

the principal element which enters into the question of the amount of salvage. The circumstances which prevent a large reward are that the labor of the salvors was not great, their property was not put in peril, and the officers and crew of the salvors were not in personal danger in saving the claimant's property. The value of the property which is the subject of this libel is \$29,200. I think that the sum of \$3,504 should be awarded, for which sum, with costs, let a decree be entered in favor of the libelants. The terms of the decree will be settled upon notice.

Upon the libel of Daniel McWilliams *et al.* little need be said in addition to the facts which have been recited. The libel was brought to recover damages for the negligent conduct of the *Intrepid* in attempting to tow the *Vandercook* and her tow, whereby the *Gladwish* and the *Clara McWilliams* were lost. At the close of the trial the libelants admitted that there was no cause of action as to the *Clara McWilliams*. The affirmative testimony as to any negligence with respect to the *Gladwish* was very feeble, and had apparently no foundation in fact. I find that the allegations of the libel as to negligence are not true.

The libel is dismissed, with costs.

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### EVANS v. SPRECKELS.

(District Court, E. D. Pennsylvania. January 9, 1891.)

#### SHIPPING—CARRIAGE OF GOODS—DAMAGES—PERILS OF THE SEA.

A part of a cargo of sugar was damaged by water, during a tempestuous voyage in which the vessel passed through severe storms accompanied by heavy rains, and was much strained and her seams opened. The greater part of the damage was by fresh water. *Held*, as the rain-storms and the condition to which the vessel was reduced would amply account for the presence of fresh water in the cargo, in the absence of satisfactory proof that the damage therefrom arose from other causes, it should be attributed to "peril of the sea."

Libel by Evans, master of the steam-ship *Mineola*, against Claus Spreckels.

*Curtis Tilton*, for libelant.

*Frank P. Prichard*, for respondent.

BUTLER, J. The libelant sues for a balance of freight; and the respondent sets up in defense a claim for damages to cargo. The only question arises out of this claim. A part of the cargo was seriously damaged. The charter exempts damages arising from "perils of the sea." The voyage was tempestuous and perilous; storms of wind and rain were encountered, of extraordinary violence; the deck was at times washed by waves and at others covered by rain-water; the swaying masts and rough sea strained the ship and, temporarily, opened seams through which water entered copiously. The damage arising from this source was unavoidable, and no blame attaches to the ship in consequence.

All damage to the cargo arose from water. According to the testimony of Mr. Wachtel, the respondent's chemist, a part of the damage was caused by salt water and a larger part by fresh. As respects that arising from the former there is no doubt that it is attributable to "perils of the sea." In the absence of satisfactory proof that the damage from fresh water should be attributed to a different source, the same conclusion will apply to it. The entrance of this water, (without such proof,) would be accounted for by the facts stated. I do not find any satisfactory evidence that water entered except through the temporary openings caused by storms. The testimony of Mr. Douglas, a witness called by the libellant, is that he found a "square wooden box or pipe, leading from what he supposed to be the master's cabin," and that it seemed to have leaked, or rather that "there was evidence of water having come through," etc. The witness did not see the water come through, nor test the pipe, nor ask to have it tested, so as to ascertain whether water would come through. This testimony consists of inferences merely; and these inferences,—which I think would not be fully satisfactory, even if we had nothing more,—seem to be completely repelled by the testimony of the master who says, on cross-examination, that the water-tanks are constructed of iron; that they were in sound and perfect condition; have not been repaired since; that he twice tested them subsequently to landing this cargo; and that the ship has recently carried sugar and flour safely. I must infer that this testimony applies to the pipes connected with the tank and all other of its fixtures, or attachments. As the respondent was seeking for evidence to support the testimony of Mr. Wachtel, who had been sent to look for leaks, and was to be called to prove a leak in the sink-pipe, it must be supposed he would have directed the master's attention specifically to the pipe if he did not understand the answers to embrace it. As the respondent's case had not then been developed, the libellant could not anticipate Mr. Wachtel's testimony, and therefore could not be expected to examine the master and others on the subject. Before the testimony of Mr. Wachtel was taken the master and crew, I am informed, had sailed. Besides, it does not appear that the injured sugar was in that part of the vessel. I am not unmindful of the fact that when the sea and rain water entered together, traces of salt would probably be found in all the sugar wet by it. Nevertheless if the fresh water was greatly in excess, the existence of salt in the sugar might not be detected by the test applied. It is quite probable, however, and indeed I think certain, that much fresh water entered when the waves were not washing the deck. Rain fell for many days, in great quantities,—sometimes flooding the deck, as the witnesses describe; and although it passed down through the seams produced by the storms, some, doubtless, passed down where no sea-water had gone; and even where the sea-water entered it is probable a much larger amount of rain-water went in, not only with it, but at times when the deck was not washed by waves, and consequently sank deeper, and spread wider, leaving no perceptible traces of salt. A decree must therefore be entered in the libellant's favor for the value of the freight claimed.

