, taking their own estimate of the capacity of their pump, and consequently for determining, approximately, the utmost limit of time saved by their aid in extinguishing the fire. The capacity of the libelants'

steam-pump, as they say, was about 100 tons of water per hour; and, allowing for some interruptions, this would give from 600 to 800 tons of water pumped aboard by the libelants' tug. The whole amount of water taken aboard in flooding the ship is ascertained as follows: On arrival at the breakwater, she was drawing 11 feet forward and 15 feet aft, or an average of 13 feet. She finally grounded fore and aft in 19 feet; and when that was done the sea-cocks were closed. In thus sinking and grounding in 19 feet of water, the steamer displaced an additional weight of water equal to a body of water 6 feet in depth, with a surface equal to the length and breadth of the ship, viz., 313 feet by 39, that is to say, 73,242 cubic feet. Fresh water weighs 62½ pounds to the cubic foot; sea-water, 64 pounds, or 31¼ cubic feet to the ton. This gives 2,344 tons additional water displaced in sinking the ship to 19 feet; and to accomplish this, evidently, precisely the same weight of water was necessary to be taken aboard. The quantity introduced by the libelants' pump was, therefore, from one-third to one-quarter of the whole amount taken aboard after the steamer's arrival at the breakwater; and the time saved in extinguishing the fire by the libelants' aid could not, therefore, exceed from two to three hours.

Another consideration, however, prevents the libelants' pump from being credited with the saving of time in extinguishing the fire in the full proportion of the amount of water pumped aboard by it. No water could be poured directly into the compartment where the fire was. The only avenues to it were two small sluice-ways from the engine-room and the run beneath the flooring of the lower hold running back from the forward compartment. The libelants' pump threw no water into the forward compartment; while the sea-cocks in the engine-room, which were aft of amid-ship, being of much larger capacity than the sluice-ways leading out of the engine-room, took in water much faster than it could run out through the sluice-ways into the middle compartment. All the water from the libelants' pump, as I have said, ran aft, so that the steamer's stern was aground in 19 feet of water by 2 o'clock, while her stem still drew but 11 feet. As the sea-cocks in the engine-room, however, took in the water considerably faster than it could run out into the compartment where the fire was, the only real effect of the additional water pumped in by the libelants' pump was, at first, to aid in sinking the stern, and later to increase somewhat the depth of water in the engine compartment, and thereby increase the pressure upon the water running through the sluice-ways.

Still another discount must be made from the time saved by the services of the libelants, in consequence of the interruption of the captain's original plan to submerge the ship, by the tug's undertaking to introduce the water directly into the compartment where the fire was. The libelants' testimony is unequivocally to the effect that when the steam-tug was first engaged by the captain, the steamer was coming in and had not yet anchored. She had previously taken a pilot

aboard, and the whole testimony leaves no doubt that, in first coming to anchor where he did, the captain hoped, through the libelants' aid, to extinguish the fire by pumping water directly into the compartment where it was, and to avoid the need of submerging the hold. The libelants' proposed aid was, I think, the reason of anchoring at first in water too deep for submerging the hold merely. The attempt proved ineffectual, in consequence, wholly, of the insufficiency of the libelants' pump and of its appliances; and from one to two hours were certainly lost in this abortive attempt. Had it not been for this undertaking by the libelants, there is no reason to suppose that the captain, instead of anchoring at first in deep water, would not at once have proceeded to the proper depth of water for submerging the hold, as he afterwards did proceed, in pursuance of his original plan. By this interruption not only was valuable time lost, but the assistance of the tug, in towing the steamer half a mile to her second place of anchorage, becomes, from this point of view, scarcely more than a just reparation to the steamer for the time lost in the attempt that those in charge of the tug ought to have known would be ineffectual, but which the captain of the steamer could not have known.

