

THE SYLVAN GROVE.¹
THE DR. J. P. WITBECK.
WALL *v.* THE SYLVAN GROVE AND ANOTHER.

District Court, E. D. New York.

July 16, 1886.

1. COLLISION—STEAM-BOAT AND SMALL BOAT ASTERN OF TUG—OVERTAKING VESSEL—LIABILITY FOR PERSONAL INJURY.

Libelant's small boat, which was being towed astern of the tug *W.*, was run down by the steamer *S.*, which was on a course overtaking the tug. Libelant's arm was thereby broken, and his boat damaged, for which injuries he brought suit against both the steam-boat and the tug. *Held*, that the steamer, being the overtaking vessel, was bound to have kept out of the way, and was in consequence solely liable for the collision.

2. SAME—FALSE TESTIMONY—ALLOWANCE FOR INJURY TO PROPERTY—FOR INJURY TO PERSON.

Libelant swore falsely that his boat was wholly destroyed. *Held*, that nothing should be allowed for the injury to property. *Held*, also, that he should recover \$500 for the breaking of his arm.

In Admiralty.

Thomas D. Cottman and Biddle & Ward, for libelant.

A. P. & W. Man, for the *Sylvan Grove*.

Benedict, Taft & Benedict, for the *Dr. J. P. Witbeck*.

BENEDICT, J. It is plain enough that, the libelant cannot recover against the *Dr. J. P. Witbeck*, at whose stern he was towing in his boat. It is equally plain that he can recover against the *Sylvan Grove*. The *Sylvan Grove* was overtaking the *Witbeck*, and the *Witbeck*, with the libelant's boat astern, was in plain sight. The duty of the *Sylvan Grove* was to avoid collision with the libelant's boat. If, as she contends, there was a change of course on the part of the *Witbeck*, which brought her on a course crossing the course of the *Sylvan Grove*, then it was the duty of the *Sylvan Grove* to stop, on seeing such change, and, by porting her wheel, avoid running over the libelant in his boat. If she was at a proper distance from the *Witbeck*, there was no difficulty in doing this. If, however, as is more probable, the *Sylvan Grove* approached so near to the *Witbeck*, holding her course, that a shift of the *Witbeck's* wheel, made to allow the *Sylvan Grove* to pass her to port, threw the *Witbeck's* stern a little off shore, and thereby pulled the libelant a little off shore, and under the paddle-wheel of the *Sylvan Grove*, then the *Sylvan Grove* was in fault for approaching so near the *Witbeck*. The libel must therefore be dismissed as to the *Witbeck*, with costs, and the libelant must recover his damages of the *Sylvan Grove*. He had one of his arms broken, and he swore falsely that his boat was wholly destroyed. I give him nothing for the injury to his property. For his broken arm I give him \$500.

Let a decree be entered for the libelant against the *Sylvan Grove* for \$500, and costs.

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