

THE SNAP. (TWO CASES.)

District Court, E. D. Virginia.

May 27, 1885.

1. TOWAGE—NEW YORK HARBOR—CANAL-BOAT.

In New York harbor, when the wind is from the north-east, blowing at the rate of about 22 miles an hour, there is no undue risk, and it is not a fault on the part of a tug to take in tow an open canal-boat loaded with soft coal down to 18 inches or two feet above the water, and tow her across the North river from Fifth, street, Hoboken, to the New York shore, and then along the protected New York shore, down around the Battery, to a point off pier No. 1, East river.

2. SAME—GALE.

A wind of that velocity is neither a "gale" nor a "storm," but merely a "brisk" wind, and, when from the north-east, need not suspend navigation in New York harbor during its prevalence.

3. SAME—SINKING OF CANAL-BOAT—NEGLIGENCE.

Held, on the evidence in the case, that the sinking of the canal-boat M. was caused by her own unseaworthiness, through leaks in her bottom,—a fact carefully concealed by her master from the master of the tug,—and was not caused by her shipping in water over her combings from the rough sea in the river, as alleged by libelants.

Libel *in rem*, in Admiralty.

Sharp & Hughes, for libelants.

White & Garnett, for petitioner and co-libelant.

Whitehurst & Hughes, for the Snap.

HUGHES, J. The first of these suits is a libel by the owners of 250 tons of soft coal lost upon the canal-boat Martha, while in tow of the tug Snap. The other is a libel by the owner of the Martha, Michael Downs, for the value of the canal-boat, which was sunk in the East river, near the Battery, New York, on the twenty-sixth day of June, 1884. The Martha had been taken in tow by the Snap at Fifth street, Hoboken, some time after 9 o'clock on that morning, had been towed across the North river to a point opposite Desbrosses street,

and had been thence taken down along the piers of North river around the Battery, beyond East river pier No. 1, to the place of sinking. The sinking occurred within an hour after the departure from Hoboken, probably about 10:15 A. M. The Martha had been loaded with coal about 17 days before the twenty-sixth of June, and had been moored at Hoboken ever since, and had lain there, sometimes afloat, but much of the time resting on the mud at the bottom of the river or dock. She was an old boat and had been frequently repaired. Just before the last load of coal had been put upon her, she had sprung a leak by the starting of one end of a plank under the port bow, which was repaired by her owner, Michael Downs, while she was lying on the mud. Her bottom does not seem to have been examined during the time she was loaded with coal. She was in charge, during these 17 days, of a man by the name of Flaherty, whom the evidence shows to have been a worthless, faithless, false person. No faith can be 293 placed by the court in any statements made by him in the testimony which are contradicted by any other witness.

The early part of the twenty-sixth June was a rainy day. A northeast wind was blowing at the rate, as shown by the reports of the Signal Service, of 20 miles an hour at 7 A. M., increasing to 24 miles at 11 A. M. The cautionary signal flag was not put up at the signal station in New York on that day until 10:30 A. M., which was after the Snap and the Martha had crossed North river, and probably after the Martha had sunk in East river. The steam-tug Morris had been ordered to tow the Martha and another canal-boat, similarly loaded, over to Pierrepoint stores, Brooklyn, the afternoon before; but the boats could not then be got off the mud. The Morris waited till the morning of the 26th, and tried again to pull the boats off. She failed with the Martha, but succeeded in getting the other boat adrift, and proceeded with

that one to its destination. The tug Snap, which shortly afterwards came to Hoboken, was then ordered by S. W. Morris, agent of the libelant for the cargo, to pull the Martha off, and tow her over to the Pierpoint stores, Brooklyn. This was after the tide had begun to set in. The Snap pulled the Martha adrift, took her in tow, and proceeded with her across North river. The Martha, having been chartered, when her cargo was put on, by the agents of the West Virginia Central & Pittsburgh Railroad Company, one of the libelants, was under their orders. Michael Downs, her owner, says that the agent of this company had entire control of her, he himself having none, for the time. The testimony is that when afloat with her load the sides of the Martha were 18 inches to two feet above the water, when taken in tow by the Snap; and that no intimation was given to the master of the Snap that she was leaking at her bottom, but that, on the contrary, positive assurances to the contrary were given repeatedly during the voyage. The Martha was taken on the starboard side of the tug, which was on the lee side, and the tug thus formed a partial breakwater for the Martha from a north-east wind.

