

by the fact that none of them saw the Purcell's green and red lights at the same time, which they must have seen had they been watching, and known when the change was made. It was the duty of the Eagle to keep a proper continuous lookout; to observe in time the change which put the vessels on crossing courses after the Purcell rounded Throgg's Neck, so as to involve danger, and required the rules as regards signals to be observed. Through lack of proper attention in this regard, the Eagle failed to give the signal which she was bound to give under the inspector's rules, and which if given in time, as required, would have corrected the mistake and confusion to which the Purcell's witnesses testify in regard to the Eagle and Vulcan, through not seeing the vertical staff lights, whether they were properly set and burning, or not.

For these reasons, both vessels must be held in fault, and the libellant is entitled to a decree against both vessels, with costs.

THE FLORIDA.

HILLS et al. v. THE FLORIDA.

(District Court, E. D. New York. May 27, 1895.)

SHIPPING—DAMAGE TO CARGO—NEGLIGENCE IN DISCHARGING.

A steamship held liable for damage where bags of filberts, in the course of discharging, were placed so near the coal bunkers that dust from the coal blew upon and through the bags.

This was a libel by John Hills and others against the steamship Florida to recover for damage to certain bags of filberts, constituting part of her cargo.

Carpenter & Park, for libellants.

Convers & Kirlin, for claimants.

BENEDICT, District Judge. This is an action to recover of the steamship Florida for alleged damage to 383 bags of filberts, caused by coal dust upon the filberts. These filberts were part of a consignment shipped from the port of Messina on board the steamship Florida, which arrived in New York about August 5, 1890. Upon their discharge on the dock a large number of the bags were found to be covered with coal dust, and considerably damaged thereby. The allegation of the libel is that the cargo in question was damaged by coal dust from the bunkers of the ship permeating said bags, and damaging their contents, and that the same was caused by negligence and improper attention on the part of the master of the vessel, his agents and servants. Although some point has been made upon the testimony as to the sufficiency of the evidence to show that the filberts in question came by the steamship Florida, the testimony, taken together, leaves no doubt on that point; and it is found that the filberts were transported in the steamship Florida, and that they were damaged by the coal dust, as alleged in the libel. It is true that the evidence shows good stowage of the filberts on board the

ship, and makes it plain that no coal dust from the bunkers could have reached them while so stowed; but this fact, taken with the fact that the filberts, when landed, were covered with coal dust, would warrant the inference that the filberts were permitted to come in contact with coal dust while discharging. But the case is not left to depend upon this inference. There is positive proof in the case that the filberts, while discharging, were placed by the bunkers of the ship where the coal was put down, and that coal dust blew right through the bags of filberts. It must therefore be found that the filberts were damaged by negligence on the part of the ship. For such negligence as this the ship is not absolved by the terms of the bill of lading, under the law of this country. Let there be a decree for the libelants, with an order of reference to ascertain the amount.

The VICTORIA.

DAVI v. The VICTORIA.

(District Court, E. D. New York. July 8, 1895.)

SHIPPING—PERSONAL INJURY TO STEVEDORE—FELLOW SERVANTS.

Where a stevedore engaged in discharging cargo was injured by being struck by a sling which the winchman, employed by the vessel, started too rapidly, *held* that the doctrine of fellow servants did not apply, and that the ship was liable.

This was a libel by Antonio Davi against the steamship Victoria to recover damages for personal injuries.

Francis L. Carrao, for libelant.

Convers & Kirlin, for claimants.

BENEDICT, District Judge. This is an action for personal injury sustained by the libelant. The libelant was a stevedore, engaged in discharging the steamship Victoria at the time he was hurt. The immediate cause of the injury was the swinging of a sling of fruit against the end of a board which the libelant was at the time adjusting in the hold, whereby one of his fingers was cut off and serious injury was done him. There is a conflict of testimony as to which sling did the injury, but the weight of the evidence seems to me to support the allegation of the libel in that particular. The evidence further shows that the libelant's injury was caused by negligence on the part of the winchman in not heeding the direction to "go easy," and in starting the winch so rapidly as to cause the sling of boxes to swing past the center of the hold, and against the board which the libelant was at the time adjusting. The owner of the ship furnished the power, machinery, and winchman to hoist the cargo out of the hold. The doctrine of fellow servant does not apply in such a case (see *Johnson v. Navigation Co.*, 132 N. Y. 576, 30 N. E. 505), and the ship is liable for the injury caused by the negligence of the winchman.

Let there be a decree for the libelant, with an order of reference to ascertain the amount of the damages.