

PER CURIAM: There is no merit in the claim of the libellant for the detention of his vessel at Richmond. He was aware of this himself, and did not assert any such claim in his conversations with the respondents, but insisted upon compensation for the detention at Poughkeepsie. The respondents, recognizing their liability for the detention at Poughkeepsie, tried to induce him to accept \$100 in full. He refused, and they handed him a check for \$125. When he read it, and saw the amount, he told them it would not satisfy the owners; but they insisted upon his keeping it, telling him, if he found it did not satisfy the owners, to return it; and he replied that he would sue them. Not only did he not promise to accept the check in full settlement, but he did not expressly promise to return it. If his conduct led them to suppose he would return it before suing them, they have lost nothing by his omission to do so. Even if he had expressly promised to do so, his subsequent neglect or refusal would not afford the respondents a defense. He was entitled to a much larger sum; and nothing short of an accord and satisfaction, or the acceptance of the check as a discharge in full, is a release. The decree is affirmed, without costs of this court to either party, both parties having appealed, and the cause is remanded to the circuit court with instructions to enter a decree accordingly, with interest.

THE FRED. JANSEN.

LYNCH *et al.* v. THE FRED. JANSEN *et al.*

(*Circuit Court of Appeals, Second Circuit. January 13, 1892.*)

COLLISION—SAIL AND TUG WITH TOW.

The schooner T. was going westward through East river, at flood-tide, keeping close to the eastern shore of Ward's island to avail herself of the slack-water. The wind died out as she reached Negro point, and here she was overtaken by a tug towing a schooner on a hawser of about 300 feet. The tug passed on her port side at a distance of from 40 to 150 feet, but, as the T. struck the tide, which here sets strongly towards Long island, she sheered to port, and struck the tow, though she put her wheel hard a-port, and dropped her main peak. *Held*, that the tug was solely in fault, as it was her duty, as an overtaking vessel, to take sufficient room for a safe passage. 44 Fed. Rep. 773, reversed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Admiralty. Libel by Daniel Lynch and others against the steam-tug Fred. Jansen for collision. The libel was dismissed in the district court, which decree was affirmed by the circuit court. Libellants appeal. Reversed.

Edward D. McCarthy, for appellants.

Wm. W. Goodrich, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

LACOMBE, Circuit Judge. This is an appeal from a decree of the circuit court, affirming a decree of the district court for the southern district of New York, dismissing the libel.

On May 22, 1890, about 11 A. M. the schooner Titus, loaded with sand, was proceeding through Hell Gate, between Ward's island and the Long Island shore, bound for Newark, N. J. She was keeping towards the Ward's Island shore, and her witnesses claim that she was hugging it closely, so as to avail of the slack-water, the tide being then flood. She was heading about south-westerly, with her booms on the starboard side. There had been a little wind about E. N. E., but this died out. As she reached Negro point, which projects into the channel from the Ward's Island shore, she suddenly took a sheer, or rather swept over bodily, towards mid-channel, although, as the answer alleges, "she had put her wheel hard a-port, and dropped her main peak, but was unable to control her movements." Before she took this sheer she was overtaken by the steam-tug Fred. Jansen, towing the schooner William O. Snow on a hawser about 300 feet long. The tug passed the Titus on the latter's port side, and had got beyond her when this sheer took place. The Titus swept over and came in collision with the Snow, although the latter starboarded to avoid her, coming, in consequence, into contact with a lighter on her own port hand. The material point in the case is the distance at which the tug passed the Titus; for, being the overtaking vessel, it was her duty to allow a sufficient margin of safety for herself and her tow, or to delay passing the Titus till a wider channel, the absence of other craft, or a more favorable condition of wind and tidal currents gave assurance that she might pass in safety. There is great difference between the witnesses in their estimates of the distance between the tug and the Titus when the former passed her. The witnesses from the Titus make it about 25 feet, those from the tug and the master of the tow 100 to 125 feet, and the tug's pilot 300 feet. Disinterested witnesses estimate it at from 40 to 150 feet. There is a like discrepancy in the estimates as to the distance of the Titus from shore. The district judge found the place of collision to be nearer 300 than 200 feet from shore, and that the tug passed the Titus with a margin of 200 feet, (which is a larger estimate than that of any witness except her pilot;) and held that to be a reasonable distance to pass, because, though the tug's pilot might expect some swinging by the Titus when she struck the flood-tide, he could not expect her to swing out so far. It appears by undisputed testimony that when the tide is flood there is slack-water along the Ward's Island shore, extending out some way from the shore above Negro point, and a sharp set of the tide from Negro point over towards the Long Island shore, the natural tendency of which is to throw a vessel coming out of the slack-water into the tide over towards mid-channel.

