

pellants on the 14th of February. On that day the Maurice river was open, and the Schall could have gone to sea, but her cargo had been unloaded on the wharf at Millville by the express orders of the appellants. Although diligent efforts were made by the master of the Schall to procure another charter, none was procurable until the 3d of March following. During all that time of enforced idleness, directly arising from the breaking up of her voyage by the act of the appellants, she had her crew on board, and was put to all the other necessary expenses which she would have incurred had she made her voyage. None of these expenses were allowed in the court below as a liquidated amount, but they were offset against the expenses which she would have incurred had she made her voyage, which, under the evidence, it seems would have been completed, under usual circumstances, long before the 3d of March. As the court below said, then it was exactly just to set the one claim off against the other. The ship was idle as a necessary consequence of the act of the appellants. They cannot urge that she ought to have been employed before she was. It was the result of their fault that the vessel became icebound, and unable to earn anything. The delay at Millville was the consequence of her going to that point. Her detention there ought to have been anticipated by the appellants, for the evidence shows that the river had been frozen over solidly just previous to their ordering the Schall to Millville; and it was only by reason of a temporary thaw that she was able to reach that port at any rate. But, having had awarded to her the gross freight which she would have earned, of course she ought not to be awarded the expenses of the detention, because she lost by that detention in the Maurice river no more time than she would have lost had she made her contemplated voyage to Florida.

We do not think it necessary to consider the other minor points that are raised in the case. The answers to the contentions of the appellants could not be stated more clearly than in the finding of the commissioner, and in the opinion of the court sustaining his conclusions; and, adopting them as the views of this court, the result is, the judgment below is affirmed.

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THE BROOKLYN.

JOHNSON v. THE BROOKLYN.

(District Court, S. D. New York. June 19, 1894.)

**COLLISION—STEAM VESSELS CROSSING—RULE OF THE STARBOARD HAND.**

Where a ferryboat, approaching her slip in the East river, saw a tug and tow coming up on her port hand, and blew them one whistle, thereby notifying the tug of her intention to insist on her right of way, and pass ahead, and there was then time and space for the tug to have avoided her by going astern or stopping, but the tug blew two whistles, and kept on until too late to avoid collision, *held*, that the tug was solely liable.

**Libel by Lorenzo D. Johnson against the ferryboat Brooklyn in a case of collision.**

Stewart & Macklin, for libellant.  
Hyland & Zabriskie, for claimant.

**BROWN**, District Judge. On the 29th of April, 1892, at about 1 p. m., as the ferryboat Brooklyn, of the South Ferry, was approaching her New York slip, she came in collision with the tug R. S. Garrett, which had a schooner in tow on a hawser, and was rounding the Battery to go into the East river. The collision was at about right angles, the stem of the tug striking the ferryboat on her port side just forward of her paddle wheel. The libel was filed to recover the damages.

There is considerable difference in the testimony as to the position of the two boats at the time when they were first observed, and the whistles exchanged. There is no doubt, however, that the Brooklyn had the right of way to her slip, and that it was the duty of the Garrett to keep out of the way; and that the Brooklyn, when she was at least 600 feet from the New York shore, and the Garrett 200 to 300 feet below the slip, gave a signal of one whistle to the Garrett, which required the Garrett to go astern of the Brooklyn. The Garrett gave two short whistles in reply, and kept on, but reversed too late, and came in collision, as above stated.

The fault in this collision lies, I think, wholly with the Garrett. Whatever confusion about the signals may have arisen from an exchange of whistles between the Brooklyn and other vessels to her right before her signal of one whistle was given to the Garrett, that signal was a clear notice to the Garrett that the Brooklyn intended to assert her right of way to go into her slip, and that the Garrett must go astern. I have not the least doubt that at that time there was plenty of time and space for the Garrett to turn to starboard, or stop, if necessary, and thus avoid collision. The weight of proof is that at collision the head of the Brooklyn was only a few feet from the entrance to her slip, and the Garrett could not have been more than from 100 to 150 feet from the ends of the piers.

