

ments of this witness, when his testimony is fairly read as a whole, to justify an inference that the tug made a sudden sheer. His whole account of the transaction is straightforward. In itself, it is probable; and it accords with all the unquestioned facts. The negligence of the ship, which is indisputable, sufficiently accounts for the disaster, and the proofs, taken altogether, we think exonerate the tug from the charge of having carelessly brought her tow in dangerous proximity to the schooner.

Little need be said with reference to the charge against the tug of negligence "in failing to sound her whistle, or to give any notice to those in charge of said ship of any change in the course of said tug." The weight of the expert testimony upon the question of the duty of the tug to signal to the ship is against the latter. We think the tug owed no such duty to her tow. Although not promptly following the tug, but "hanging on" her port quarter, the mate of the tug was justified in assuming that the ship, with the pilot aboard of her, would avoid the schooner, as she could easily have done had her officers been attentive to their duties.

Upon the whole case we are satisfied that the collision was altogether due to the negligence of those who were aboard the ship, and charged with her navigation, and that the tug was not in any wise in fault. Therefore the claimant of the ship is justly answerable for the entire damages.

The decree of the district court is reversed, and the case is remanded, with a direction to enter a decree for the libelant against the claimant of the ship *Invertrossachs* and his stipulator for the full amount of the damages, with interest from August 5, 1893, and costs in the court below and in this court.

THE M. KALBFLEISCH.¹

THE WM. FLETCHER.

PAUL v. THE M. KALBFLEISCH and THE WM. FLETCHER.

(District Court, E. D. New York. November 9, 1893.)

1. COLLISION—DAMAGES—OFFERS TO REPAIR—LOWEST OFFER.

One who prefers to have his damaged vessel repaired where she lies, though he knows of an offer to repair at a lower figure made by another shipwright, cannot recover as damages more than the amount of the lower figure, unless he can clearly show that his vessel would have been injured by removal to the new berth.

2. SAME—DEMURRAGE—INTEREST ON DEMURRAGE.

Interest is allowed on demurrage awarded for delay during negotiation in regard to repairs necessitated by collision.

In Admiralty. On exceptions to commissioner's report.

A loaded schooner in tow was brought in collision with another tow, without any fault of her own, and, upon suit brought, both the tugs were held liable for the damage caused. On a reference to ascertain the amount of libelant's damages, it appeared that

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

the master of the schooner on the same day, Saturday, put his vessel on a dock to prevent injury to the cargo from the leaks. On Monday the owner of the vessel appeared, and negotiations were opened for settlement and repair. A survey was called, and held Tuesday; the owner, the agents for the two tugs, and three shipwrights,—one appointed for each vessel,—being present. An offer to repair according to the survey was made by G., on whose dock the vessel lay, and a lower offer by M., the surveyor called by one of the tugs, in writing. The surveyor called by the other tug went home, gave his measurements to a superior, and an offer to repair (which was much lower than either of the other offers) was sent by the firm A. & Co. to the agent of the second tug on Wednesday. At the time of the survey, P., the owner of the schooner, objected to having the vessel removed from the dock where she lay unless she was unloaded, fearing too great strain would be brought on the vessel. The offer of M. was shown to him; but he did not show the offer of G. to the agent of the second tug, nor did he see the offer of A. & Co., for on Wednesday, in answer to a message from P. sent through the agent of the first tug, the agent of the second tug told P. to go on, and libel for his damages. All negotiations being dropped, P., on Thursday, ordered G. & Co., on whose dock the vessel still lay, to do the repairs, giving him no particular directions, but to do no more than was necessary. The commissioner reported the amount of damages sustained, saying:

“I take as the cost of repair the sum for which an offer in writing to do the work was made at the time by a responsible firm, and add the cost of temporary repairs and transfer of the vessel from the dock where she lay to another dock, for full repair, as estimated. The judgment of the owner, that she could not be so transferred without injury, is not supported by evidence which convinces me that it was an accurate judgment. Some evidence was presented of another and still lower offer to repair the damage, but I do not think this was so brought to the knowledge of the owner as to require him to act on it. The other offer he saw and knew about, but preferred to have the vessel repaired where she lay. The expense of the dock, while the vessel lay awaiting negotiations about the repair to be closed, is allowed, and I see no reason for withholding demurrage for that time.”

The commissioner allowed interest on the demurrage, following the case of *Milburn v. 35,000 Boxes*, 57 Fed. 237. Both parties excepted, the libelant claiming that the full amount of G. & Co.'s bill for repairs should be allowed; and the claimants, that only the amount of the third offer (that of A. & Co.) should be allowed, and no demurrage for the days of negotiation.

Alexander & Ash, for libelant.

Wilcox, Adams & Green, for claimant of the M. Kalbfleisch.

Hyland & Zabriskie, for claimant of the Wm. Fletcher.

Upon hearing before the court, all the exceptions were overruled, and the report confirmed as made.

THE ROBERT HOLLAND and PARANA.

POPPE et al. v. BIGELOW.

(District Court, E. D. Wisconsin. November 27, 1893.)

1. COLLISION—SAIL—STEAMER AND TOW—DUTY OF STEAMER.

A steamer with a long and unwieldy tow is bound to take especial care to keep out of the way of an approaching sail; and if, being on the open lake, she allows herself to come into dangerous proximity, and then miscalculates the course of the sail, and is too late in her maneuver, she must be held in fault.

2. SAME—TORCH—IMMATERIAL OMISSION.

The failure of a sailing vessel meeting a steamer to show a torch, as required by Rev. St. § 4234, is immaterial, when the night is clear, and her ordinary lights are distinctly seen from the steamer.

3. SAME—ERROR IN EXTREMIS.

A wrong maneuver by a sailing vessel at a time of peril and confusion brought about by the unwarrantably near approach of a steamer and tow will be regarded as an error in extremis.

In Admiralty. Libel by Albert Poppe and others against Anson A. Bigelow to recover damages for a collision. Decree for libelants. Van Dyke & Van Dyke, for libelants. Charles E. Kremer, for respondent.

SEAMAN, District Judge. On November 1, 1891, at about 5:15 A. M., a collision occurred between the schooner William Aldrich and the barge Parana, in tow of the steamer Robert Holland, (with the barge Stevenson,) at a point on Lake Michigan four to six miles off the west of Wisconsin shore, and five or six miles north of Cana Island light. The Aldrich was a three-masted schooner of 180 tons burden, laden with lumber, bound from Nahama, Mich., to Milwaukee, Wis. She had her three jibs, foresail, and mainsail set, and her mizzen furled, and was on a course of S. by W. $\frac{1}{2}$ W., when sighted. The wind was a good, fresh breeze, from the northwest. The steamer Holland had the barges Stevenson and Parana in tow, in the order named, all light, bound from Chicago to Washburn, Lake Superior, via straits of Mackinac. Their course, when the schooner was sighted, (erroneously stated by the answer as N. E.,) was N. N. E., according to the undisputed testimony. The Stevenson carried a foresail and staysail, and the Parana a foresail. This libel was filed by the owners of the schooner against the owner of the Holland and the Parana, upon claim that the collision happened solely from fault of the towing steamer, through violation of rule 20 of navigation regulations, in failing to keep out of the way of the sailing vessel, and especially in an alleged change of course to cross the bows of the schooner. The respondent denies all fault on the part of the steamer, and alleges fault of the schooner in the following particulars: (1) That she exhibited no torchlight to the steamer; (2) that she kept no proper lookout; (3) that she did not keep her course.

Although there are many contradictions in the testimony with the advantage as to numbers in favor of the respondent, the undisputed evidence shows that it was a clear, dark morning, and the lights