

THE FAVORITE.

BRAND *et al.* v. THE FAVORITE.

(District Court, D. Washington, W. D. May 11, 1892.)

TUGS AND TOWS—NEGLIGENCE—UNSEAWORTHY TOW.

When a scow in tow of a tug careened and lost overboard her deck load of brick, and the court found that the leaky and unseaworthy condition of the scow was the cause of the accident, but also that the master of the tug had not made the usual examination to ascertain her condition before undertaking to tow her, it was held that both tug and tow were in fault, and the owner of the scow should recover against the tug but half his loss.

In Admiralty. Libel to recover damages for negligent towage.

A. J. Hanlon, for libelant.

Crowley & Sullivan, for claimant.

HANFORD, District Judge. This is a suit brought to recover damages for the loss of a scow load of brick, on the ground of negligence and unskillfulness on the part of the master of the steamer in towing the scow, causing said loss. The libelants were owners of the scow and cargo. They employed the steamer to tow the scow, loaded with brick, a distance of 16 or 17 miles, from the brickyard to Tacoma. In order to take advantage of the tides the steamer went for the tow, and started with the same on the trip to Tacoma, in the night. After making a distance of about seven miles, as the scow appeared to be filling with water, the master attempted to run her upon the beach to save her, but before he could accomplish his purpose the scow careened so that the brick which were loaded upon her deck were dumped into the water and entirely lost. The mishap occurred in fine weather and in smooth water. The leaky and unseaworthy condition of the scow was the sole cause of it, and for this the libelants, who loaded her and sent her upon the venture, must be held to be primarily responsible. But the loss could not have occurred if the steamer had left her moored as she was at the brickyard. The master relied upon an assurance given by an employe of the libelants that he had on the day previous let the water out of the scow, and that she was all right, and towed her away without making the usual examination to ascertain her actual condition. Had he acted with ordinary care and prudence the loss would not have occurred while the property was in his charge, and for his neglect in this respect he is in part responsible for the consequent damage. According to the rule in admiralty the loss must be shared by all who were contributors towards producing it. I find from the evidence that 83,000 brick were lost, the market value of which at Tacoma was \$9 per 1,000. The cost of transportation would have been 40 cents per 1,000. Deduct this expense from the value of the brick, and the difference will be the whole loss. A decree will be entered in favor of the libelant for one half of said amount, and costs.

SCOWS 3, 16, AND 17.

LUCKENBACH *v.* SCOWS 3 AND 16.SAME *v.* SCOW 17.

(District Court, S. D. New York, April 30, 1892.)

SALVAGE—SCOWS ADRIPT IN GALE—TOWAGE TO PORT.

Four scows, employed in carrying refuse from New York to the dumping grounds outside of Sandy Hook, were blown out to sea in a violent gale. Two men were aboard each scow. Tugs went out to search for them, but were unable to find them, and could not have brought them in if they had been found, so heavy was the weather. Libellant's tug Luckenbach, a powerful seagoing vessel, worth \$60,000, and carrying a crew of 11 men, then put out from New York, and, on one trip, discovered two of the scows 60 miles from Sandy Hook, and, on a second attempt, found a third 70 miles at sea. These were brought safely into port; the fourth scow was never recovered. The three scows would in all probability have been lost but for the Luckenbach. The latter was the only boat, save one, capable of rendering the service, and that one was unsuccessful. The work was of unusual difficulty, and was attended with danger to the tug. *Held*, that the libellant should receive, as salvage, one third of \$28,000, the value of the scows.

In Admiralty. Libel by Lewis Luckenbach against certain scows.
Decree for libellant for salvage.

Peter S. Carter, for libellant.

Carpenter & Mosher, for claimants.

BROWN, District Judge. On the morning of Tuesday, January 26, 1892, four scows known as Nos. 3, 5, 16, and 17, employed in carrying refuse from New York to the dumping grounds outside of Sandy Hook, got adrift in a violent gale from the northwest. The tug Webster which had in charge Nos. 5 and 17, had fouled her propeller with the hawser leading astern, and had become disabled; and the tug Nichols, having charge of scows Nos. 3 and 16, after vainly endeavoring to assist the Webster and her tow, was obliged to leave her own scows at anchor in order to get water. In the increasing gale of the morning, the anchors dragged and all the scows were carried out to sea. When this became known in the harbor, some tugs soon after noon went out to rescue them, but after going a few miles outside of Sandy Hook found the weather so heavy that their efforts would be useless, even if the scows should be found, and accordingly returned without having seen them. On Tuesday night the libellant's tug, the Edgar F. Luckenbach, with 11 men, officers and crew, a large and powerful seagoing boat, fitted for such emergencies, and of the value of \$60,000, was got in readiness and left Atlantic Basin at about midnight. The weather was extremely heavy; but at about 9 o'clock A. M. on the 27th, scows Nos. 3 and 16 were found about 60 miles outside of Sandy Hook, and brought into the Atlantic Basin a little before midnight of the 27th. Neither of the other two scows having in the mean time been discovered by the three other tugs that had put out for them, the Luckenbach about midnight of the 27th started out again, and at about 10 o'clock of the following