Salvage compensation is only allowed for benefits actually conferred; not for meritorious exertions alone. *The India*, 1 Wm. Rob. 408; *The Blackwall*, 10 Wall. 1, 12. All persons, however, who do render beneficial aid are entitled to a salvage reward. The ship and cargo in this case were saved; but not mainly, as the above considerations compel me to conclude, through the libelants' efforts. The fire was not raging; it had not burst out anywhere. Subsequent examination showed that it arose in the second tier of bales forward of the engine-room bulk-head, extending up through the bales to the under side of the deck, and charred the deck to a considerable extent in that vicinity. On the whole, I do not think it probable that there would have been any breaking out of the fire, even if the libelants' aid had not been rendered; and, as it turned out, probably no great difference would have resulted from the absence of their services, since the other means employed by the ship would have extinguished the fire a little later. While these circumstances are sufficient to prevent any large salvage reward, they are not sufficient to reduce it to a mere nominal sum, under the circumstances of this case as understood at the time. The ship and cargo were valuable; the steamer being worth $170,000, the cargo $130,000, and the freight and charges $8,300; in all, $315,300. So long as the fire was unextinguished, there was danger, even after the stern had grounded at 2 o'clock. The master, though a man of great coolness and self-possession, was under great apprehension for the safety of the ship, even after she had grounded astern. It was his duty to employ from the first every available means that could contribute anything towards hastening the extinguishment of the fire at the earliest possible moment. He called on the libelants for aid, and they rendered it promptly, and

their steam-pump was of some service in the early extinguishment of the fire; although, under the circumstances, I must hold it to be of a minor character. And their additional services in aiding in the removal of a part of the cargo and baggage; in furnishing a diver to shut the sea-cocks when the hold was full; in lying by during the night, at the master's request, to render any help that might become necessary; and in finally transferring the passengers back to the Rio Grande when she was prepared to start, are entitled to some consideration.

In the case of *The Connemara*, 108 U. S. 352, S. C. 2 Sup. Ct. Rep. 754, where $14,198, or 6 per cent., was allowed for the salvage of a ship and cargo worth $236,637, the court say that had not the fire "been promptly discovered and extinguished, there was imminent danger that it would extend to the rest of the cotton, and, fanned by the stiff breeze, destroy or greatly damage the ship and the whole cargo;" and the fire in that case was extinguished wholly by the libelants' services. The court intimate even there that "they would have been better satisfied with an award of a smaller proportion, though it was not so excessive as to violate any rule of law." In the case of *The Suliote*, also, (5 FED. REP. 99,) the fire was extinguished by the salvors, and not mainly through the ship herself.

On the whole, I think the sum of $3,500 will be a sufficient and liberal salvage reward in this case for the various incidental services of the libelants; sufficient for all the services actually rendered, and a reasonable encouragement for salvage undertakings and for the maintenance of proper means and appliances therefor, (*The Tornado*, 109 U. S. 110; S. C. 3 Sup. Ct. Rep. 78; *The Egypt*, 17 FED. REP. 369; *Baker Salvage Co.* v. *Excelsior*, 19 FED. REP. 436; *The Plymouth Rock*, 9 FED. REP. 422,) while not imposing upon the claimants, or on the vessel and cargo saved, a tax out of reasonable proportion to the benefits received.

PENNSYLVANIA R. Co. *v.* ATHA and others.

(*District Court, D. New Jersey.* January 7, 1885.)

1. WHARVES AND DOCKS—AUTHORITY OF AGENT—INJURY TO VESSEL.
A. was the owner of a wharf at Newark, on the Passaic river, and the consignee of a cargo of coal shipped on board a barge belonging to libelant. When the barge arrived at the wharf the master found M. in charge, directing the moving of vessels, etc., and in obedience to his direction moored the barge along-side the docks and when the tide went out the barge grounded, and was seriously injured by piling that had been negligently left standing under the water. After mooring, but before the grounding of the barge, the master reported to the clerk of the libelant the arrival of the barge, and was referred to M. as his representative. *Held*, that the master had a right to assume that M. was the agent of the owner of the wharf, and that he was liable for the injury.

2. SAME—LIABILITY OF OWNERS OR OCCUPIERS.
The owner or occupier of a dock is liable for damages to a person who makes use of it by his invitation, express or implied, for an injury caused by any defect or unsafe condition of the dock, which he negligently causes, or permits to exist, provided the person himself exercises due care.

