

does not necessarily follow, the contract being maritime that a lien upon the vessel is allowed"—and that the services of a stevedore stand in no such relation to the ship as those of a mariner.

BUTLER, District Judge. The libel and exceptions raise the question, are stevedores employed in the home port of a vessel entitled to a lien? It seems to be settled that they are not. The subject is well discussed and the authorities cited on the one side and the other, in the proctor's brief annexed, and I therefore incorporate it in this opinion. The contract is maritime; but this fact does not control the question. Contracts for supplies and other necessaries, are maritime; but when furnished in the home port no lien attaches. In the absence of express stipulation, liens attach only where the supplies are furnished, or services rendered, on the credit of the vessel. In the home port they are presumed to be furnished or rendered on the credit of the owners. Liens are not favored, and are, therefore, allowed only where the necessities of the vessel and the interests of commerce render them necessary. No case is found in which a lien for stevedores' services in the home port, has been allowed, as the libellant's intelligent proctor, admits. He relies however on expressions found in some cases where the question was not directly involved. The obiter dicta of judges are not of much value; very often they are misleading. The libel must be dismissed.

THE HERCULES.

THE SEA QUEEN.

In re SHIPOWNERS' & MERCHANTS' TUGBOAT CO.

(District Court, N. D. California. May 28, 1897.)

TOWAGE—DUTY OF TUG—BUOY MARKING OBSTRUCTION.

The master of a tug plying in a busy harbor is not justified in relying absolutely upon the presumption that a buoy, placed by the government to indicate a dangerous obstruction to navigation in such harbor, is in its proper position, but is bound, especially when towing a large ship past the obstruction, to observe the bearing of such buoy, and watch for any change in its position, and to be so familiar with the actual location of the obstruction as to be put on his guard by a displacement of the buoy amounting to 200 feet in distance and making a difference of a point and a half in its bearing.

Page, McCutchen & Eells, for petitioner.

Andros & Frank, for claimants.

MORROW, District Judge. A petition for limitation of liability, under sections 4282-4285, Rev. St., was filed December 30, 1895, by the Shipowners' & Merchants' Tugboat Company, owner of the steam tugs Hercules and Sea Queen. The petition asked for a limitation of liability with respect to the Hercules. By an amended petition, filed January 10, 1896, the Sea Queen was also included. The petition and amended petition were filed, in view of certain claims for damages having been made against the tugs, aggregating about \$20,000, to limit the liability of the owner to the value of said tugs, if

it should be determined that there is any liability. The principal claim for damages against the tugs is that involved in a libel instituted in this court by Arthur Sewall and others against the steam tugs Sea Queen and Hercules, in the sum of \$20,000, for alleged negligence on the part of those in charge of said tugs in towing the ship Benjamin F. Packard on a rock in the Bay of San Francisco. The further prosecution of this suit was restrained and enjoined by an injunction issued to the petitioner on April 9, 1896, and a monition was issued, returnable July 14, 1896, citing all persons claiming any damages for any loss arising out of the stranding of the ship Benjamin F. Packard to appear before Southard Hoffman, a commissioner, and make due proof of their respective claims, and answer the petition for a limitation of liability. Two claims have been presented,—one, as has been already stated, by Messrs. Arthur Sewall and others, claiming damages in the sum of \$20,000. The other claim is presented by the firm of Balfour, Guthrie & Co., in the sum of \$484.54, for damages to a portion of the cargo of wheat, alleged to have been caused, also, by the negligent stranding of the ship by the tugs.

The petition and amended petition set up, in brief, that certain claims have been made upon the steam tugs Sea Queen and Hercules, owned by the petitioner, for damages alleged to have arisen from the stranding, on Mission Bay Rock, on December 3, 1895, of the ship Benjamin F. Packard; that the said stranding was not caused by any incompetency or negligence of the master of the steam tug Hercules, or the unseaworthiness of said tug; that the Sea Queen took no part in the actual towing of said ship, but was simply attached by holding lines to the ship, having been somewhat disabled by unseating her funnel before the towing had commenced in striking against the ship's mainyard; that the cause of the stranding and damage to the ship and cargo was the fact, solely, that the buoy, which indicated where the submerged Mission Bay Rock was located, had, for some cause unknown to the petitioner, been moved, and was not, at the time of the towage aforesaid, in the place in which it had been for many years previous to the date of the stranding, or in which it was designated by the chart as being, and in which the master of the Hercules believed it to be; that, on the contrary, the said buoy had been moved from its said usual place and designated point to a distance of more than 200 feet from the position which it had once occupied, and to a point considerably to the southward of the northwesterly side of said rock; that, in consequence of the said change of the danger buoy, the master of the tug Hercules was deceived as to the course that he should take in moving the said ship, so that the course actually taken by him, though apparently, by reason of the actual location of the buoy, a distance of nearly 200 feet from the rock, was in fact in the direction of the rock; that whatever loss or damage or injury was done to the ship Benjamin F. Packard or to the cargo was done without the privity or knowledge of the petitioner.

The answers filed by both of the claimants set up, substantially, that the stranding of the ship Benjamin F. Packard, and the conse-

quent damage to the ship and her cargo, were caused by the careless, negligent, and unskillful manner in which those having charge of the tugs attempted to perform said service. With respect to the position of the buoy, the answer of Messrs. Sewall and others denies:

"That the accident to said vessel was caused entirely, or at all, by reason of the fact that said buoy had been removed from the place it had at some other time occupied, or that said accident was not brought about by any incompetency or negligence of said master of said tug."

