

to that effect by the commissioner, and the proofs laid before him are not in the record. And, in conclusion, the results reached by us render it unnecessary to consider whether the appellant had knowledge of the alleged defect, or should have had knowledge of it, or whether it constituted unseaworthiness, or to consider any other question which has been suggested.

The decree of the district court is to be amended by adding that petitioners, namely, the owners of the schooner Essex, and the said vessel and her proceeds, are forever exempt from any liability for or on account of the claim of said Patrick Quinlan, in every form of proceeding and in every jurisdiction, and that such claim is held invalid and is disallowed; and the decree, when thus amended, is affirmed, but without costs in either court for either party.

ALDRICH, District Judge, (concurring.) I concur in the result, but am not prepared to accept the reasoning of the learned circuit judge with respect to privity. I am inclined to think that the words "privity or knowledge," as used in the statute, may mean less than knowledge, and that the circumstances or nature of the defect might be such that the failure of the owner to inspect and make the vessel staunch and seaworthy before the commencement of the voyage, would render him privy to disasters which result directly therefrom; but I agree that there is nothing in the case under consideration to bring it within this query.

THE R. C. VEIT.

BARNEY DUMPING CO. v. THE R. C. VEIT.

(District Court, S. D. New York. May 8, 1893.)

1. TUGS AND TOWS—TOW GOING ADRIPT—INSECURE BITT OF TOW.

Two mud scows belonging to libellant had dumped their loads at sea, when, on starting up, the bitt of the former scow, to which the second scow was attached, pulled out. There was a heavy sea at the time. It appeared that the scow whose bitt gave way was an old boat, and that such pulling out of a bitt was unprecedented. The evidence showed that the tug was managed with reasonable care. *Held*, that she was not liable.

2. SAME—ATTEMPT TO RESCUE DRIFTING SCOW—PROPER MANEUVERS.

After the accident the tug maneuvered to pick up the drifting scow, but, the tralling hawser rendering the attempt dangerous, she first put into harbor with the remaining scow, and afterwards went out to the one adrift, but found her at anchor in shoal water. The tug then returned and reported, and other aid was obtained, but meantime the scow had gone ashore. *Held*, that the tug was not negligent.

In Admiralty. Libel by the Barney Dumping Company against the steam tug R. C. Veit for loss of a scow. Dismissed.

Stewart & Macklin, for libelant.
Carpenter & Mosher, for claimants.

BROWN, District Judge. The above libel was filed to recover for the loss of dumper No. 16, which, on the night of November 17, 1892, was taken in tow by the tug R. C. Veit to the dumping grounds outside of Sandy Hook, in order to dump her cargo of refuse. The dumper broke adrift and was afterwards lost. The libel charges negligence in handling the dumper and failure of proper care and endeavor to rescue her after she had broken away. She drifted and was lost on the beach at Rockaway.

There was a heavy sea at the time, and a strong wind from the northwest. No. 16 was attached to dumper No. 3 by a hawser from two to three hundred feet long, made fast to one of her stern bitts. No. 3 was on a hawser of about 100 fathoms from the Veit. On arriving at the dumping ground, the usual signal was given to the Veit, and the cargo was dumped as usual. After the cargo was out, No. 3 closed and came to properly; but No. 16 would not close, and her foreman on board sent a hail to the tug to swing No. 16 into the trough of the sea to assist her to close. The libel charges that this was done, and that afterwards the tug, in heading up again towards New York, maneuvered too suddenly and brought such a jerk upon the hawser that the bitt of No. 3, to which the hawser of No. 16 was attached, was pulled out.

There is no doubt that the bitt was pulled out of No. 3. The hawser did not break. The version given by the Veit of the preceding maneuvers differs to some extent from that given by the witnesses for the libelant. Without referring in detail to these differences, I am satisfied that the Veit was managed with reasonable care and prudence. It is not an uncommon thing for hawsers to be parted by these dumpers in such a sea as there was on the night in question. No previous instance is reported where the bitt was pulled out and the hawser did not break. No. 3 was an old boat,—the oldest, save one, among those in the service of the line. Some straining and jerking cannot be avoided in such seas. The mate on board for 10 or 15 minutes before the accident, and even before there was any swinging of the vessel, had been fearing that the hawser would part. I am satisfied that the accident arose from the age of the bitt and its insecurity, and not from any lack of reasonable care and prudence on the part of the tug.

Nor do I think any charges of fault are fairly established in not picking up the dumper after she got adrift. The Veit began to maneuver for that purpose, but found she was in shoal water. The dragging of the loose hawser from No. 16, as all the witnesses testify, made great care necessary in approaching her; for if the propeller should foul the hawser, all would be in great jeopardy. All the witnesses testify that the endeavor to pick up No. 16 at night with such a hawser dragging, would be difficult and dangerous with No. 3, also, in tow. On the whole I think the tug was justified in

ceasing this attempt and in going as she did to Gravesend bay, the nearest refuge, to leave No. 3, and then returning in the endeavor to find No. 16. She could not find the latter that night, though she cruised in search of her until 2 A. M.; but on the following morning found her at anchor in water where the Veit could not approach her. Her condition was thereupon reported as soon as possible, and other aid obtained. I do not think the Veit was negligent in either of these respects; and the libel must, therefore, be dismissed, with costs.

THE ENERGIA.

THE WILD PIGEON.

PHILLIPS et al. v. THE ENERGIA.

INSURANCE CO. OF NORTH AMERICA v. THE ENERGIA and THE WILD PIGEON.

(District Court, S. D. New York. April 4, 1893.)

1. COLLISION—STEAM AND SAIL—CHANNEL—ARTICLE 21.

A schooner bound eastward from South Amboy at first designed to go up through the Narrows, but afterwards changed her course to go out by way of Sandy Hook. The steamship *Energia* was going down the port side of the Cut channel, and, near buoy C 4, collided with the schooner. She claimed that the schooner's change to go out by way of the Hook was a violation of her duty to hold her course. The evidence indicated that the schooner changed her heading when a mile and a half or two miles distant from the steamer. *Held*, that the steamer was in fault for failing to take the proper maneuvers to avoid the schooner, and also for going needlessly down the port side of the Cut channel, contrary to article 21 of the rules of navigation.

2. BILL OF LADING—NEGLIGENCE—STIPULATION TO ADOPT FOREIGN LAW VOID.

A stipulation in a bill of lading provided that "the liability of the carrier shall be governed by the law of England, with reference to which this contract was made." *Held*, that such stipulation, so far as it related to the invalid stipulation for exemption from liability for negligence, was also invalid.

In Admiralty. Libels for collision. Decrees for libelants.

Owen, Gray & Sturgis, for the Wild Pigeon.

Wing, Shoudy & Putnam, for the *Energia*.

Butler, Stillman & Hubbard, for the insurance companies.

BROWN, District Judge. The above libels were filed to recover damages arising from a collision near buoy C 4, in the "Cut Channel" of the Lower bay, at about 11:30 o'clock in the forenoon of December 22, 1892, between the steamship *Energia*, outward bound, and the two-masted schooner *Wild Pigeon*, laden with coal, bound