This libel is filed by the Pennsylvania Railroad Company, owners of the barge The Delaware & Raritan Canal No. 3, against Benjamin Atha & Co., to recover damages for injuries to the said barge whilst lying at the wharf of the respondents at Newark, on the Passaic river, under the following circumstances. On the sixth of November, 1878, Shaw Brothers, of Baltimore, shipped on board the barge 275 tons of Cumberland coal consigned to Benjamin Atha & Co., at the port of Newark, New Jersey. The barge, being towed by a steam-tug, proceeded on her trip and arrived at the wharf of the respondents in Newark about noon on the thirteenth of November. The master of the barge found another boat discharging its load at the derrick on the wharf, and a schooner lying outside of her. He requested the captain of the tug to put him alongside of the schooner, and threw a line to the canal-boat unloading, asking one of the hands on board to take the line. The only person on the dock was a Capt. Mullins, who was employed by the respondents as a stevedore to unload boats coming to the wharf, and who was then engaged in discharging the canal-boat. He forbade the crew of the boat taking the line, told the master of the libelant's vessel that he could not lie there, as he would be in the way, and directed the captain having the Delaware & Raritan Canal No. 3 in tow to drop her astern. The boat was dropped astern to the dock below, at the place pointed out by Mullins, and was fastened alongside of the respondents' dock, and was breasted off by his directions eight or ten feet from the dock, where Mullins assured him she would lie level and in safety. The master then was directed to the office of the respondents, near the wharf. He reported his arrival, and was told by a clerk to whom he handed the bill of lading, to see Capt. Mullins, who would give all needed instructions about discharging. Having thus moored the libelant's barge, under the superintendence of Capt. Mullins, the master left her about 2 or 3 o'clock in the afternoon, went up to the city of Newark, where he met some friends, and returned to the boat about dusk the same evening, and found her aground. He boarded her, and, after eating his supper, retired to bed. The barge had grounded with the fall of the tide, after several hours of flood. The master turned out about 11 or 12 o'clock that night to ascertain the condition of the boat. He found that she was full of water, not having risen with the rising tide. It was afterwards discovered that she had settled upon some obstructions in the bottom of the river, and had her bottom punctured with several holes, which caused her to leak so badly that she could not be raised except by the employment of wreckers, and after large expense and long delay.

We learn from the testimony of Atha that the respondents pur-

chased the property where the libelant's barge was placed in the spring of the year 1869. It was then used as a ship-yard, having no very permanent dock-line in front. There were two marine railways on the premises, used for hauling vessels out of the water onto the land, to be repaired, one of which prejected down for some distance into the river, and consisted of two parallel tracks, about 12 feet apart, and running nearly at right angles to the face of the dock, supported by wooden piles driven on the shore and in the bed of the river. There was a provision in the conveyance by which the grantor (Richards) excepted and reserved from the operation and effect of the deed all buildings, sheds, ways, and all movable things of every name and nature on said premises, hereby conveying nothing more than the land itself, and also reserving the use, occupation, and possession of the premises for one year from the date of the conveyance. By virtue of this reservation, the said grantor occupied the premises for a year as a ship-yard, and, at the expiration of the year, removed the buildings and the ground-ways, tracks, and machinery of the said marine railways, to an adjoining property which he had purchased, leaving upon the premises the piles on which the railways had been placed. When the respondents made the purchase there was an old spile dock in front of the property—piles driven and capped, with plank on their top. The respondents built a new dock and bulk-head, extending the same a few feet further into the river, and using, to some extent at least, the piles that had been left of the marine railways in the new construction. When the dock was filled in, such of the pilings as were standing within the bulk-head were covered up by the respondents, but those in the bed of the river outside were not removed, either by Richards & Brown or the respondents, after they purchased the property. From the testimony of Mr. Everett there seems to be no reasonable doubt that the injury to the libelant's barge was caused by these pilings left in the river. Mr. Brown thinks that the railway extended into the river 30 or 40 feet outside the dock-line, but does not know what supported it, or that there were any piles driven in the bed of the river. Mr. Atha testifies that he was never informed that there were any pilings there, but does not say that he ever took any pains to ascertain whether there were or not. After the injury to the libelant's barge, the respondents employed Mr. Van Ness to remove the piles from the river bed. He says he found and pulled up 12 or 14, 4 or 5 of which were 8 or 10 inches above the mud, and about 2 feet under water at low tide.

Wilcox, Adams & Macklin, for libelant.

McCarter, Williamson & McCarter, for respondents.

NIXON, J. The decision turns upon two questions: (1) Were the respondents responsible for the acts of Mullins in regard to the location of libelant's barge? (2) Did they possess such knowledge of the circumstances of the property, when they purchased, as to put them upon inquiry concerning the condition of the river bed in front? If

the facts shown in the testimony warrant the answer of both these questions in the affirmative, there should be a decree for the libelant; if not, the libel must be dismissed.

1. In regard to the first, the respondents were the owners of a wharf upon a public, navigable river, to which vessels loaded with freight were in the habit of coming. In the present case, and, perhaps, generally, the respondents were the consignees of the cargo. The master of the libelant's barge was a stranger there, and Mullins was the only person he found on the premises who assumed any responsibility in directing him where to go, or what to do. He was engaged as stevedore in unloading all vessels consigned to the respondents, and was paid by them for his services, the amount being afterwards deducted by the consignees from the freight due to the master. Mr. Atha testifies that, although no person had special authority over the wharf, or arriving vessels, it was necessary for Mr. Mullins, in the course of his duties, to request the captains to move their boats, so that it would be possible for him to unload them; and that, so far as it appertained to all that was necessary for him to continue his work, he made them—requested them—to lie here or there, as a matter of course. Page 186 of Record. He was aware that Mullins was in the habit of exercising such authority, and never found fault with him for so doing. In addition to this, it appears that, after the master had moored the barge alongside of the dock, under Mullins' specific directions, he reported to the clerk of the respondents in the office, and was referred by him to Mullins, as the representative of the consignees in the matter of discharging the cargo.

I do not think it is competent, under the circumstances, for the principal to shield himself from the responsibility of the acts of his agent by setting up that he did not authorize the act from which the injury arose. The master of the barge had a right to assume that the single person he found in the employ of the consignees could speak and act in their behalf, and that, when so speaking and acting, he was not overstepping the limits of his employment. The case is much stronger than the recent one of *Barber* v. *Abendroth*, in the supreme court of New York, (26 Daily Reg. 148.) Suit was there brought to recover damages sustained by the boat of the plaintiff while moored at the defendants' wharf on Byram river at Port Chester. She was taken to the wharf laden with sand, consigned to the defendants. A contract had been entered into with the defendants by Whitehead Bros. for the sale of the sand and its delivery to the defendants at their dock. The plaintiff arrived with the sand in the vicinity of the dock near the middle of the night. He found a watchman on the dock. He had received no directions as to where he should place his boat to have the sand unloaded. He applied to the watchman, who was there in the service of the defendants, for directions as to where the sand was wanted, and the watchman said he could not tell; but in the course of the interview he indicated to him a point on the wharf

where sand had previously been received by the defendants. He went to that point, and was assisted by the watchman in securing his boat. When the tide went out the boat rested on the ground, which proved to be so uneven that the boat settled about her midships, receiving the injury which was the subject of the action. It was proved on the trial that the watchman's duties were limited to the protection of the premises from fire or burglary. "But," says the court, "the fact that the watchman was upon the premises, in their apparent charge and possession, was a direct indication that he so far represented the defendants as to be authorized to indicate what might properly be done by a vessel arriving at the wharf on the defendants' business during the night-time when no other person was to be found who could be at the time consulted. The fact of his being there, in the service of the defendants, was an indication that it was his duty, as well as his authority, to look after their affairs, and in so simple an act as the moving of a vessel, could indicate where she might be properly or safely placed." The court sustains its position by quoting its oft-repeated adjudication, that—

"The principal is, as to third persons not having any notice of a limitation, bound by the ostensible authority of the agent, and cannot avail himself of secret limitations upon the authority and repudiate the agency where innocent third persons have in good faith acted upon the ostensible authority conferred by the principal." *Doubleday* v. *Kress*, 60 Barb. 181; *Lefler* v. *Field*, 50 Barb. 407; *McNeil* v. *Tenth Nat. Bank*, 46 N. Y. 325.

