

been unmindful that in the case of *Ciampa v. The F. W. Vosburgh*, 41 Fed. Rep. 57, the learned judge for the eastern district of New York has, upon consideration of a portion of the testimony presented to this court, based upon the same collision, adjudged the Vosburgh guilty of negligence in suddenly changing her course from the eastward to the westward when too near the dredge safely to make such change. The opinion and judgment of so able a judge should receive the most careful consideration, and are justly entitled to the greatest weight. Had the evidence presented in this court been substantially the same as that considered in the court in New York,—although its weight might not have been as impressive to me as it seemed to the learned judge there,—I should unhesitatingly have adopted his conclusions. But in addition to the testimony there submitted, is now for the first time presented the testimony of two witnesses, whose statements under oath I cannot reject. This new testimony, if received as true, clearly proves, as it seems to me, the very important fact that the Vosburgh made no variation or change in her course after she shaped it in taking the Mifflin range lights to go to the westward of the dredge. If this is so, the theory of the claimants that it was the sudden change of course by the tug when near the dredge, that caused the ship to strike the dredge, falls to pieces. There is nothing to sustain it. This testimony was not before the court in New York. Had it been, the result might have been different. At any rate, the introduction of such new testimony makes the present case a different one from the one referred to, and it is therefore entitled to a thorough and independent consideration.

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THE NORA COSTELLO.<sup>1</sup>

MORRISSEY *v.* THE NORA COSTELLO.

(*District Court, S. D. New York. May 30, 1891.*)

ADMIRALTY—MAKING FAST TO WHARF—INSUFFICIENT FASTENING—BREAKING ADRIPT.

Libellant's boat was lying off the end of pier 2, near Wallabout canal, in the East river. Twenty-five feet away, and at pier 1, lay a tier of 6 boats, among them the *Nora Costello*. One hundred feet above these lay another tier of 8 or 10 boats. On the turn of the tide, the wind blowing fresh at the time, the whole last-named tier broke loose, and was carried down upon the second tier of boats, which in turn gave way, and swung around upon the boats off pier 2, the *Costello* striking libellant's boat, and doing damage, to recover for which this libel was filed. The libel charged that the *Costello* was not properly made fast to the pier. The evidence showed that she was fastened in the customary manner. *Held*, that vessels, in making fast to piers, are bound to provide only against ordinary contingencies, such as they can anticipate; that they are not bound to make fast by lines so strong or numerous as to resist the impact of such a fleet of vessels as got adrift in this case; and that, as there was no negligence in the *Costello* as to her mode of fastening, the libel against her should be dismissed.

In Admiralty. Suit to recover damages caused by collision.

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

*Alexander & Ash*, for libellant.

*Hyland & Zabriskie*, for respondent.

BROWN, J. On the morning of July 9, 1890, the libellant's canal-boat John Kelly was lying off the end of pier 2, bow down, to the southward of Wallabout canal, outside of a lighter, which was fastened at the end of the dock. The canal-boat had one line run to the dock, and two lines were made fast to her and the lighter. A space of about 25 feet separated these boats from another tier of six boats that lay in a similar manner off the end of pier 1; among them the Nora Costello, which had arrived there that morning with a cargo of ice, and was directed to take her position as the fourth boat off from the pier. Afterwards another boat came, and made fast outside of her. About 100 feet above the boats off pier 1, was another tier of 8 or 10 boats, all along-side and off the bulk-head immediately north of the canal, fastened to one another; and the inside boat, at least, had her northerly end made fast to a ring bolt in the string piece of the bulk-head. When the tide became flood, running south at that point, and the wind fresh from the north-west, the whole last-named tier gave way at the northerly end and swung off from the wharf, and were carried down upon the tier of boats off pier 1. The impact broke the northerly line that held the latter boats to pier 1, so that they swung around and came down upon the boats off pier 2; the Costello striking against the stern of the Kelly, and breaking her taffrail, and doing other damage, to recover for which the above libel is filed.

The faults charged upon the Costello are that she was not sufficiently made fast to pier 2, nor properly manned. There is no evidence to sustain the latter charge, and the controversy has turned mainly upon the obligations that attach to boats moored outside of others in the manner above stated. There is some evidence indicating that the pressure of boats for room there is so great that not infrequently in the crowding together some get loose, or break away; one tug finding its business in keeping them in place. The result of the evidence given on both sides as to the usual practice of boatmen in fastening their boats, and as to what is usually deemed safe and prudent, is that boats fastened outside of others should run at least one line to the shore, if that can be readily done; but it is not considered necessary, nor is there any uniform custom to do so, where the boat next to the dock is securely fastened by an abundance of strong lines, and where the cargo of intervening boats makes it difficult or improper to run lines across. I do not think it is any part of the legal obligation of boats mooring along-side of the wharf to make fast by lines so strong or so numerous, or by such attachments, as to resist the impact of such a fleet of vessels as got adrift in this case and came down upon them. The weight and force of such impacts are wholly beyond the calculation of ordinary boatmen. It is enough, in my judgment, that each boat secures itself properly against all the ordinary forces of wind, tide, or other causes to be looked for in the position taken for mooring. The tier in which the Costello lay received the force