## PIERCE v. THE J. R. P. MOORE.

(District Court, E. D. North Carolina. December, 1890.)

## 1. COLLISION—VESSEL AT FAULT—DIVISION OF DAMAGES.

In case of a collision between vessels, one of which has been guilty of a clear fault, there must also be clear evidence of contributing fault on the part of the other, to divide damages.

## 2. SAME—VESSEL AT ANCHOR—LIGHTS.

A schooner collided with a yacht, which was at anchor in the channel of a river. There was no one on the deck of the yacht. The mate whose watch it was was in the mess-room, and probably asleep. A light had been burning during the night. The mate testified that he saw it an hour before the collision, that it was shining on his feet, so that he could not have missed, and that he had been absent from the deck only 10 minutes. On the schooner the master was on deck, the mate on the lookout, and a man at the wheel, and they all testified that there was no light on the yacht. A witness who lived near the river had seen the yacht at anchor the day before, and noticed her light during the night. Two hours before the collision he had looked for the light, and it was gone. *Held*, that it was clear that the yacht had kept neither anchor light nor anchor watch as required by statute.

## 3. SAME—DIVISION OF DAMAGES.

It was a very dark night, and the yacht was at anchor in the channel 25 miles from any frequented port. An expert testified that the lookout on the schooner ought to have seen the yacht at a distance of 200 or 300 yards, and that, if he had seen her at 300 yards, the schooner ought to have cleared the yacht. The schooner was sailing at the rate of 6 knots, and would have covered 300 yards in some seconds more than a minute. *Held*, that the evidence of fault on the part of the schooner was not clear enough to justify a division of damages.

In Admiralty.

*Clark & Clark*, for the Nydia.

*M. D. W. Stevenson* and *L. I. Moore*, for the Moore.

SEYMOUR, J. This is a case of cross-libs for a collision which took place at a few minutes before 6 in the morning of the 13th of last December, near the mouth of the Neuse river. The steam-yacht Nydia, of which Dr. R. V. Pierce is owner, was lying at anchor near Garbacon shoal, in the channel of the river. It was not a fault that she lay there, for the river is wide and deep at this place, and there was abundant room to pass on either side of her; but being in a passage-way she was required by statute to keep both anchor light and anchor watch.

*Case as against Yacht.* She kept neither. As for the light, the yacht had been burning a bright light during the early part of the night, visible at a distance of several miles,—certainly of two miles,—but this light was in a lantern attached to a mast which was carried away in the collision. There was no one at the moment of the accident on the steamer's deck. The cook was up, in his galley making preparations for breakfast. The mate, whose watch it was, was in the mess-room, and probably asleep. He says he had been there but 10 minutes. Whether awake or asleep, he certainly was not at his post. A mariner testifies to having seen the light burning during his watch, which was from 7 to 11 at night. The mate says he looked at the light, and saw it, about an hour before the collision, and that it was shining on his feet all the time, so that he could not have missed it. On the deck of the schooner were three men,—the master on the quarter-deck, the mate on the lookout,