2. With regard to the second question, there is not so much dispute or difficulty about the law as there is in its application to the facts. The owner or occupier of a dock is undoubtedly liable for damages to a person who makes use of it by his invitation, express or implied, for an injury caused by any defect or unsafe condition of the dock which he negligently causes or permits to exist, provided, of course, the person himself exercises due care. He is not an insurer of the safety of his dock, but he is required to use reasonable care to keep it in such a state as to be safe for the use of vessels which he invites to enter it, or for which he holds it out as fit and ready. If he fails to use such care,—if there is a defect which is known to him, or which, by the use of ordinary prudence and diligence, should be known to him,—he is guilty of negligence, and liable to the person who, using due care, is injured thereby. *Nickerson* v. *Tirrell*, 127 Mass. 236; *The John A. Berkman*, 6 FED. REP. 535. In *Sawyer* v. *Oakman*, 7 Blatchf. 290, the owner of a wharf was held bound to notify the master of a vessel, which was about to haul into the wharf, as to the condition of the bottom where the vessel would ground at the fall of the tide, and was held liable in damages for injuries to the vessel caused by unequalities in the bottom, due care having been exercised by the vessel.

When the respondents purchased the property, as before stated, it had been used as a ship-yard, and a marine railway extended from

the shore down into the bed of the river. When the grantees removed from the premises the buildings and other improvements reserved by the conveyance, they left standing above and below the water the pilings which had supported the railway. The respondents put up a bulk-head in front of the dock, partially filled in the same, and covered up the pilings where the filling in was done, but did not disturb those outside the bulk-head in the bed of the river. Mr. Atha excuses himself for leaving them by saying he did not know they were there. But he made no inquiry, and took no steps to ascertain whether they were there or not. I think it was negligence for not doing so on completing his wharf for use, and, being aware of the existence of the railway, he owed it to the public to remove, or at least to attempt to remove, the obstructions left by the former owners. From the large number of pilings afterwards taken out by Van Ness it is manifest that a little inquiry would have given him knowledge of the obstructions to the navigation, and of the perils to the use of t. wharf, which had been left in front of the dock. Holding that the omission of such inquiry was negligence, there must be a decree for the libelant, and a reference to ascertain the damages.

THE INDIANA.

(District Court, E. D. Pennsylvania. January 13, 1885.)

1. SALVAGE—AMOUNT, HOW DETERMINED.
   What is a proper allowance for salvage is a question for the sound discretion of the court, to be determined by a consideration of the time, labor, expense, and risk expended and incurred by the salvors, and the value of their services.
2. SAME—STEAMER NEAR BURNING PIER—COMPENSATION OF TUGS.
   An iron steam-ship, with about 30 men on board, and 45 pounds of steam on her donkey-engine, was lying next to a pier that caught fire, endangering the steamer, and, as a precautionary measure, the captain summons two tugs to render assistance, and they remained by her for several hours. The steamer could have moved, but not without some risk. *Held*, that the service rendered by the tugs was a salvage service, but that, under the circumstances, $1,100 would be sufficient compensation therefor.
3. SAME—EXCESSIVE CLAIM—COSTS.
   Although a vessel has been arrested for an exorbitant claim, costs may be allowed libelants where the respondent has made no offer of compensation whatever for the services rendered.

In Admiralty.

Flanders & Pugh, for libelants.

Morton P. Henry and *H. G. Ward*, for respondents.

BUTLER, J. That the libelants rendered a salvage service I cannot doubt. The respondent (in the brief submitted) admits that it was "a technical salvage service, in respect that the parties were not connected with the ship, and there were circumstances which required