With reference to the averments in the amended petition that the Sea Queen did no towage service to said ship, the answer of the same claimants denies, on information and belief:

"That the said tug Sea Queen did no towage service to said ship thereafter and before the stranding of said ship, or that said tug was merely attached to said vessel while the funnel of said tug was being replaced. On the contrary, they aver, on information and belief, that said tug Sea Queen was, immediately after said ship had been started away from said wharf, engaged in towing her in connection with said tug Hercules; that said tug Hercules was made fast on the quarter of said ship, and the said Sea Queen was made fast near the bow of said ship; and that, immediately after getting clear of said wharf, both of said tugs were under steam, and engaged in towing the said vessel at the time of said accident."

From the issues as thus made up three questions arise: (1) Whether the stranding of the ship Benjamin F. Packard arose or was caused by any negligence on the part of both of the tugs, or either of them, in towing the ship; (2) whether the Sea Queen participated or had anything to do with the towing of the ship; and (3) whether the liability of said tugs, or either of them, should be limited to their value, or whether there was such privity or knowledge on the part of the owners of the tugs as to justify holding them personally responsible, and denying their petition for a limitation of liability.

The principal question of fact involved, upon the determination of which the right of the petitioner on the one hand to a limitation of liability or a decree absolving it from all liability, and the right of the claimants on the other hand to recover against the petitioner, alike depend, is whether the stranding of the ship on Mission Bay Rock, while being towed, was caused by the negligence, carelessness, and unskillfulness of those in charge of the towing, or whether, under the circumstances, it was excusable. Considerable testimony has been introduced by both sides. The leading facts are these: On December 3, 1895, the ship Benjamin F. Packard was lying on the north side of Long Bridge wharf, in the Bay of San Francisco. She was starboard to the wharf, and headed outward, to the southeastward. She had a gross tonnage of 2,130.21 and a net tonnage of 2,025.72, and was 244.2 feet in length, 43.3 feet in breadth, and 26.8 feet in depth. She was built in 1883 at Bath, Me. At the time of the stranding she was partially loaded with a cargo of 2,800 or 2,900 tons of wheat and barley. It became necessary to move her from the wharf into the stream for the purpose of completing her loading. The Ship-owners' & Merchants' Tugboat Company was employed to perform that service. The steam tug Sea Queen went to the ship, and reached her some time between 10 o'clock and 10:30 of the morning of the 3d of December, 1895. The ship was to be towed out on the ebb tide. It ap-

pears that the Sea Queen, in going around the ship, fouled the mainyard of the latter, and her funnel or smokestack was unseated. Besides this, the collision broke the whistle pipe, and put the escape pipe out of condition. The smokestack guys, excepting one, were carried away, and several injuries of a minor character sustained. This disabled the Sea Queen for towing purposes. As the captain of the Packard was anxious to go out on that tide, the master of the Sea Queen, accompanied by the captain of the ship, went to a telephone office on the wharf and requested that another tug be sent out. Thereupon, the steam tug Hercules was sent out. While the latter tug is not quite as large nor as powerful a tug as the Sea Queen, still it satisfactorily appears that she was amply sufficient to tow the Packard; certainly so under the conditions then prevailing. The registered dimensions of each tug are as follows: The Hercules was 90 feet in length, 21 feet in breadth, and 11.9 feet in depth. She had a gross tonnage of 96.71, and a net tonnage of 48.36. The Sea Queen was 100.5 feet in length, 22 feet in breadth, and 11.8 feet in depth. She had a gross tonnage of 111.15, and a net tonnage of 55.58. The horse power of each tug, as testified to, was: The Hercules, 635; the Sea Queen, 691. The weather was good, and the tide, as stated, ebb,—just a light ebb when the towing actually began. Meanwhile efforts had been made to set up the smokestack of the Sea Queen, which, it appears, had been only partially successful. The tug Hercules was made fast for towing at the port quarter. After the accident to the Sea Queen, the latter was moved abreast of the forerigging, under the foreyard, and on the same side on which the Hercules was made fast. Both tugs were heading with the ship.

There is a conflict in the testimony as to whether the Sea Queen was made fast for towing purposes, and as to whether she actually rendered any assistance in towing. It will, therefore, be necessary to determine this question at the outset. The testimony on the part of the petitioner tends to show that she was not made fast for towing; that at no time until after the accident did she assist in the towing; that when the towing began she was made fast by two small lines, called "holding lines," and shortly after the towing began by one small line only. To use the language of her master:

"After knocking over the smokestack, I hauled up alongside the forerigging of the ship. I got one headline out onto the shankpainter bitt that they use to hang the anchor in. That was what the headline was fastened to. The sternline consisted of what we use for a messenger, a three or three and one-half inch line with a hook in it, and that hook was hooked into the second or third chain plate in the main rigging. It was not fast at all."

The testimony on the part of those on board the ship tends to show that the Sea Queen was made fast for towing purposes, and that she did render towage services. But this testimony is unsatisfactory and in some respects unreliable. The captain of the ship states unequivocally that the Sea Queen was made fast when the towing first began, and that she was not afterwards moved forward, whereas several of the witnesses on board the ship testify that the Sea Queen was first moved forward some 35 or 40 feet and then made fast for towing. This conflict between their statements in