

## THE MANHANSET.

## NELSON v. THE MANHANSET.

(District Court, E. D. New York. December 27, 1892.)

## NEGLECTANCE—PERSONAL INJURY—ABSENCE OF LIGHT AT WINCH—FELLOW SERVANT—ACT IN EXTREMIS.

Libelant stepped into a snarl in the fall of a winch on the deck of a ship, and was drawn into the winch and injured. It was after dark, and there was no light by the winch. After libelant was caught, the man at the winch attempted to stop it, but in his excitement made it go faster. *Held*, that the absence of a light constituted such negligence as rendered the ship liable, and that the act of the winch man in increasing the speed of the machine was an act in extremis, and did not contribute to the accident.

In Admiralty. Libel by Peter Nelson against the steamship Manhanset to recover damages for personal injuries. Decree for libelant.

E. G. Davis, for libelant.  
Convers & Kirlin, for claimant.

BENEDICT, District Judge. The personal injuries to the libelant, for which he seeks to recover in this action, arose out of his stepping into a snarl in the fall of the winch, which lay upon the deck of the steamer. The fall was not observed by him, because the winch was running after dark, without a light placed so as to enable the fall to be seen by one walking along the deck, and when he stepped into the snarl his leg was drawn into the winch and severely injured. In my opinion, the failure to have a light by the winch, when running after dark, was the cause of the libelant's injury, and was negligence which renders the ship liable for the injury to the libelant resulting therefrom. The act of the man who was running the winch, in making the winch go faster, instead of stopping it, when alarm was given that the libelant was caught in the fall, was an act in extremis, caused by alarm at the dangerous situation of the libelant when caught by the fall. It cannot be held to be a fault of the man at the winch, which contributed to the disaster. The fright of the man at the winch, which caused him to run the winch faster, when it should have been stopped, was one of the results of the failure to provide a light at the winch, and for which the ship is responsible. Let a decree be entered in favor of the libelant, and an order of reference to ascertain the amount of his damages.

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 THE FRANCE.<sup>1</sup>

## MCDOWELL v. THE FRANCE.

(District Court, S. D. New York. January 16, 1893.)

## SHIPPING—NEGLECTANCE—PERSONAL INJURY—INSUFFICIENT FITTINGS.

Libelant, while shoveling ashes beneath the hatch in the hold of a vessel, was injured by the fall of an ash bag; such fall being due to its weak handle, by which it was hooked to the fall. Libelant had no duty or responsi-

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

bility as to the selection, oversight, or charge of the bags used. The court, on the evidence, found that under the circumstances libelant could not be held to be negligent in working beneath the hatch, and that the notices to stand from under, which it was alleged were given libelant, had no reference to the hoisting of the bags, with a view to the possibility of their falling, but were the customary notices given when the empty bags and chains came down. *Held*, that the ship must supply sound bags for such a purpose, and was responsible to the libelant for his damages caused by the insufficiency of this bag; such damages, for a broken thigh, being fixed at \$2,000.

**In Admiralty.** Libel by William McDowell against the steamship France to recover damages for personal injuries caused by the falling of an ash bag down the hatch while he was engaged in shoveling cinders into another bag at the bottom of the hatch. Decree for libelant.

Hyland & Zabriskie, for libelant.  
John Chetwood, for claimants.

**BROWN, District Judge.** The evidence does not show anything out of the usual course that should cause the handle of the ash bag to break while it was hoisting up; its weak and insufficient condition must be inferred from the fact that it broke under such circumstances. I cannot regard the general testimony that the bag was sound and sufficient as overcoming that fact.

The cases cited for the claimants seem to me not applicable here. The libelant had no duty or responsibility in the selection, oversight, or charge of the bags used; and the present case is therein distinguished from the whole class of cases to which that of Cregan v. Marston, 126 N. Y. 568, 27 N. E. Rep. 952, belongs.

Nor can I find the libelant chargeable with contributory negligence in working beneath the hatch. The falling bag struck him while he was shoveling cinders into another bag, as was customary, and this bag was nearly filled. It is not credible that he would have been filling a bag under the hatch, unless there had been matter near by that was required to be shoveled into the bag at that place. On re-reading the depositions of the other workmen who were near him, I do not find it a reasonable construction of that evidence, that the libelant was notified to keep from under the hatch while a bag was ascending, or in respect to any such contingency as the breaking of the bag handles and the falling of an ascending bag. All the witnesses testify that they never had known any such previous breaking; there was no apprehension of it; and, as it seems to me, there is not the slightest probability that the several notices spoken of to stand from under, had any reference to the bags going up, but solely to the bag, rope and chain coming down, since the evidence shows that the persons above when about to throw them down were in the habit of giving notice to the persons below. It was quite natural, and in the ordinary course, that such calls should be repeated to the libelant by his fellow workmen while he was working under the hatch; and I have no doubt that it was such calls, and such only, that are referred to by the witnesses; and those notices had nothing to do with such an accident as this, and indicate no neglect by the libelant.

The ship is responsible for the supply of sound and safe bags for such a purpose. The *A. Heaton*, 43 Fed. Rep. 592; The *Julia Fowler*, 49 Fed. Rep. 277; The *Persian Monarch*, Id. 669; The *Wm. Branfoot*, 48 Fed. Rep. 914, affirmed, 52 Fed. Rep. 390.

The libelant was severely injured by the fall. The femur was fractured, and to some extent crushed. Shortening of the limb in consequence could not be avoided, notwithstanding the severe treatment applied in the endeavor to diminish the contraction, and the great suffering incident to this treatment. The result is a permanent injury and considerable crippling, disabling the libelant from following his former or any severe occupation, but not such as to interfere materially with many lighter kinds of employment. I award him \$2,000, with costs.

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THE M. MORAN.

In re PETITION OF MORAN FOR LIMITATION OF LIABILITY.

(District Court, E. D. New York. December 24, 1892.)

NEGLECT—COLLISION—LOOKOUT.

A tugboat had towed a vessel to sea, and her pilot was being taken off the ship by a yawl attached to the station boat. As the yawl lay alongside the ship, the tug approached, and, owing to the failure of the wheelsman to see the position of the yawl until too late to stop his boat, the yawl was crushed between the tug and the ship, and two of the pilots in her lost their lives. The owner of the tug filed a petition in limitation of liability. *Held*, that the accident was due to the negligence of the master of the tug, and her owner was liable in damages.

In Admiralty. In the matter of the application of Michael Moran, part owner of the steam tug *M. Moran*, for limitation of liability.

Carpenter & Mosher, for petitioner.

James Parker, for claimant.

BENEDICT, District Judge. The sad occurrence which caused the death of two pilots while in their yawl boat alongside the bark *Methuselah*, by being crushed between that bark and the tug *Moran*, was the result of negligence. I find no negligence on the part of the pilots; for while it is true that, if the yawl's line had not been cast off from the bark, no injury would have been done, I do not think it was negligence on the part of the pilots to cast off their line when they did. The bark was moving. The proper thing to do, as soon as the pilot they were taking stepped into the yawl, was to cast off the line. The yawl was in plain sight of the tugboat, and the pilots had a right to suppose that the tugboat would not come close enough to the bark to catch the yawl as it was drifting aft alongside the bark and touching the same. Neither do I think it was negligence on the part of the pilots to attempt to climb on the rail of the tugboat when they saw the tugboat upon them. All in the yawl were at that time in a state of alarm because of the dangerous approach of the tug. To attempt to climb over the rail of the tug when the tug came upon the yawl was a rational thing to do under the circumstances, and