

unreasonable obstruction to the free navigation of the river which it crosses; and in such case it has such jurisdiction whether the bridge is constructed or maintained according to the act of the legislature or not.

The action of the national government, acting through the secretary of war, is the final test of the sufficiency or insufficiency of a bridge across a navigable water of the United States, and not the act of the legislature permitting its construction.

But a suit in personam in admiralty will lie by the owner of a vessel injured by a collision with an unauthorized obstruction placed in a navigable water. *Atlee v. Packet Co.*, 21 Wall. 389.

A bridge permitted by an act of the legislature, but not constructed in accordance with it, is so far an unauthorized structure. The owner of a vessel injured by such a structure may maintain a suit against the owner of the bridge for damages, but he must allege and prove that the collision was caused by the defective construction or maintenance of the bridge in some specified particular.

In this case the libel does allege that the draw is less in width than that authorized by the legislature, but it fails to allege that such lack of width was the cause of the collision.

The exceptions are sustained, including the first two, which are for mere redundancy.

In re SUTHERLAND.

(District Court, D. Oregon. December 17, 1892.)

SEAMEN—DESERTION.

A seaman who signs articles for a voyage, and fails to render himself on board in due season, is a deserter.

(Syllabus by the Court.)

On Habeas Corpus.

Alfred F. Sears, Jr., for petitioner.
Raleigh Stott, for respondent.

DEADY, District Judge. On December 7, 1892, George Sutherland duly shipped at San Francisco, before the British consul, for a voyage on the British bark *Invergarry*, to a port of discharge in the United Kingdom. At the time, the vessel was lying at Astoria, Or., loaded and ready to clear for Queenstown. At the time of signing the articles, Sutherland received \$40 advance on his wages, and at once proceeded to Astoria, on the steamship *Queen*, at the expense of the bark, where he arrived on the morning of the 9th.

There he refused and neglected to join the vessel, being thereto persuaded by the petitioner, Peter Grant, and his associates, certain boarding-house keepers at Astoria.

The master of the *Invergarry*, Mr. James Crombie, then instituted proceedings under a supposed treaty between Great Britain and the United States, concerning deserters from merchant vessels, signed at Washington on June 3, 1892, to have said Sutherland returned to the

vessel as a deserter, which resulted in his being placed thereon in the custody of the master, where he said he desired to remain and proceed upon the voyage.

On the 10th inst., on the petition of Peter Grant, a writ of habeas corpus issued from this court, directed to the said master, commanding him to produce the body of Sutherland before the same, with the cause of his detention.

On the 12th inst. the master made a return setting forth the above facts, and the day after made a supplemental return, to the effect that Sutherland had escaped, at Portland, that morning, and he was unable further to comply with the writ.

The petitioner demurred to the return, and the case was argued by counsel.

The shipping articles were annexed to the return, and made a part thereof. From these it appears that Sutherland "agreed to make the voyage from San Francisco to Astoria, there to join the Invergarry and proceed on her to a port of discharge," as above stated, and to render himself "on board at once," and to be obedient to all lawful commands of the master, "whether on board, in boats, or on shore."

It does not appear that the treaty aforesaid, under which the proceedings before the vice consul, at Astoria, took place, has ever been confirmed by the United States senate.

The constitution (article 2, § 2) gives the president power to make treaties, "with the advice and consent of the senate," and not without it. So far as appears, the senate not having advised and consented to this so-called "treaty," it has no legal force, and the proceedings taken thereunder are of no avail.

But if the seaman was legally bound to render himself on board the Invergarry, as he certainly was, and he afterwards came into the custody of the master, he was lawfully there, and the writ must be discharged.

The voyage commenced at San Francisco on the Queen, and the fact that it was to be prosecuted from Astoria onward in the Invergarry makes no difference in the status or obligation of the sailor. A contract is complete when the articles are signed, and, unless they contain a provision postponing his going on board, the seaman is bound to render himself on board at once, or else he becomes a deserter. 2 Pars. Shipp. & Adm. 99.

These articles required Sutherland to render himself on board "at once," which he did, and afterwards deserted, at Astoria.

This was not a contract of shipment on the Queen and to ship on the Invergarry at Astoria after reaching there. Sutherland shipped for the whole voyage from San Francisco to Europe,—from San Francisco to Astoria in the Queen, and thence forward in the Invergarry.

By failing to render himself on board of either vessel, or absenting himself therefrom, he became a deserter.

The writ is dismissed, and judgment is given against the petitioner for costs.

THE NEW YORK.
THE CONEMAUGH.

(District Court, E. D. Michigan. November 11, 1891.)

1. COLLISION BETWEEN STEAMERS—MUTUAL FAULT—STEERING AND SAILING RULES.

A tow descending the Detroit river, in making a landing, occupied all the channel, except a narrow passage on the Canadian shore. The steamer C., going downward, was approaching this passage, when she saw the lights of the steamer N. a mile below, ascending on the American side, also heading towards the passage. The C. gave the "passing signal," of two blasts, and repeated it twice on nearer approach, but received no answer. As she cleared the end of the tow, she suddenly lost the green light of the N., then a quarter of a mile away, whereupon she sounded an alarm of several short blasts, put her helm hard astarboard, and kept on at full speed, showing her starboard light to the N., which also kept on at full speed under a port helm, showing her port light. Just before the collision the wheel of the N. was starboarded, but too late to prevent her striking and sinking the C., with small damage to herself, near the eastern side of the channel. The N. did not hear the first or second signals, and did not see the C. until the alarm signal. The weather was favorable to sight and hearing, and the locality called for careful navigation. *Held*, that it was the duty of the N., on passing the tow, to resume her course upstream, and that the C. was therefore not bound to keep out of her way, by steering and sailing rule 19, (Rev. St. § 4233.)

2. SAME—RULES 19 AND 21.

The N. violated rule 19 by not holding her course, and rule 21 by not stopping or reversing, and therefore could not rely as a defense on the failure of the C. to obey those rules.

3. SAME—NEGLECT TO ANSWER SIGNAL.

It was the duty of the C., on losing the N.'s starboard lights, to stop and reverse, under rule 21, from which she was not excused by the fact that neglect in answering signals is common. She had no right to assume that her presence was known until her signals had been answered.

4. SAME—FAULT IN EXTREMIS—PREVIOUS NOTICE OF PROBABLE DANGER.

The C.'s failure to stop and reverse was not excusable as a fault in extremis, for she had notice of the danger before the N.'s sudden change of course.

In Admiralty. On libel and cross libel for collision.

Shaw & Wright and H. D. Goulder, for the Conemaugh.
Scuyler & Kremer and H. C. Wisner, for the New York.

SWAN, District Judge. The original libel in this cause was filed by the owner of the Conemaugh to recover damages for the sinking of that steamer by the propeller New York, October 21, 1891, in the Detroit river, a short distance below Sandwich, Ont. The New York also received injury, for which her owner filed a cross libel against the Conemaugh. The cases were heard as one. No proofs were offered on the part of the New York.

The circumstances attending the collision were as follows: The Conemaugh, a screw steamer of 1,609 tons burden, (registered,) and laden with 1,800 tons of flour and general merchandise, was on her way from Milwaukee to Erie, Pa. She had a full watch on deck, and her lights were properly placed and burning brightly. Between 7 and 8 o'clock P. M. of October 21, 1891, the night being clear and the weather fine, she had reached the vicinity of the Kasota piles,—the remains of a cofferdam used in raising the steamer Kasota, which had been there