THE A. R. ROBINSON.

LANE v. THE A. R. ROBINSON.

(District Court, D. Washington, N. D. July 1, 1893.)

1. TOWAGE—TUG NOT A COMMON CARRIER—NEGLIGENCE.
The contract of towage does not subject a tug to the liability of a common carrier. She only undertakes to exercise ordinary care and skill.

2. SAME—LOSS—PRESUMPTION OF NEGLIGENCE.
Proof of a loss suffered by a tow does not raise a presumption of negligence against the tug in the absence of additional affirmative evidence. The Webb, 14 Wall. 406, followed.

In Admiralty. Suit in rem by J. H. Lane against the steamer A. R. Robinson to recover the value of part of a raft of piles lost while being towed by said steamer. Dismissed for failure of proof to establish negligence.

Preston, Carr & Preston, for libelant.
Allen & Powell, for claimant.

HANFORD, District Judge. That there was a contract to tow a raft of piles from Brown's Bay to Seattle; that the steamer did tow said raft; and that more than one-half of the piles that were in the raft when it started escaped therefrom, and were lost, during the passage,—are facts in this case. The claim of the libelant against the tug for damages is based upon a charge that by hauling too suddenly at starting, by running too rapidly, by venturing to cross Puget sound when the weather was threatening, and by failure of the master to exercise good judgment in going ahead towards his destination after being caught by a strong wind and choppy sea, instead of changing his course and running for shelter, the loss was caused by negligence or want of care and skill on the part of the master of the steamer. But to sustain this charge in either of the particulars mentioned by a fair preponderance of the evidence the libelant has failed. The proof is not sufficient to show with any degree of clearness the real cause of the loss.

The authorities which I have consulted require me to hold that by a contract for towage service the tug does not become chargeable with the liability of a common carrier. She only undertakes to exercise ordinary care and skill in performing the service. Proof of a loss does not raise a presumption of negligence or want of ordinary care and skill, so as to entitle the injured party to damages, without additional affirmative evidence. The Webb, 14 Wall. 406. Libel dismissed.

SCHERMACHER et al. v. YATES et al.[1]

(District Court, E. D. New York. July 28, 1893.)

1. SEAMEN'S WAGES—TERMINATION OF VOYAGE—PORT OF REFUGE.
In order to effect the termination of a voyage at a port of refuge, there must be some other act than the discharge of the crew.

2. SAME—FINAL PORT OF DISCHARGE—WHAT IS.
Seamen shipped for an outward voyage, "and back to a final port of discharge in the United States." The vessel was returning in ballast, bound for New York, when she became disabled in a gale, and bore away for Key West. There she discharged her crew, made temporary repairs, shipped another crew, and proceeded to New York. No cargo was loaded or ballast unloaded at Key West. *Held*, that New York, and not Key West, was her final port of discharge, and the original crew were entitled to recover against the vessel the cost of their passage from Key West to New York.

In Admiralty. Libel for seamen's wages.

Alexander & Ash, for libelants.
Edward B. Merrill, for respondents.

BENEDICT, District Judge. This is an action on the part of the crew of the American bark Liberia against the owners of that vessel to recover a balance of wages, and the cost of a passage from Key West to New York, for each of the men. The crew signed articles at New York on the 26th of September, 1892, for a voyage described as follows:

"From the port of New York to Monrovia, Liberia, and such other ports and places in any part of the world as the master may direct, and back to a final port of discharge in the United States, for a term not exceeding twelve calendar months."

The vessel proceeded from New York to Sierra Leone, and thence to Kingston, Jamaica. On the 24th day of January she left Jamaica, bound for New York, in ballast. When about 600 miles out from Jamaica, she met with a storm, by which she lost her foremast, and everything attached to it, her mainmast, and everything above that, and broke her bowsprit. The master thereupon determined that it was not safe, at that time of the year, to come on the coast in that condition, and so bore away for Key West, where she arrived in about 10 days. There the crew were discharged before the shipping commissioner, and wages up to the time of the discharge were paid each man. The men demanded payment of the expenses of their passage for New York, which was refused. The bark remained at Key West six weeks, during which time she was rigged up with a jury mast, and then she sailed without cargo to New York, where she arrived on the 20th day of February, 1893. The seamen now claim that they were improperly discharged in Key West, and are entitled to wages up to the time of the arrival of the bark in New York, together with the sum paid for the passage from Key West to New York.

[1] Reported by E. G. Benedict, Esq., of the New York bar.