

engineer of the ferryboat testifies that he got part of a turn backwards. In so short an interval I cannot find any substantial delay, or any neglect to reverse promptly. The collision arose, I think, wholly from the misapprehension of the pilot of the tug as to the expected course of the ferryboat; from his mistake in giving a contrary signal, and from his change of course to starboard. Manifestly except for this, no collision would have occurred. As the ferryboat had no reason to anticipate this course by the tug, and the moment it was perceived did all she could to avert the consequences of it, I must hold her without fault, and direct a dismissal of the libel, with costs.

WEBSTER v. DISHAROON.

(District Court, D. Maryland. May 26, 1894.)

COLLISION—VESSEL NAVIGATED BY OWNER PRO HAC VICE—OWNER'S LIABILITY IN PERSONAM.

Master running vessel on shares, paying all wages and expenses, and having sole control of navigation, is owner pro hac vice, and for collision resulting from negligence of himself or crew the owner is not liable in personam. *Thorp v. Hammond*, 12 Wall. 416, applied.

This was a libel in personam for collision, filed by John P. Webster against A. C. Calvin Disharoon.

Thomas S. Hodson, for plaintiff.
Beverly W. Mister, for defendant.

MORRIS, District Judge. This is a libel in personam, brought by the owner of the schooner *Ida Virginia* against the owner of the schooner *Margie J. Franklin* to recover the value of the schooner *Ida Virginia*, which became a total loss because, during a storm, the schooner *Margie J. Franklin* dragged her anchor, and drifted down on her, and injured her so that she had to slip her cable, and went ashore. The allegation in the libel is that the *Margie J. Franklin* was not provided with sufficient anchors and cable to hold her in a storm, and that sufficient anchors were not put out on her, and sufficient cable was not paid out, and the collision was occasioned by a want of care and skill on the part of her crew. Prior to the filing of this libel in personam, the same libelant filed a libel in rem for the same cause of action against the *Margie J. Franklin*. The owner did not claim her, and did not stipulate, and she was sold pendente lite, but brought only \$45, which was not sufficient to pay the costs. She was bought in for the benefit of her owner, the respondent in the present case. The answer, among other defenses, alleges that the schooner was not under the management of the owner at the time of the collision, but was being run on shares by her master, George W. Webster, who was to receive two-thirds of her earnings, out of which he was to provide and pay the crew and all her running expenses, and had sole control of her navigation; and that, said Webster being the owner pro hac vice, the respondent, as owner, cannot be held responsible in personam for the damages resulting from this collision.

It is clear that the master of the Margie J. Franklin must be regarded as her owner pro hac vice. He sailed her on shares, and had sole control of her use and navigation, employed and paid her crew, and provided them food. I know of no case which has disturbed the authority of *Thorp v. Hammond*, 12 Wall. 416, in which it was held that for damages resulting from a collision the owner pro hac vice is liable, and the general owner is not. The vessel is liable in rem, but the general owner is not liable in personam. It is urged in this case that the general owner was bound to make his vessel seaworthy, and properly equip her, and that the drifting in this case occurred because the Margie J. Franklin was not equipped with sufficient anchors and cables. I do not find that the drifting resulted from the insufficiency of the cables or anchors. The storm arose on Sunday night, after midnight, and the collision occurred after daylight Monday morning. The master had gone ashore on Saturday, to his home, leaving the schooner in charge of her crew of oyster dredgers. He left her held by her larger anchor and 15 fathoms of chain. When, from the force of the storm on Sunday night, the Margie J. Franklin began dragging, her crew did not let out more chain, although there was 30 fathoms to the larger anchor, and did not get out the smaller anchor, which had about 25 fathoms of chain, until after the collision. The master testifies that the owner had told him that only 15 fathoms of the chain to the larger anchor was in good order, and not to pay out more. This is denied by the owner, but, even if it were true, there is no reason why the smaller anchor should not have been put out, and there is no proof that the two would not have held her; and it is only a supposition that, if all the chain to the larger anchor had been paid out, it would have broken. If the chain had broken, that would have been proof that it was in bad order, or, if the master had been on board, and had refrained from paying out the chain because it was in bad order, it might be contended that the vessel had been allowed to drag because of the insufficiency of the chain. But nothing of that sort appears. The crew on board did nothing. They neither put out the smaller anchor in time, nor did they pay out more chain on the larger anchor. It is not proven that the two anchors would not have been sufficient if they had been used. There was ample time to have gotten out the second anchor, as the vessel was dragging from about 3 o'clock until after daylight. The master, as owner pro hac vice, was liable for this neglect, and not the general owner, and the libellant's remedy against the general owner was exhausted when he libeled the vessel in rem.

UNITED STATES v. PETERSON.

(District Court, E. D. Wisconsin. October 23, 1894.)

FEDERAL COURTS—JURISDICTION—HIGH SEAS.

The district court of the Eastern district of Wisconsin has no jurisdiction of an indictment for an assault committed on a vessel on Lake Huron within the boundary of the jurisdiction of the Eastern district of Michigan.

On Demurrer to Indictment against John G. Peterson.

J. H. M. Wigman, U. S. Atty.

Markham & Nickerson, for defendant.

SEAMAN, District Judge. An indictment is presented charging the defendant, master of the schooner Belle Brown, for an assault with a dangerous weapon upon one of the crew. It is alleged that the vessel belonged to a citizen of the United States, and the assault was committed thereon, "on waters on the high seas, and within the admiralty and maritime jurisdiction of the United States, and out of the jurisdiction of any particular state, to wit, upon the waters of Lake Huron." The defendant demurs to the indictment, alleging that this court is without jurisdiction of the offense charged; and, for the purpose of having the question determined at this stage, the district attorney requests that the following undisputed facts be considered as though set forth in the indictment: That the vessel was within 25 or 30 feet of a bridge pier, known as "Spencer's Pier," in the state of Michigan, on the west shore of Lake Huron, where the offense was committed; that the crew were warping the vessel to the pier, for landing, by means of rope and tackle; that it was upon the open waters of the lake, and not in any harbor or bay. So considered, the question of jurisdiction is fairly presented.

Section 5346, c. 3, tit. 70, of the United States Revised Statutes provides:

"Every person who, upon the high seas, or in any arm of the sea, or in any river, haven, creek, basin or bay within the admiralty jurisdiction of the United States, and out of the jurisdiction of any particular state, on board of any vessel belonging in whole or in part to the United States, or any citizen thereof, with a dangerous weapon, or with intent to perpetrate any felony, commits an assault on another, shall be punished by a fine of not more than three thousand dollars, and by imprisonment at hard labor not more than three years."

An act of congress of September 4, 1890 (26 Stat. 424, c. 874), provides for the punishment of any person who commits offenses mentioned in the chapter which contains the above section, upon United States vessels, "being on a voyage upon the waters of any of the Great Lakes" (naming them, and including Lake Huron), or connecting waters; and "the circuit and district courts of the United States, respectively," are vested with the same jurisdiction in respect of such offenses that they possess in respect of offenses in said chapter.

The recent decision of the supreme court in *U. S. v. Rodgers*, 150 U. S. 249, 14 Sup. Ct. 109, is based upon section 5346, as the offense there charged arose prior to the enactment of 1890, and the opinion