

The proprietors of a drawbridge over navigable waters of the United States, are bound to use it in such a manner as not unnecessarily to obstruct navigation, (*Blanchard v. Telegraph Co.*, 60 N. Y. 510; *The City of Richmond*, 43 Fed. 85, 88;) and this duty includes the use of all reasonable methods tending to avoid accident or collision. This principle is not disputed by the counsel for the respondents. Their defense and much of their evidence were to the effect that all reasonable facilities were in fact given to this tug; that the draw was open when the vessel was more than half a mile below; that there was no delay, no train, and no stopping of the tug. This defense, on the facts, I am obliged to discredit, as above stated; being satisfied that the libelants' account of the matter is correct.

With a freight train two miles distant, and a tug with a tow on a hawser coming up with the tide not over 1,500 or 2,000 feet away, the refusal to open the draw in order to give a preference to so distant a train, was an unreasonable and unjustifiable obstruction of the tug and tow. Its unreasonableness was increased by the omission to give any signal, which left the tug in uncertainty what to do, or what to expect. The practice of the bridge to give no answering signals, is one little to be commended, and is liable often to place the bridge in the wrong. The draw is worked by steam; and answering signals, such as are given upon other bridges, could be given without difficulty. True, signals are not made a statutory duty. But the practical necessity of such signals is manifest, particularly where there is a cross set of the tide; because without them it is impossible for the approaching vessel to know with any certainty whether she can safely continue on towards the draw, or whether she must stop and maneuver for delay. The embarrassment to a tug incumbered with a tow upon a hawser is still greater; and this is so evident, that I have no hesitation in holding that the omission either to open the draw when the tug is at a reasonable distance, or to give prompt notice by some practicable answering signal if the draw cannot then be opened, is negligence and misconduct; because it violates the rule that is obligatory upon all persons charged with duties concerning navigation, to use all reasonable and practicable means of avoiding collision and the attendant losses of life and property. *Edgerton v. Mayor*, 27 Fed. 230. The defendants neglected this duty in the present case; that was the efficient cause of the accident, and I do not find any lack of reasonable skill and diligence on the part of the tug.

Decree for the libelants, with costs, with an order of reference to compute the damages, if not agreed upon.

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CENTRAL R. CO. OF NEW JERSEY v. PENNSYLVANIA R. CO.

(Circuit Court of Appeals, Second Circuit. December 5, 1893.)

1. NAVIGABLE WATERS—OBSTRUCTION BY RAILROAD DRAWBRIDGE—SIGNALS.

A railroad company, in maintaining a drawbridge over navigable waters, must exercise reasonable care, not only not to impede the safe

navigation of passing vessels, but to obviate any unnecessary delay thereto.

2. SAME—NEGLIGENCE—INJURY TO PASSING VESSELS.

Where the opening of a railroad drawbridge is so unreasonably delayed, after proper signals, that a signaling tug, with her tow, is unable to make the passage with safety, and in attempting to pass through, in the exercise of the best judgment and proper diligence of those navigating her, the tow is injured by collision with the bridge, the railroad company is liable.

Appeal from the District Court of the United States for the Southern District of New York.

In Admiralty. Libel by the Pennsylvania Railroad Company against the Central Railroad Company of New Jersey to recover damages for the collision of a scow with a bridge abutment. Decree for libellant. Respondent appeals. 59 Fed. 190, affirmed.

George Holmes, for appellant.

Charles Hough, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

PER CURIAM. In disposing of this appeal, we do not find it necessary to pass upon the question of the competency of the evidence received in the court below respecting the signal codes, or regulations adopted by other railway companies operating drawbridges in the vicinity of the appellant's bridge. It was the duty of the appellant, in exercising its right to maintain a drawbridge over navigable waters, to respect the rights of the public, and in this behalf to exercise reasonable care, not only not to impede the safe navigation of passing vessels, but also to obviate any unnecessary delay to such vessels. *Wiggins v. Boddington*, 3 Car. & P. 544. It is manifest that this duty cannot be properly discharged, in view of the character of the water way, and the extent of the commerce upon it, without employing and enforcing a system of signals by which approaching vessels can be informed, when at a safe distance from the bridge, whether they are at liberty to proceed, or whether they must maneuver for delay. In the present case, those in charge of the tug navigated her with all reasonable care, supposing, as they had a right to, that the draw would be opened seasonably to permit the tug and her tow to pass. When it became apparent that the draw was not to be opened, the tug stopped. Incumbered as she was with a heavy tow, and encountering the force of the tide, she was in an embarrassing situation when the draw began to open. There was danger that the tow would have been set by the tide against the east pier if the vessels had attempted to take the easterly passage. The pilot of the tug, in the exercise of his best judgment, took the westerly passage. We cannot find upon the evidence that he erred in doing so. Notwithstanding the exercise of proper diligence in trying to pass through the draw, the tow was brought in contact with the end of the central abutment, and sustained the injuries for which damages were awarded by the decree appealed from. We conclude that there was no fault on the part of the tug or of the

libelant's tow, and that the appellant is responsible for the injuries to the tow because of its neglect to seasonably open the draw, or to notify the vessels that it did not intend to do so when they were sufficiently far away to permit them to adopt proper precautions for their own safety. The decree is affirmed, with costs.

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THE INVERTROSSACHS and THE JAMES McCaulley.

THE JAMES McCaulley v. THE PERCY BIRDSALL et al.

(Circuit Court of Appeals, Third Circuit. November 21, 1893.)

No. 14.

COLLISION—VESSEL AT ANCHOR—TUG AND TOW.

A heavy ship in light ballast, with a pilot aboard, while coming up the Delaware river in tow of a tug on a hawser 120 to 130 fathoms long, struck a schooner lying at anchor at Bombay Hook, a quarter of a mile west of mid-channel, the channel there being one mile wide for vessels of deep draft. The tug was competent to handle the ship, and was not in fault as to the course taken to pass the schooner, but the ship failed to follow her, and impeded her progress eastward by hanging on her port quarter. *Held*, that the collision was caused solely by the failure of the ship to properly follow the tug, and the ship was alone liable for the damage. 55 Fed. 683, modified.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

In Admiralty. Libel by Elias Burr, master of the schooner Percy Birdsall, on behalf of her owners, against the ship Invertrossachs, for damage to the schooner by collision with the ship in tow of the steam tug James McCaulley. On petition of the claimant of the ship the tug was made a codefendant. The district court found both the tug and the ship in fault, and a decree against both was rendered in favor of the schooner, and in favor of the ship against the tug for half damages. 55 Fed. 683. The owner of the tug appeals. Reversed as to the decree against the tug, and decree directed against the ship for the full amount of the damages.

John F. Lewis, for appellant.

Horace L. Cheyney and J. Rodman Paul, (Biddle & Ward, on the brief,) for the Invertrossachs, appellee.

Curtis Tilton, for the Percy Birdsall, appellee.

Before ACHESON and DALLAS, Circuit Judges.

ACHESON, Circuit Judge. This is an appeal by the owner of the steam tug James McCaulley from the decree of the district court in admiralty against the appellant for one-half of the damages awarded to the libelant in a cause of collision. The libel was filed by the master of the schooner Percy Birdsall, on behalf of her owners, against the British ship Invertrossachs. The claimant of the ship filed a petition in accordance with admiralty rule 59, and brought in as a codefendant in the suit the tug James McCaulley.