The testimony seems to leave no doubt that the movement of the Titus was caused by the action of this tidal current, which she was unable to counteract, because, the wind dying out, she had not sufficient motive power to make headway against it, and that she did all that

good seamanship required in putting her helm hard a-port and dropping her main peak. Whatever, then, may have been the distance of the Titus from the shore when she struck the tide, and at whatever distance the tug passed her, it was undoubtedly so short that a schooner such as the Titus, having but little way on her in so light a wind, would be, by the action of the tide alone, carried over that distance in the time it took the tug and the tow to move about 150 feet; for the Titus did not begin to swing till the Jansen had passed half the length of the towing hawser beyond her. There is no suggestion that there was any abnormal condition of the tide on the day of the collision. Its set and strength is known to navigators in those waters, and was known to the master of the Jansen. He admitted that, "provided the Titus had been in the slack-water, and then had dropped into the tide, it might cause her to make a little sheer,—quite a sheer if the tide was strong;" insisting, however, that she was not in the slack-water, but in the tide, when he passed her. We are satisfied, however, as was the district judge, that the Titus was in the slack-water, going close along the shore, and that her swing followed naturally from her striking the tide. It was a movement, therefore, that should have been anticipated and guarded against by the master of the tug if he decided to overtake and pass her in that part of the channel. The precise moment when the wind died away is not entirely clear upon the evidence; but it was certainly so light when the Jansen passed that he had reason to anticipate that the Titus would not have sufficient headway to control herself when she struck the tide; She was moving, as he admits, so very slowly then,— "scarcely stemming the tide,"—that he supposed she must be retarded by the flood-tide; mistakenly, for we are satisfied she was then in slack-water. The master of the Grace Fee, a tug bound eastward at that time with a tow, and who was called as a witness by the claimants, thought there would be a collision before the Titus began to sheer, because, the wind being light, and the Titus having "little way," he expected the tide would cut her out into the stream far enough to hit the Jansen's tow. For not anticipating and providing for that contingency, we think the Jansen, an overtaking steam-vessel, was in fault. The decree of the circuit court is reversed, and the cause remanded, with instructions to enter a decree in favor of the libelants for damages, with costs of the district court, disbursements of the circuit court, and costs of this court.

DRESSER v. EDISON ILLUMINATING CO.

(Circuit Court, D. Rhode Island. February 12, 1892.)

1. JURISDICTION OF FEDERAL COURTS—CITIZENSHIP—RESIDENCE.

Where the parents of a minor remove from the state of her birth when she is 10 years old, her citizenship follows theirs, although for nearly 10 years longer she remains in the original state, completing her education, and spends but part of each year at the new home of her parents.

2. SAME.

One who depends entirely upon her grandparents for support, and makes her permanent home with them at the place of her former residence, continues to be a resident of that place, though in company with her grandmother she spends about half of each year in a different state, living in different rented houses, and has the *bona fide* intention of becoming a resident of the latter state.

At Law. Action by Susan L. R. Dresser against the Edison Illuminating Company. Heard on motion to dismiss for want of jurisdiction. Granted.

Wm. G. Roelker, for plaintiff.

Saml. R. Honey and *Arnold Green*, for defendant.

COLT, Circuit Judge. The defendant moves to dismiss this suit for want of jurisdiction, upon the ground that the plaintiff, at the time of bringing the suit, was a citizen of the state of Rhode Island, and not a citizen of the state of New York, as alleged in her writ. It appears from the affidavits that the plaintiff is the daughter of George W. Dresser, and that she was born in the city of New York in 1864, where her parents then lived. Subsequently, Mr. Dresser moved to Newport, R. I., and he became a resident of that city as early as 1875. This appears from the following facts: He began paying personal property taxes in Newport in that year; he registered in Newport as a voter in 1873; he was on the voting lists of that city from 1878 to 1881, and voted there in 1880; he died in Newport in 1883, and was buried there. Mrs. Dresser, the plaintiff's mother, died in Newport a short time before her husband, and was buried there. The plaintiff remained at school in New York after her father changed his residence to Newport, and down to about the time of her father's death, in 1883, spending only a portion of each year in Newport. This circumstance, taken in connection with the fact of her birth in New York, is urged to support the position that she still remained a resident of New York. When Mr. Dresser established his residence in Newport, the plaintiff was a minor, about 10 years of age. Her place of residence, therefore, would naturally follow that of her parents, and would be in the place where the family home was located. Although the plaintiff continued her education in New York, and passed only a part of each year in Newport, she became legally a resident of Newport when her parents became residents of that city, and made it their permanent domicile and place of family abode. I have no doubt, therefore, that Newport was the legal residence of the plaintiff on the death of her father in 1883, she being then 19 years of age. Upon the death of their parents, the Dresser children,