

the libellant's measurements after the grounding, showing that at a point 30 feet distant abreast of the bow to the right, the water was three inches less, confirm the pilot's statement in this respect.

The libellant testifies that he had repeatedly sent up the creek a greater tonnage load than was aboard the canal-boat at this time. Opposed to this is the testimony of the consignee's son, that when the boat arrived up the creek on this trip she drew 5½ feet after 30 tons had been removed for the purpose of getting her off. Some explanation of these apparent discrepancies may, perhaps, be found in the fact that the canal-boat had been leaking before she arrived at the bar, so much so that in the absence of the boat's captain, two men were employed to pump; and in coming down the two women on board were seen working the pump. With the boat much loaded by the head, the water from any leak would accumulate there and increase the draft forward.

It is urged that the captain of the tug, before taking the boat in tow, ought to have examined her draft, and should not have taken her in tow if the water was insufficient. This would undoubtedly be so if this had been a first trip, and the captain and the owner of the Long had no knowledge of the circumstances. In that case it would be the business of the tug-boat to inquire into her draft before trying to take her over the bar. But in the present case there had been a long previous course of dealing; the boat had been up the creek many times in charge of this tug; the requirements were well understood by all parties; and the captain had no reason to suppose the boat was loaded deeper than usual, or contrary to the known usage. No intimation of it was given to him. In coming to be towed in accordance with the previous custom, it was the duty of the tow to conform to the well-known requirements, and she was presumed to have done so. The tug was not put upon inquiry, and had no reason to make inquiry or investigation concerning the canal-boat's draft. As the grounding arose from overloading, either by too much cargo, or lack of proper pumping, the fault was with the canal-boat; there was no negligence or fault on the part of the tug. I have examined the various authorities cited by the libellant's counsel, but do not find them applicable to facts like the present. As the tug is not an insurer, but liable for negligence only, the libel must be dismissed with costs.

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THE JOHN A. CARNIE.

THE OLINDA.

ANDRESEN v. THE JOHN A. CARNIE.

(District Court, E. D. New York. February 18, 1892.)

**TUGS AND TOWS—STEAM-SHIP IN TOW—COLLISION WITH PIER—RESPONSIBILITY.**

In hauling a steam-ship, with steam up, out of a basin, it is the usual practice to have a single tug haul her stern foremost on a hawser, the vessel to check her sternway, if too great, by going ahead on her own engine. The steam-ship *Olinda* was being so taken out of the Atlantic basin when her stern struck one of the piers of the outlet, doing damage for which this libel against the tug was filed. It appeared

that her master and a pilot were on the bridge, also that her screw had been going full speed astern for a time before the collision. On conflicting evidence, held that the master of the steam-ship, not the master of the tug, was in charge of the ship's engines, and was responsible for the excessive sternway caused by the steamer's backing "full speed" astern, which was the proximate cause of the collision; that the navigation of the tug was in no way improper; and that the libel against her should be dismissed.

In Admiralty. Suit by owner of steam-ship *Olinda* against the steam-tug *John A. Carnie* to recover damages caused to the steam-ship by colliding with a pier while in tow of the tug. Libel dismissed.

*Wing, Shoudy & Putnam*, for libellant.

*Carpenter & Mosher*, for claimant.

BROWN, District Judge. About half past 9 o'clock in the morning of November 4, 1890, the libellant's steamer *Olinda*, while being towed stern first out of the Atlantic basin by the steam-tug *John A. Carnie*, ran against the outer corner of the southern pier of the outlet, thereby breaking her propeller blades, bending her rudder and doing other damage, for which the above libel was filed. The tide was the first of the flood, running up at the rate of about a knot an hour. The *Carnie* had made fast her hawser of from 20 to 25 fathoms to the port quarter of the *Olinda*. The steamer was of 1,020 tons register, 250 feet long by 36 feet beam, and 17 feet deep. She was light, in water ballast, and had steam up all ready for sea.

The testimony shows that the usual practice in hauling out of the basin is to employ but a single tug when the vessel has the use of her own steam; the tug pulls the vessel out stern first, and the vessel is to check her sternway, if too great, by the forward turning of her own engine. If the steamer has not steam up, one or more additional tugs are employed, which are lashed alongside the steamer to check her way, if too great, and to counteract any sheer of the steamer. In the latter case, the captains of the tugs along-side, according to the testimony of the claimants' captain, have charge of the navigation of the steamer; while in the former case, where there is but a single tug forward on a hawser, her duty is only to pull on the steamer, while the officers of the latter exclusively have the charge and management of her helm and engines; and he further testifies that in such cases the steamer should not increase her own sternway at all by working her engines astern, but should leave the hauling astern solely to the tug, and only work her own engines *ahead* to check her sternway, if necessary.

In the present case the evidence shows that the steamer, assisting by some backing of her own engine, was hauled right to go straight through the outlet until she got near to the gap, when she took a sheer to the southward towards the southerly pier; that to prevent collision her engines were then put ahead full speed, and her helm to port; but that either through too rapid sternway, or delay in the forward action of her engine, there was not time to check her way sufficiently to prevent collision, though she came within a couple of feet of clearing. The tug was already angling to the northward as was proper, and when it was seen that the vessel was likely to strike the pier, the tug pulled ahead sharply in a northerly direction away from the pier in order to haul the