

Fanwood is sought to be held on the ground that it was her duty to reverse sooner than she did, and in time to avoid a collision; because, as it is said, she ought to have perceived and known that the tug was, from some cause, helpless, and that the duty of keeping out of the way, therefore, devolved on the Fanwood. There is no doubt of this obligation, if the Fanwood knew, or had sufficient reason to suppose, that the tug was disabled in time to avoid her. But the circumstances do not seem to me to justify this assumption. The tug was a small boat, and unincumbered; she was presumptively capable of being handled with great ease and facility. *The West Brooklyn*, 45 Fed. 60, 61. She was going slowly, making only about four knots, and could ordinarily stop and turn within a very short distance,—just how quickly the pilot of the Fanwood did not know, and was not presumed to know, as well as the tug's pilot. The tug could certainly stop, ordinarily, within short hailing distance. As soon as she became subject to any disability which would prevent her stopping in time, it was certainly her pilot's duty to give notice of it to the Fanwood when he came within reasonable hailing distance of her, or by previous signals. He did neither; and, in the absence of any hail or signal from the tug, the pilot of the ferryboat was not called on to imagine that any such disability existed, or to suppose that the tug would not stop in time. The ferryboat reversed before the collision, and her quick water carried the tug ahead of her after the collision. I do not see any evidence sufficient to show that the pilot of the ferryboat did not reverse as soon as he had reason to suppose that the tug could not or would not keep out of the way. *The West Brooklyn*, 45 Fed. 60, affirmed 1 U. S. App. 88, 1 C. C. A. 415, 49 Fed. 688.

According to the testimony, the causes of the collision, independently of the catching on the center, were: (1) The false position of the tug; (2) the engineer's tardiness in getting her off the center; and (3) the captain's failure to hail or signal his disability. The evidence of the pilot's admissions, not being a part of the *res gestae*, but made some time afterwards, are not, as I understand, competent evidence against the owner; it is only the master whose admissions, as the general representative of the owner, are thus admissible. *The Enterprise*, 2 Curt. 320, Fed. Cas. No. 4,497; *La Champagne*, 3 C. C. A. 539, 53 Fed. 293. The libel must therefore be dismissed.

THE DELAWARE.¹

WINNETT et al. v. THE DELAWARE.

(District Court, E. D. New York. May 7, 1894.)

COLLISION—STEAM VESSELS CROSSING.

A tug having a steamship approaching on her port hand, in a situation justifying the supposition that the steamship will go under her stern, or stop, is not in fault for keeping up her speed.

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

This was a libel by Charles H. Winnett and others against the steamship Delaware for the loss of libelants' tug Talisman by collision with the steamship.

Wing, Shoudy & Putnam, for libelants.

Convers & Kirlin, for claimants.

BENEDICT, District Judge. This is an action brought by the owners of the tug Talisman to recover for the loss of that tug, which was sunk at about 10 o'clock on the morning of September 16, 1893, by the steamer Delaware, in Gedney's channel. The steamship was inward bound. The tug was towing the pilot boat Edmund Driggs to her station, and was crossing Gedney's channel, towards the line of the black buoys. The Talisman was struck on her port side by the Delaware. The fireman on the tug was killed while attempting to cast off the towing line, the captain's arm was broken, and several of the crew were thrown overboard.

The fault of the Delaware is clearly proved. The only question remaining for consideration is whether there was a fault on the part of the tug. The faults charged against the tug are—First, in omitting to stop and reverse when risk of collision was evident; second, that the engineer of the tug left his post at a critical moment, when he ought to have executed an order which might have avoided the collision. I find neither of these charges sustained. The tug had an undoubted right to cross Gedney's channel as she did. It was the duty of the steamship to avoid her, and it was equally the duty of the tug to keep up her speed. In my opinion, it would have been a fault on the part of the tug to have stopped, under the circumstances. The vessels were on crossing courses, and in Gedney's channel. When the Delaware approached near to the tug, the tug had reached the western side of the channel. The situation justified the pilot of the tug in supposing that the steamship would go under his stern, or stop, and repelled any supposition that the steamship would pass ahead of him, and over to the western side of the channel. If he had acted on such a supposition, and stopped, he would have been at fault. I also find that the collision was in no way attributable to the fact that the engineer of the tug left the engine, and ran, at the last moment, to save his life.

There must be a decree for the libelants, with an order of reference to ascertain the damages.

EGAN v. BARCLAY FIBRE CO.¹

SMITH v. SAME.

(District Court, S. D. New York. May 7, 1894.)

1. DEMURRAGE—BILL OF LADING—DELIVERY "AS SOON AS POSSIBLE."

A provision in a bill of lading requiring delivery "as soon as possible" is equivalent to a provision for quick dispatch, and requires the consignee to make use of all means of discharge readily available, and does not admit of a detention of the vessel to suit the convenience or business purposes of consignor and consignee.

2. SAME—DISCHARGE AT CONSIGNEE'S CONVENIENCE—LIABILITY.

Where defendant had a slip, on each side of which were suitable places for discharge, and two of the boats of libellant E. arrived there to discharge at the same time, but defendant, for its convenience, allowed the discharge on one side of the slip only, *held*, that libellant was entitled to demurrage for the detention of his boats for any period over and above the time it would have taken them to discharge simultaneously on opposite sides of the slip; and a second libellant, S., whose boats arrived subsequently to E.'s, was *held* entitled to demurrage for the period after E.'s boats should have been unloaded, and before S.'s boats began to discharge.

These were two libels—one by John Egan, and the other by John A. Smith—against the Barclay Fibre Company, for demurrage for detention of libellant's canal boats on delivery of cargo.

T. Clement Campbell, for libellant.
Peter Cantine, for respondent.

BROWN, District Judge. The bills of lading required delivery of the cargo "as soon as possible." This is equivalent to a provision for quick dispatch in unloading, and required the consignee to make use of all the means of discharge that were readily available; it did not admit of a detention of the vessels for such a disposition of the cargo as merely suited the convenience, or the business purposes, of the consignor and consignee.

Each libellant had two canal boats loaded with wood. Egan's two boats arrived at Saugerties on the 29th of June. The defendant had a slip there in Esopus creek, and on each side of the slip were suitable places for the discharge of wood. Under such a stipulation in the bill of lading, I think it was the duty of the consignee to admit of the discharge of the two vessels at both places at the same time, on the two opposite sides of the slip; and to supply men enough to remove the wood as fast as it was put upon the wharf by the vessel's men. The defendant, for its convenience, allowed the discharge on one side of the slip only, where a car track could be made use of for removing the wood to a shed some five or six hundred feet distant; and the second boat had, therefore, to wait until the first was discharged.

The libellant chose to employ but four men to unload his wood. His witnesses testified that these were sufficient to remove the wood in two days. But what the men hired were capable of do-

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