

if an independent action against the libelant alone would not be maintainable upon the facts stated, neither can this special defense, which is in reality a cross-demand, and the same as another action, be maintained in this case. For these two reasons, therefore, viz., that the contract was not pleaded, and that the facts stated do not constitute a cause of action against the libelant singly, I decline to consider the defense made upon the testimony; and, the libelant having established his demand, a decree will be rendered in his favor for the sum sued for,—\$205,—and costs.

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WAGNER v. THE W. M. WOOD.

(Circuit Court, E. D. Louisiana. February 19, 1891.)

TOWAGE—NEGLIGENCE OF TUG.

Where a tug, in attaching to its tow a heavily loaded barge, collided with it, causing some of its seams to open, and handled it in a reckless manner, against the remonstrance of the master of the barge, it is liable for the damages resulting therefrom.

In Admiralty.

PARDEE, J. This cause came on to be heard upon the transcript of record and the evidence, and was argued by Mr. Richard De Gray, proctor for libelant, and Mr. Charles S. Rice, proctor for claimant. Upon consideration whereof the court finds, on undisputed evidence, that the barge, loaded with libelant's brick and lumber, did not leak before the tug Wood took her in tow; that the said barge took in water over the gunnels, and also began leaking after being taken in tow by the said tug; that the leaking of said barge was serious in character, because the barge continued to settle in the water after being placed in still water at the wharf of the oil company. And the court finds by the preponderance of evidence that when the tug Wood hitched onto the barge in Diamond Eddy there was a collision between the two, which probably resulted in opening some of the seams of the barge, causing the barge to leak; that the handling of the barge by the officers and crew of the tug Wood was reckless, and unnecessarily exposed the barge to danger, particularly if it be true, as stated by them, that the barge was overloaded; that the master of the said tug exhibited reckless obstinacy in refusing to land the barge at the place originally intended; and that the said barge was not overloaded. Wherefore it is ordered, adjudged, and decreed that the libelant, O. V. Wagner, do have and recover from the Charlie Wood Transportation Company, claimant and owner of the tug W. M. Wood, and from P. M. Schneidau, surety on the release bond, *in solido*, the sum of \$594.75 damages, and all costs of the district and circuit courts to be taxed, for which execution may issue in five days after the final signing of this decree.

THE INTREPID.<sup>1</sup>

## WRIGHT v. THE INTREPID.

(District Court, E. D. New York. March 28, 1891.)

## COLLISION—ATTEMPT TO PASS VESSEL AHEAD—NEGLIGENT SHEER.

The steam-boat M., going at night with a strong flood-tide up the East river, overtook two steam-boats, also going up stream. When in a narrow part of the river, the steam-boats ahead gave two whistles, and stopped to await the passing of the tug L., which, with a car-float along-side, was coming down stream near the Brooklyn shore. The M., without stopping, ported, to pass around the boats ahead, and discovered the tug and car-float so near that it was impossible to escape collision. *Held*, that the cause of the collision was the improper sheer of the M., under the stern of the boats ahead.

## In Admiralty.

The steam-boat Morrisiana, going at night with a strong flood-tide up the East river, overtook two steam-boats, also going up stream. When about off Ninth or Tenth streets, New York, in a narrow part of the river, the steam-boats ahead gave two whistles, and stopped to await the passing of the tug Intrepid, which, with a car-float along-side, was coming down stream near the Brooklyn shore. The Morrisiana, without stopping, ported, to pass around the boats ahead, and discovered the tug and car-float so near that it was impossible to escape collision.

*Wing, Shouddy & Putnam*, for claimant.

*George A. Black*, for libellant.

BENEDICT, J. In my opinion the cause of the collision which gave rise to this action was a sudden sheer of the Morrisiana, improperly taken under the stern of the ferry-boat ahead of her, and when the Intrepid was so near that it was impossible thereafter to escape collision. An effort has been made to locate the place of this sheer at a great distance from the ferry-boat, but the effort has failed. It is impossible for the Morrisiana, in my opinion, to escape the effect of the sworn statement of Capt. Geer, her master, made the next day after the collision, wherein he says: "When within about a hundred feet of the stern of the ferry-boat, we ported our helm. As we passed the stern of the ferry-boat, we discovered the tow."

The libel must be dismissed, with costs.

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