

Thereafter Havens paid, on account of this agreement, on August 1st, \$50; on August 31st, \$50; on October 8th, \$50; October 10th, \$50,—making in all, \$200. In February, 1890, these lighters were libeled by various lienors, and then Jones and Whitmill filed a libel against the Half Moon, and also against the Carrie, to enforce lien for the amount of the repairs done by them, respectively. In this action of Jones and Whitmill one of the said lienors appeared to defend, and filed his answer denying that Jones and Whitmill had any lien by reason of the agreement of August 9, 1888, between Jones and Whitmill and Havens, above set forth. The contention of these intervenors is that Jones and Whitmill by that agreement accepted the personal responsibility of Havens for their debts, and waived any lien upon the vessels mentioned therein. The question thus raised for decision is whether the agreement of August 9th, as set forth, was an abandonment of any lien Jones and Whitmill may have then had against the lighter Half Moon. In my opinion, that agreement was, in legal effect, an abandonment of the lien, for the reason that after the execution of the agreement, and certainly after the receipt of \$200 on account of that agreement, it became impossible, by reason of the terms of the agreement, to designate any definite sum constituting a subsisting lien upon any particular one of the vessels named. The intention of the parties must have been to look to the personal responsibility of Havens, and not to the Half Moon, for they entered into an agreement which made it impossible thereafter to state any sum for which the lighter Half Moon was liable. This intention is confirmed by the acts of Jones and Whitmill subsequent to the agreement, for, although they made frequent demands upon Havens for payment of the debt after the agreement of 1888, they took no proceeding against the lighters until they were seized in other actions, some two years and eight months after the bill was incurred, and one year and six months after the agreement was signed, and eight months after the lighters had been transferred, with the knowledge of Jones, to Thomas T. Costigan, who witnessed the execution of the agreement of 1888. There must therefore be a decree dismissing the libel, with costs.

THE CHARLES RUNYON.

MORSE v. THE CHARLES RUNYON.

(District Court, E. D. New York. June 19, 1891.)

TOWAGE—DUTY OF TUG TO LEAVE TOW IN SAFE BERTH.

A tug left a sound canal-boat at a pier to which the master of the canal-boat objected as unsafe. At low water the canal-boat broke in two. The water was 3½ feet deep at the end of the pier. The evidence as to the depth of water at the bows of the canal-boat was conflicting. *Held*, that the evidence of the soundness of the boat, and the fact that she actually broke in two, together with the positive evi-

¹Reported by Edward G. Benedict, Esq., of the New York bar.

dence of libellant that the water was shallow, placed the weight of evidence as to the unsafe nature of the place with libellant, who was therefore held entitled to recover his damages.

In Admiralty. Suit to recover for loss of a canal-boat.

Anson Beebe Stewart, for libellant.

Wing, Shoudy & Putnam, for claimant.

BENEDICT, J. This is an action to recover of the steam-tug Charles Runyon damages for neglect in respect to the canal-boat Thomas Dobby. On the 13th day of March, 1889, a contract was made by the owners of the tug Charles Runyon to tow the canal-boat Thomas Dobby, loaded with a cargo of coal, from Port Johnson to Barren island. The tug started in the morning with the canal-boat, but after she passed Norton's Point the weather proved so heavy that the tug deemed it prudent to go no further. She accordingly turned back with the canal-boat, and, taking the canal-boat to the north side of the American cotton docks on Staten island, left her there, along-side of the north side of pier No. 1. The place where the canal-boat was left was not a regular slip. It had never been excavated for a slip, but was simply part of the land used by the light-house station at Staten island, which adjoins pier 1 of the cotton docks. At the time the canal-boat was left at that pier, the master of the canal-boat objected to the place as unsafe. The wind was then high. During the afternoon the master of the canal-boat proceeded to New York, and informed the owners of the tug that the boat was in danger, and requested them to move her to a safe place. They promised to do so in the morning. The master also made unsuccessful efforts to procure another tug to move him to a safe place. The bottom along-side pier 1, where the canal-boat was moored, was a shelving bank, the water being some 30 feet deep at the end of the pier, and shoaling towards the shore. During the night the canal-boat suddenly broke in two and sank, the captain and his wife barely escaping with their lives. For the damage thus resulting this action is brought by the owner of the canal-boat.

No doubt exists as to the obligation of the tug to put the canal-boat in a safe place, when it was found best to turn back, and the ground of the contention in behalf of the canal-boat is that the place where the canal-boat was left was an unsafe place, because of insufficient water under the bows of the canal-boat. Upon the question of the depth of water at that place much testimony has been taken on both sides, and the conflict of testimony is extraordinary. Many witnesses swear that the water was by actual measurement eight and one-half feet at the lowest depth, and on the other side, witnesses who have actually measured it declare that it is not more than three or four feet. In this conflict of testimony as to the depth of water at the place where the boat lay notice must be taken of the undisputed fact that the canal-boat did break in two while lying at this place at low water. The claimant attempted to meet this by testimony going to show a bad condition of the boat. No other explanation has been attempted of the fact that the boat actually broke in two at low water at this place. The weight of the evidence is that the boat was

sound and strong. The sound condition of the boat, the sinking of the boat at low water, taken in connection with the positive evidence on the part of the libelants as to the depth of water, places the weight of the evidence with the libelant. Accordingly, it must be held that the tug-boat left the canal-boat at a place where it was unsafe for her to lie, by reason of which neglect the canal-boat was sunk.

There will therefore be a decree for the libelants, with an order of reference.

THE CALVIN S. EDWARDS.¹

SHARPLEY *et al.* v. THE CALVIN S. EDWARDS.

(District Court, E. D. New York. July 1, 1891.)

SALVAGE—DERELICT.

Where a schooner was found by salvors off the New Jersey coast, derelict, with four or five feet of water in her, and held to an anchor by a single hawser nearly chafed off, and was brought into port in safety in the face of a threatened storm, it was held, that the cargo of lumber aboard the vessel, and which was valued at \$1,500, should pay a salvage of \$675.

In Admiralty. Suit to recover salvage.

Wing, Shoudy & Putnam, for libelant.

Robert S. Minturn, for the vessel.

Peter S. Carter, for cargo.

BENEDICT, J. This is a claim on the part of the owners of the schooner *Eleanora* and the owners of the steam-tug *Idlewild* to recover salvage compensation for services rendered to a derelict. The schooner *Calvin S. Edwards*, laden with lumber, was discovered by the schooner *Eleanora* below *Absecomb*, abandoned, with four or five feet of water in her; the gaff, foregaff, and forebeam broken; no boats, no water-barrels on board; all sails gone but the topmast staysail; held to an anchor by a single hawser fastened to her bitts, and nearly chafed off; her chains were overboard with no anchors attached. As she was situated, she would have held on but a very little while longer. The *Eleanora*, finding her abandoned, made a line to her, put three men on board of her, and commenced to tow her towards New York. This was about 9 o'clock in the morning, and the sea was calm. After a while the wind began to breeze up, and the line parted. Then another line was made fast to her. By the time the *Eleanora* had arrived with the derelict off *Barnegat* the weather was looking very ugly. About 9 o'clock in the evening, the tug-boat *Idlewild*, coming in sight, was signaled, and asked to assist the *Eleanora* to get the derelict into port. This she agreed to do upon an understanding that any salvage that might be realized would be divided equally between the tug and the schooner. By the combined efforts of these two vessels the derelict was brought safely into

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