

had motioned to him from the tug, twice, and I told him to keep her in behind the tug. The vessel was at that time headed on the starboard quarter of the tug. By the time he had the vessel steadied up behind the tug, we were up within about 60 to 70 feet below this inlet. We appeared to be then headed to about 12 to 15 feet outside the Inlet pier, somewheres that way, and she kept sagging towards the wall; the current kept setting her in, and I gave the man at the wheel orders to keep his wheel a-port, and keep her out; and that did not seem to clear her, and in order to keep her stern out, I told him to starboard the wheel which he did. Then she struck the lower corner of the Inlet pier."

In other words, the master of the barge, knowing that the tug was towing his vessel so carelessly that she must pass within a few feet of a projection which extended out into a swift and treacherous current, gave an order when only 200 feet distant which threw the head of his vessel directly towards the impending danger. If it were negligent in the tug to give such an order it was negligent in the barge, with the danger so manifest and so near, to obey it. The master of the barge cannot shield himself, therefore, upon the theory that he was called upon under all circumstances to obey the orders from the tug. The danger was so imminent that common sense and common prudence admonished him to postpone obeying the order at least until after the Inlet pier was passed. As one of the witnesses expresses it, "A man has got no business doing such a thing, when he sees himself getting into danger he should use his own judgment and keep out of there." Starboarding, porting and starboarding again in quick succession in such circumstances was clearly bad seamanship and undoubtedly contributed to produce the accident. *The Margaret*, 2 Fed. 255. The situation is somewhat similar to that of *The Nettie*, 35 Fed. 615. The libelants are entitled to a decree for half damages and costs and a reference to compute the amount.

THE GEORGE DUMOIS.

GULF CITY COAL & WOOD CO. v. THE GEORGE DUMOIS.

(District Court, S. D. Alabama. January 26, 1895.)

MARITIME LIENS—SUPPLIES FURNISHED ON CHARTERER'S ORDER.

Where coal is furnished, even in a foreign port, not being a port of distress, on the personal order of the president of a corporation known to be a charterer only, without any mention of the ship by either party, or any inquiry of or dealing with the master, the presumption is that credit was given to the charterer, and the ship is not bound.

This was a libel by the Gulf City Coal & Wood Company against the steamship *George Dumois* to recover the price of coal supplied to the ship.

L. H. Faith, for libelant.

G. L. Smith and H. T. Smith, for claimant.

TOULMIN, District Judge. I find the facts in this case to be that the coal was furnished to the ship in Mobile, Ala., on the personal
v.66f.no.3—23

order of one Dick, the president of the Columbian International Colonization & Improvement Company of New Orleans, La., who were the charterers of the ship for the term of one year; that the ship was a foreign vessel; that libelant knew that the Columbian International Colonization & Improvement Company were the charterers; that the ship was not in a port of distress; that she was running in a regular line between the port of Mobile and foreign ports; that in the negotiation for the coal no reference was made to the vessel as a source of credit, and there was no inquiry made of or dealing with the master or any agent of the ship. I further find that the charterers had, by the terms of the charter party, agreed to pay for such supplies, but that the libelant had no actual knowledge of this provision of the charter party. In short, the Columbian International Colonization & Improvement Company were the known owners of the ship, and Charles I. Dick was the president and representative of the company. The coal was obtained on the personal order of Dick in a foreign port, where he was at the time of giving the order. The dealing, then, was presumptively on the said owner's personal credit only, and I am not satisfied from the circumstances of the transaction, as shown by the proof, that there was a common understanding or intention to bind the ship. On the contrary, I think that the circumstances indicated to the libelant that the purchase of the coal was on the charterer's credit only, and that in furnishing it without objection or any reference to the ship, or inquiry of the master, the libelant must be held to have trusted to the charterers only, and that the ship is not bound.

My opinion in this case is sustained by the following authorities: *The Stroma*, 41 Fed. 599; *Id.*, 3 C. C. A. 530, 53 Fed. 281; *Stephenson v. The Frances*, 21 Fed. 715; *Neill v. The Frances*, *Id.*, 921; *Herreschoff Manuf'g Co. v. The Now Then*, 50 Fed. 944; *Id.*, 5 C. C. A. 206, 55 Fed. 523; *The Kong Frode*, 6 C. C. A. 313, 57 Fed. 224. The substance of these decisions is that, in dealing with a known charterer, even in a foreign port, for mere ordinary supplies, the dealings are prima facie upon his personal credit only, and no lien will be implied unless the libelant satisfies the court, from the negotiations or the circumstances, that there was a common understanding or intention to bind the ship.

The libel in this case must therefore be dismissed, and it is so ordered.

THE RAMBLER.

PRICE v. THE RAMBLER.

(District Court, S. D. New York. January 21, 1895.)

TUG AND TOW—ICE—TOWAGE AT NIGHT—NEGLIGENT LOOKOUT.

An ordinary engagement of towage in the North river does not authorize the tug to take the tow in the nighttime, when thick running ice makes towing dangerous; and the R., having taken the tow alongside after dark, with its bow projecting 40 feet ahead of the tug, thus exposing the tow to the chief danger of being cut by ice, without maintaining any good lookout on the bow of the tow to avoid injurious cakes of ice, and running at such a rate that holes were cut through the bow of the tow, causing her to sink, the tug was held liable for the consequent loss: *Held*, also, that the duty to maintain a lookout on the bow of the tow was a part of the tug's duty in navigation, and that the boatman on the tow in acting to some extent as a lookout, at the tug's request, acted as the agent of the latter and at her risk.

This was a suit in rem by William A. Price against the steam-tug Rambler to recover for damages occasioned by alleged negligent towing.

Hyland & Zabriskie and Mr. Hough, for libellant.
Stewart & Macklin, for respondent.

BROWN, District Judge. There is no sufficient evidence on the part of the respondent to discredit the testimony in the libellant's favor, showing that the canal boat McMahon, though old, was in good condition, sound in her planks and timbers, and reasonably fit for navigation. She was taken in tow by the Rambler alongside after dark, with her bows projecting 40 feet ahead of the tug, and in that manner towed through ice in the North river, during which a hole was cut through two planks in her bow, which caused her to sink speedily. The manner of towing, in effect, placed most of the liability to damage from ice and the danger from cutting through any cakes that were met, upon the canal boat; whereas the tug was much better designed for this work, and could do it much more safely. The tug also did not take the straightest course across the water, but headed four points down river, which still further relieved the tug at the expense of the tow. It does not appear that the tug had orders to tow the boat through ice; I must assume that the orders were the usual orders for towage, and were no justification for towing in such ice as made towage dangerous, or towing in the nighttime, when dangerous cakes could not be distinguished far enough ahead to avoid injury from them. The man on the barge testifies that he objected to starting after dark, and asked the tug to wait till morning.

If towing alongside in ice, and in the nighttime, could be justified, with the bow of the tug placed so far ahead, it was the duty of the tug to maintain a careful and competent lookout on the bow of the canal boat, and to proceed with great caution in order to stop in time to prevent any rapid crashing into the larger