I could not exempt the Garrett from fault in this case, without virtually holding that tugs coming up near the shore can at pleasure reverse the rule of the road, and require ferryboats to forfeit their right of way to their slips, and to wait for the mere convenience of tugs hugging the shore contrary to law.

Nor can I hold the Brooklyn partly in fault upon the analogy of the case of *The Fanwood*, 28 Fed. 373, and many other similar cases. In all those cases the position of the other vessel was such as to show that she was intending to cross ahead and could not, or would not, keep out of the way. In the case of *The Fanwood*, the tug was already partly across the slip, while the ferryboat was far enough away to stop easily before reaching her. In this case the tug had not reached the ferryboat's slip, and when the ferryboat's signal of one whistle was given, the tug was far enough below the slip to enable her to stop without difficulty before reaching the line of the ferryboat's course. That was the tug's duty. The ferryboat had every reason to suppose that the tug would stop or turn to the right as it was her duty to do, and therefore properly kept

on; and the tug's contrary whistles and alarm came too late. The ferryboat stopped; to reverse would have been dangerous to the tug.

The libel is, therefore, dismissed, with costs.

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THE RITA.

CLARKE et al. v. THE RITA.

(Circuit Court of Appeals, Fifth Circuit. May 8, 1894.)

No. 176.

**SALVAGE—AMOUNT OF COMPENSATION.**

While a steamship was at anchor, loading with cotton, fire broke out in cotton already stowed. There being some delay in putting into service the steamship's hose and pipes provided for using steam to suppress fire, she accepted the assistance of a tug lying near, and in about three hours, by the use of the tug's pumps and the labor of her officers and crew, participating with the steamship's appliances and crew and stevedores employed on her, the fire was extinguished. No serious risk was incurred by the tug, her officers, or crew, and the services rendered required no greater skill than her ordinary business. The value of the steamship and cargo was about \$194,000. The tug was worth about \$15,000, and had seven men, including officers, in her crew, who were paid \$480 per month. *Held*, that an award of \$1,500 to the tug and an equal amount to her crew was sufficient.

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

This was a libel by Charles Clarke and others against the steamship Rita, for salvage. The district court rendered a decree for libelants. They and certain interveners appealed, assigning as error that the amount awarded was inadequate.

Charles Clarke & Co., a firm composed of Charles Clarke, Robert P. Clarke, and Fred A. Brock, owners of the steam tug Seminole, for themselves and others interested as salvors, filed a libel in the district court of the United States for the eastern district of Texas on October 14, 1892, against the steamship Rita, her machinery, cargo, etc., and alleged that on the 11th of October, 1892, the Rita was at anchor in the Gulf of Mexico, about 3½ miles from the port of Quintana, engaged in loading cotton. That the Seminole had just towed a barge of cotton to the steamer, and made it fast thereto, when it was discovered that the cotton in the upper cross bunkers of the Rita and below the wooden deck was on fire. That about 125 bales were stowed in that place. In response to the alarm, the tug passed her hose aboard the steamer, to aid in extinguishing the flames. The steamer at first refused the assistance, but afterwards hailed the Seminole, and requested help in putting out the fire, it having been found that the steam appliances of the steamer would not work, and that the steamer alone and those on board could not overcome the fire. The tug went to the rescue, putting her hose on board the steamer, and her officers and crew threw water upon the fire steadily for over three hours, until it was subdued, and the danger averted. That, but for such service, it was probable that the Rita and cargo and those on board would have been lost, and, as it was, all were in serious jeopardy, as there were no other means of saving the vessel at hand, and the Rita was unable to make proper steam connections or otherwise to control the fire unaided. In performing this service the efforts of the tug and crew were attended with great labor and hardship, and considerable peril. That such service contributed to save the steamer, which was of the value of \$75,000, and about 4,000 bales of cotton, worth \$40 per bale, or a total of \$235,000. That the