

tion and increase the difficulties and dangers of navigation immeasurably if the court should sanction the idea that a seaman may refuse to obey the master's orders on the ground that the work he is directed to perform is "extra" and entitles him to additional compensation. The facts in this case, however, take it out of the general rule and preclude the possibility of its ever being used as a precedent for a departure from or relaxation of the rule. The Potomac was in port at the time in question. The work was partly on the vessel and partly on shore and consisted in unloading and re-loading a part of her cargo. There were from 40 to 50 stevedores engaged in this business and the master promised the libelants and other members of the crew that if they went to work they should receive the same pay as the stevedores. The master admits the agreement and recognizes its fairness. The claimant also has conceded the justice of the claim by paying all of the mariners, pursuant to the agreement, except these libelants. The record discloses no reason for this apparently unfair discrimination. The libelants are entitled to a decree for \$21, interest and costs.

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THE CYGNET.

(District Court, N. D. New York. March 7, 1895.)

**SHIPPING—TITLE TO VESSEL—NINETY-NINE YEARS' LEASE.**

The lessor in a 99 years' lease of a pleasure yacht, which document the lessees have accepted in lieu of a bill of sale after paying full value, has no interest or title which the court can recognize.

This was a libel against the pleasure yacht *Cygnat* for mariner's wages.

Harvey L. Brown, for libelant.  
Clinton & Clark, for claimant.

COXE, District Judge. This cause, for a comparatively unimportant one, abounds in unusual complications. The libelant has failed to prove the cause of action and the claimant has not proved a defense. This may seem paradoxical, but it is, nevertheless, true that the proof fails to sustain the cause of action alleged in the libel and does establish the fact that the claimant has no title to the libeled vessel. The *Cygnat* is a Canadian pleasure yacht. In the spring of 1894 she was lying at the port of Buffalo and was owned by Buffalo parties. The libelant alleges that he was employed by one Ewing to act as sailing master of the yacht at \$50 per month. The proof shows that Ewing was neither owner of the yacht nor agent for the owners to make such a bargain. The testimony, documentary and oral, proves that at all the times in controversy the owners were Louis E. Levi and Alfred Schoelkopf. There is nothing to contradict this positive proof but rumor, hearsay and unfounded declarations. At the time of the alleged em-

ployment of the libelant as sailing master one of the owners of the yacht was in Europe and the other, from personal considerations, had no inclination to use her. In short, neither owner had any intention of sailing the *Cygnets* during the season of 1894; both were anxious to sell her. She had never had a sailing master, at least while Levi and Schoelkopf owned her, and she had absolutely no occasion for one in the spring and summer of 1894. The oaths of Ewing and the two owners that the libelant was never employed as sailing master are thus corroborated by the fact that there was no occasion for such employment. It is not pretended that either of the owners employed the libelant, and, even if Ewing made the alleged contract, it is clear that he had no authority to make it and could not bind the yacht. On the other hand it is shown that Thomas McGraw, of Toronto, who claims to be "the true and bona fide owner of said yacht," has no interest in her whatever; at least the proofs fail to disclose any interest. His only claim of title is as lessor under a 99 years' lease; the lessees, Levi and Schoelkopf, having paid full value for the yacht and having accepted this lease in lieu of a bill of sale. It is hardly necessary to consider the nature of McGraw's interest in the *Cygnets* in August, 1892. The court will take judicial knowledge of the fact that long before the lease falls in the yacht will have fallen apart and the claimant will have taken his last boat ride with *Charon* as "sailing master." Although the testimony does not establish the cause of action as alleged it does show that the owners authorized the employment of the libelant at \$2 per day to clean the yacht and put her in order so that she could be shown to intending purchasers and sold to advantage. The libelant says that it took him about 10 days to clean the yacht, but it is thought that the testimony of Ewing warrants the conclusion that libelant was employed in the above capacity and as keeper for at least 2 weeks. He was paid \$6. This would leave a balance due him of \$22. The evidence of all interested parties is before the court, and it is thought that the most equitable disposition that can be made of the controversy is to give the libelant a decree for this amount, interest and costs. Should further proceedings be contemplated the owners should have leave to intervene and answer and the libelant should be permitted to amend if he is so advised.

## THE J. H. DE GRAFF.

(District Court, N. D. New York. March 8, 1895.)

**1. TOWAGE—NEGLIGENCE OF TUG—PASSING NEAR OBSTRUCTIONS.**

It is negligence in a tug, towing a large barge against a current so swift that the tug, with a hawser of 250 feet, jumps and dodges about in the eddies, to go so near a pier (15 to 40 feet) as to render an accident to the barge possible, if not probable; and, where the barge is heading outward, it is further negligence to signal her to keep closer in, behind the tug.

**2. SAME—NEGLIGENCE OF TOW—OBEYING ORDERS MANIFESTLY DANGEROUS.**

Where a barge is being towed against a swift and treacherous current, it is negligence in the master, knowing that he is being towed so carelessly that he must pass within a few feet of a dangerous projection, to obey a signal from the tug to head closer in, and follow in her wake.

**3. SAME—SIGNALS FROM TUG—PRESUMPTION OF AUTHORITY.**

Persons on a barge in tow of a tug on a long hawser have a right to assume that any signal from the tug is made by authority, and it is therefore immaterial whether a given signal is made by the master or the fireman of the tug.

This was a libel against the tug J. H. De Graff to recover damages for negligent towage.

George S. Potter, for libelants.

George Clinton, for respondents.

COXE, District Judge. The libelants, as owners of the barge *Fostoria*, seek to recover damages for injuries to the barge alleged to be due to the negligence of the steam tug J. H. De Graff. On the 28th of August, 1890, the barge, while being towed by the tug up the Niagara river, struck the Inlet pier, which projects from the Bird Island pier from six to eight feet into the swift current of the river, at a point about opposite the Buffalo waterworks crib. That the *Fostoria* sustained injury by reason of this collision is admitted. The question to be determined is whether the tug or the barge is responsible for the injury, or are both responsible? The *Fostoria* was owned in Saginaw, Mich. She had no motive power of her own. It was manifestly her duty to obey the tug whose master was supposed to know all the dangers and obstacles to be encountered. *The Lady Pike*, 21 Wall. 1; *The M. J. Cummings*, 18 Fed. 178, and cases cited; *The S. S. Wilhelm*, 8 C. C. A. 72, 59 Fed. 169, 170.

The impression produced after reading the testimony is that the accident was occasioned by the negligence of both the tug and barge. I do not think that the fault of either alone could have produced it. The tug was at fault in two respects: First, in towing so near the Bird Island pier; and, second, in signaling the barge to keep still closer to the pier. That the current at the point of the accident is swift, treacherous and full of eddies, is conceded. It runs between eight and nine miles an hour and is known as "The Rapids." The *Fostoria* is about 130 feet long and 26 feet beam. On the day in question she was without a load and drew about 5 feet aft and 4