During the 15 or 20 minutes' time of crossing North river, the wind was blowing probably at the rate of 22 miles an hour. This was a "brisk" wind. It was not the "terrible storm" which the man Flaherty declared it to be. A "gale" blows at the rate of 40 to 60 miles an hour; a "storm" at the rate of 60 to 80 miles. There was neither storm nor gale nor high wind when these vessels crossed North river, but only a "brisk" wind. See Telegraphic Cipher, U. S. Signal Service, (6th Ed.) 38, 39, for classification of winds. Moreover, the wind was from the north-east; from which the North river was protected by Manhattan island, and the tall structures of the compactly built city of New York. It is incredible, therefore, that such "terrible" waves, as the man Flaherty speaks of, were encountered at all;

or that they rose two feet up the sides of canal-boat and surmounted her combings; or that they swept over the decks, or made ²⁹⁴ a pool of water on the soft coal in the Martha three feet deep! The crew of the Snap all testify that the passage across North river was not rough; that no water at all washed over the combings of the canal-boat; and that, after crossing the river, and while going down close in front of the piers on the New York side of the river, the water was smooth.

It is obvious to me, therefore, that the Martha sunk from a leak in her bottom, and that she did not sink from high waves coming in over her decks during her passage across the Hudson. The probabilities would seem to be that this leak opened some time after she was taken in tow, and probably about the time she reached the New York side of North river. She had perceptibly begun to sink when she passed pier 13 of North river. The cargo was owned by, and the canal-boat was under charter to, the West Virginia Central & Pittsburgh Railroad Company. Both tug and canal-boat were under the orders of the agents of this company. One of these agents, S. W. Morris, who was well acquainted with the dangers of the navigation of North river in bad weather, ordered the tug Snap that morning to take the Martha in tow. The responsibility of the trip was thereby assumed by the libelant in the first of these suits. But, in point of fact, no undue risk was encountered. The navigation of the waters around New York city is not suspended whenever a "brisk" wind of 22 miles an hour sets in from the north-east. There was nothing in the weather to forbid the Snap to take the Martha on that morning across North river.

The case is rather different with a *north-west* wind sweeping down the Hudson at the rate of 25 to 42 miles an hour, as to canal-boats on the open bay below. It has been held that it is fault in a tug to tow canal-boats in the open bay during such winds. But the Hudson river itself is land-locked from a *north-east*

wind, and I am sure that it would require a “gale” or a “storm” from that point of the compass to imperil a canal-boat in crossing from Hoboken to the foot of Desbrosses street. I gather from the testimony that the Martha did not begin appreciably to take in water from her leak or leaks in the bottom until after she had crossed North river. Certainly, her own master, the man Flaherty, protested that she had no such leak until after she had rounded the Battery. He did not seem to know that she had been gradually sinking until about the time he became alarmed lest he might himself go down with her, after passing pier 1, East river. He had pumped with his tin pumps several times during the trip, and, though his vessel was gradually filling with water in the bottom, pronounced her dry, because his pumps had sucked. It was not until a short time before the sinking, when the master of the Snap insisted that he should try whether or not there was water in the hold with a rod, that he was confounded with the demonstration that there was much water down there, and that his pumps were worthless. No warning had come from him that his boat was leaking from the bottom, 295 either at Hoboken or during any part of the trip up to the time of sinking. I cannot see that the Snap was in fault in this matter, and I will sign decrees dismissing both of the libels, with costs.

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