of 8 or 10 boats that had broken loose from the bulk-head above by the giving way of the string piece. No such accident had occurred before, or was likely to be anticipated. It was a vast weight that came down with the wind and tide, and such as must inevitably carry away the boats below that were only secured by fastenings sufficient for ordinary navigation. The Costello's tier was in like manner carried down from her own pier to the tier below, in which the libelant's boat lay; and, although she was secured by a line to the dock, it was parted by the impact. And that tier also would probably have gone below had it not been bound in against the wharf by the wider tier from above. The claimant's witnesses testify that they could not carry a line to pier 1, because the boat next inside of her had a deck-load, which prevented; nor could they lawfully have carried a line across the canal to the bulk-head above, the only leading line that could have done any good. The harbor master testified that the claimant's boat was moored in the customary way, and that the two boats nearest the pier were both made fast to it. The claimant's captain also testifies that, before making fast to the third boat, he examined the lines of the inside boat, and found that they were new, strong, and secure.

Upon these facts I cannot find that there was any negligence in the claimant's boat in her mode of fastening. It was evidently, it seems to me, sufficient for all ordinary contingencies, such as she was bound to anticipate; nor is there any reason to suppose that, if an additional line had been run to the pier, it would have made any difference when the tier of 8 or 10 boats from above came down upon the tier off pier 1. Such a line would have been snapped at once, as was that of the libelant's boat. In substance, the present case, it seems to me, does not differ from those that have arisen from time to time, in which one boat is injured by another that is driven upon her, without the fault of either, by the impact of a third boat upon the second, through the fault of the third. In such cases the latter boat alone is held responsible. *The Moxey*, 1 Abb. Adm. 73; *The Grapeshot*, 38 Fed. Rep. 156; *The W. J. McCaldin*, 35 Fed. Rep. 330; *The Northam*, 37 Fed. Rep. 238. In the present case it does not appear what or whose was the original fault in consequence of which the tier of 8 or 10 boats off the bulk-head got adrift. That, it seems to me, is the true and necessary inquiry in fixing the responsibility for the libelant's damages. No fault or negligence being proved in the claimant's vessel, she must be acquitted.

Libel dismissed, with costs.

THE EMMA KATE ROSS *et al.*MYERS EXCURSION & NAVIGATION CO. *v.* THE EMMA KATE ROSS *et al.*

(Circuit Court, D. New Jersey. May 8, 1891.)

## 1. COLLISION—CROSSING COURSES UNDER STEAM.

A steam-tug and a steam-boat approached each other on crossing courses in the Hudson river, when the tide was about slack water, on a bright moonlight night. Each vessel was seen from the other a considerable time before the collision. The red light of the tug was first seen from the steam-boat, which was going down stream, and a little later the green light also, when she gave a signal by one blast of her steam-whistle, and held on her course. The steam-tug answered with one blast, and did not change her course either until too late to avoid collision. *Held* that, under the provision of Rule 19, Rev. St. U. S. § 4233, that if two steam-vessels are crossing so as to involve the risk of collision, the one which has the other on her own starboard side shall keep out of the way, the steam-tug should have passed under the stern of the steam-boat, and was at fault in persistently attempting to cross her bows.

## 2. SAME—DEMURRAGE—NET VALUE OF CHARTERS.

An excursion steamer was so injured in a collision as to be necessarily delayed for repairs 21 days, during all but one of which she was under charter. Her engagements were filled by other vessels of the libelant, on all but eight days, when another steamer was hired to take her place. *Held*, that an allowance of the net value of her charters for the days on which her place was taken by other vessels of libelant was proper.

Affirming 41 Fed. Rep. 826.

In Admiralty. Appeal from district court.

*Wing, Shoudy & Putnam*, for appellants.

*Robert D. Benedict*, for appellee.

## FINDINGS OF FACT.

ACHESON, J. The court finds the following facts:

*First.* On the 23d day of June, 1888, at about 11 o'clock P. M., a collision occurred on the Hudson river, a short distance south of the ferry of the Pennsylvania Railroad Company, between the claimants' steam-tug, the Emma Kate Ross, bound from pier No. 1, North river, New York city, to the Red Star Steam-Ship Company's docks, Jersey City, and the libelant's side-wheel steam-boat Crystal Stream, bound from the foot of Thirty-Fifth street, New York city, to the Communipaw Coal Company's docks, Jersey City. It was a bright, moonlight night. The tide was about slack water, running ebb on the New Jersey shore. There was no wind.

*Second.* Both vessels were in plain sight of each other, and each was actually seen from the other some considerable time before the collision.

*Third.* The two vessels were on crossing courses, and from the time they came in sight of each other until the moment of collision the Emma Kate Ross had the Crystal Stream on her own starboard side.

*Fourth.* The Crystal Stream was proceeding down the river on a southerly course, parallel with the New Jersey shore, and about 300 yards distant easterly from the exterior line of the piers. When about opposite the Pennsylvania Railroad Company's ferry, the pilot of the Crystal Stream sighted the red light of the Emma Kate Ross. A little later her