



Before the landing of the barge at the Cunard dock the libelant's canal-boat sprang a leak, from what her master supposed, and no doubt correctly, to have been contact with a piece of ice. The leak increased, and finally after the boat had been landed at Hoboken she sank.

Assuming that the cause of the boat's sinking was coming in contact with ice while the tug was hauling towards the New York docks in order to land the barge, it is still necessary, in order to charge the tug with the sinking of the boat, that it be proved that the canal-boat was brought in contact with the cake of ice by some negligence on the part of the tug. The proofs show no such negligence. There is no evidence of any failure on the part of the tug to exercise due care and skill throughout the voyage. If, then, any liability on the part of the tug exists, it must arise from a breach of the towing contract. The libelant contends that the towing contract was for a voyage from Newtown creek to Hoboken direct; that the tug deviated from this voyage to land the barge at the Cunard wharf; and that the sinking of the boat was owing to injuries received by her in the course of this deviation, for which the tug is consequently responsible. But I am unable to hold that to take the barge in tow and land her at the Cunard wharf was a breach of the towing contract made with the libelant. When the contract to tow the canal-boat to Hoboken was made, nothing was said about going direct, nor about taking other boats in tow at the same time, and although the barge, as well as a lighter, were taken on immediately after the canal-boat was alongside, no objection was made by the captain of the canal-boat to the taking of these boats. From these circumstances I infer that the taking of the barge in tow was in accordance with the parties' understanding of the contract made to tow the libelant's boat, and if so, it was not a deviation to land the barge at the Cunard

dock. The libel must therefore be dismissed, and with costs.

<sup>1</sup> Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

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