

SMITH *v.* HAVEMEYER AND OTHERS.<sup>1</sup>

*District Court, S. D. New York.*

November 18, 1887.

1. WHARVES—UNUSUAL CONDITION—DAMAGE ARISING THEREFROM—LACK OF CARE AND EXAMINATION—LIABILITY OF OCCUPANT.

The lessee and occupant of a wharf is liable for damage arising from its unusual and dangerous condition, unless he can show reasonable care and examination in regard to the condition of the wharf and slip.

2. SAME—DAMAGE TO VESSEL—STATEMENT OF CASE.

Respondents' wharf, instead of being perpendicular below the water line, extended considerably into the slip. From one of the beams a spike projected, which injured the bottom of libelant's vessel when she went there to discharge. *Held*, in the absence of evidence of reasonable care and examination of the condition of the wharf by respondents, they were liable for the damage.

*Goodrich, Deady & Goodrich*, for libelants.

*John E. Parsons*, for claimants.

BROWN, J. While the bark *Formosa* was lying along-side the dock that for many years had been occupied by the defendants for discharging cargo, she got upon a projection from the pier below the water-line, and received some injury. Subsequently examination by a diver showed that the side of the pier where the *Formosa* lay, instead of being perpendicular below the water, projected considerably into the slip, the successive layers of crib work forming a kind of stairs. A spike projected from one of the beams about six feet above the bottom, and tore off some of the copper of the vessel.

There is no direct evidence to show whether the side of the wharf was originally built in the manner above stated, or whether it had subsequently got into this condition accidentally. There is but a single statement in evidence that has any bearing on the question, viz., that similar vessels had previously been accustomed to lie there without injury. The libelant, in the course of the trial, propounded a question to a witness which, if answered, might have thrown some light upon the cause of the condition of the pier; but, upon objection by the respondent, the question was withdrawn. It was proved, however, that such a shape of the side of the wharf was improper and unusual, and it was clearly dangerous. Such a wharf was plainly not a proper one, or in a proper condition below the water-line to receive vessels for the discharge of cargo. The defendant, as the lessee and occupant of the wharf, is, therefore, *prima facie* chargeable with negligence. To exonerate himself, it was incumbent upon him to show reasonable care and examination in regard to the condition of the wharf and the slip. No proof on this subject being adduced, the *prima facie* liability must stand, and the respondents held to answer for the damages. A reference may be taken to compute the amount.

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar.