

patch, the district court correctly awarded demurrage to the libelant.

Such award, however, was without interest, and the refusal to allow it is assigned as error by the libelant. Upon this point the decisions of the eastern and of the southern districts of New York are not harmonious. *The Alexandria*, 10 Ben. 101; *Johanssen v. The Eloina*, 4 Fed. Rep. 573; *The J. A. Dumont*, 34 Fed. Rep. 428. It is unnecessary to add anything to the discussion of the subject contained in those opinions. The amount of the demurrage is liquidated by the contract. Claimants stipulated to pay it day by day, in case they detained the vessel beyond the stipulated time. It was their duty to pay it when they so detained her, and to pay it day by day for each day of such detention, as they contracted to do. The master of the *Tiverton* demanded daily the amount due. In similar cases interest follows recovery, and there is no adequate reason why demurrage should be subject to any different rule.

The decree of the district court is reversed, and cause remanded, with instructions to decree in favor of the libelant for demurrage, as found by said court, with interest thereon from date of demand, and costs of the district court and of this court.

#### IN re MYERS EXCURSION & NAVIGATION CO.

(District Court, E. D. New York. July 7, 1893.)

##### 1. SHIPPING—LIMITATION OF LIABILITY—EXCURSION BARGE.

A barge without motive power, which is used for transporting excursion parties on New York harbor and adjacent waters, is within the limited liability acts of the United States.

##### 2. SAME—BARGE WITHOUT MOTIVE POWER—MAY BE SURRENDERED WITHOUT TUG.

A barge without motive power, which is used for carrying excursion parties about New York harbor and adjacent waters, may be surrendered by her owners, under the limited liability acts of the United States, without the surrender of the tug towing the barge at the time of the loss, though the tug belongs to the same owners.

##### 3. SAME—UNSEAWORTHINESS—CAPACITY TO WITHSTAND STORMS OF ORDINARY VIOLENCE.

A barge used to carry excursion parties on New York harbor and neighboring waters is unseaworthy when not in a condition to withstand without serious injury to her passengers the violent thunderstorms which are of frequent occurrence in that locality.

##### 4. SAME—OWNERS CHARGED WITH KNOWLEDGE—LIMITATION OF LIABILITY.

Where the unseaworthy condition of an excursion barge would be shown by a proper examination, her owners are charged with knowledge thereof, and any injury to passengers resulting therefrom is not without the "privity or knowledge" of the owners so as to entitle them to the benefit of the limited liability acts of the United States.

In Admiralty. In the matter of the petition of the Myers Excursion & Navigation Company for limitation of liability as owners of the barge *Republic*. Petition dismissed.

Wing, Shoudy & Putnam, for petitioner.

Raphael J. Moses, Jr., Fernando Solinger, and George W. Cottrell, for respondents.

BENEDICT, District Judge. The barge Republic was hired, under an excursion contract made on March 2, 1891, to convey an excursion party to Cold Spring grove and back to New York on August 12, 1891, for the sum of \$260. The barge, in pursuance of that contract, on that day took on board the excursion party, and was towed to Cold Spring grove by the steamboat Crystal Stream, owned by the same owners. Early in the afternoon the barge reached a wharf on the east side of the harbor at Cold Spring grove, where she was made fast to the end of the wharf, the port side of the barge being next to the wharf, and the Crystal Stream being fast to her upon her starboard side. Just as the barge was about to leave the wharf on the return trip, the excursionists being on board, but the lines not cast off, a thunderstorm came up from the westward, striking the barge on her starboard side. By the force of the wind, the roof of the hurricane deck on the starboard side was raised off its fastenings and doubled over against the two masts of the barge and the pilot house. The pilot house turned over, the two masts broke, and these masts, together with the broken portion of the hurricane deck, fell upon the other side of the hurricane deck, which was thereby crushed down upon the passengers collected underneath it, and 13 of the passengers were in this way killed. The owners of the barge, being sued for the injury to these passengers, filed their petition in this court to have their liability limited, and surrendered the barge to the custody of the court. In their petition they set up that the injuries to the passengers alluded to were not caused by any negligence on the part of those owning or in charge of the Republic, but to unavoidable accident.

The following objections are raised to the granting of the relief prayed by the petitioners:

First. That the Republic was not a vessel intended to be embraced in the limited liability acts. In my opinion, this objection is not well founded. As I understand the limited liability acts, they were intended to relieve from liability barges engaged in any kind of navigation, and they cover the barge in question.

The next objection taken is that the tug Crystal Stream, being the motive power of the barge Republic, should also have been surrendered. This objection is without foundation. The petitioners do not seek to limit any liability they may be under as owners of the Crystal Stream, and there is nothing in this proceeding to prevent the parties injured from proceeding against the Crystal Stream or her owners, if so advised.

The third objection is that the Republic was unfit for the employment in which she was engaged, and that the injuries sustained by her passengers were due to her unseaworthy condition. Upon this question a mass of testimony has been taken, both in regard to the force of the wind and the construction and condition of the barge. After a careful consideration of the testimony relating to the effects of the wind on other objects near the place where the barge was when struck by the wind, and the evidence tending