

or take the tugs with it. The tug which was cast off to rescue Griffen was not again attached because, as I suppose, it was seen that such attachment would be useless. The only probable effect of making it would have been to hasten the catastrophe. As the dock was sometimes driven towards the tug attached the latter would hasten forward to tighten the line, and then a counter wave would drive the dock back, and the jerk thus caused on the line would produce a strain that would have been likely to part it sooner if the weight and force of the two tugs had been encountered at the forward end. That it endured the strain to which it was subjected by the storm, so long as it did seems to demonstrate that it was in good condition. It held until the situation was such that no hawser would have saved the tow. It was lost as a consequence of the storm, and not of the condition of the hawser. This conclusion is, I think, fully warranted by the testimony on both sides. Nor do I think the respondents were remiss in not turning back to seek a harbor because of indications of bad weather after starting, or when the storm arose. There were no such indications, in my judgment, of a reliable nature, until the storm was imminent, as required them to seek a harbor, and afterwards turning back against the wind would, I think, have augmented the danger.

The libel must be dismissed.

THE JOHN AND WINTHROP.

KRUEGER et al. v. THE JOHN AND WINTHROP.

(District Court, N. D. California. December 29, 1897.)

No. 11,402.

SEAMEN'S WAGES—DEFENSES.

In a suit for seamen's wages, where the defense is that libelants were suspended from duty and imprisoned by the master, on suspicion of an attempt to burn the vessel, it is not sufficient that the master acted in good faith, and under the belief that libelants were guilty, if, in fact, they were not guilty of such a purpose.

This was a libel by F. A. Krueger and others against the American bark John and Winthrop to recover seamen's wages.

The defense to the action was that the libelants had shipped for an entire whaling voyage on the bark John and Winthrop, and while on such voyage attempted to burn and destroy the vessel, and for that offense the captain, after such investigation as he thought sufficient, suspended the libelants from duty and imprisoned them on board of the vessel. Upon the trial the captain testified that such action was, in his judgment, necessary for the safety of the vessel. The captain did not, however, of his own knowledge, know that the libelants were in fact guilty of the offense charged against them.

H. W. Hutton, for libelants.

Geo. W. Towle, Jr., for respondent.

DE HAVEN, District Judge. The evidence in this case is not such as would warrant the court in finding that the libelants, or either of them, attempted to burn and destroy said bark John and Win-

throp, and thus to break up the voyage for which they shipped as seamen on board of said vessel. The fact, if it be a fact, that the captain, in suspending the libelants from duty and imprisoning them on board the ship, acted in good faith, under the belief that they were guilty of attempting to destroy the vessel, is not of itself sufficient to defeat the claims of the libelants in this action. The good faith of the master in that matter would be important, if the libelants were seeking to recover damages for assault or false imprisonment; but in this action, based on the contract set out in the shipping articles, the libelants are entitled to recover if they are not in fact guilty of the charge of attempting to set fire to the vessel. There will be a decree for the libelants.

THE MEXICO.

In re COMPANIA TRANSATLANTICA.

(Circuit Court of Appeals, Second Circuit. January 7, 1898.)

No. 39.

1. COLLISION—PRESUMPTIONS—CARGO INSURERS—LIMITATION OF LIABILITY.

The rule that where fault on the part of one vessel, sufficient to account for the collision, is established, the burden is then on her to clearly show fault on the part of the other, applies as against underwriters of the cargo of the vessel so in fault; and it makes no difference that the other vessel has sought the benefit of the statutes for limitation of liability.

2. SAME—STEAMERS AT SEA.

The fact that one of two colliding steamers had the reversing gear of her engine clamped fast to the rock arm, so that from one to five minutes was required to release it after notice to reverse, *held* a gross fault, rendering her liable.

3. SAME.

Where two steamers approached each other on the open sea at night, *held*, on the evidence, that the one having the other on her starboard bow, after crossing the bow of the privileged vessel, so as to have her green light constantly in view, began porting, and continued to do so until she struck the latter on the starboard side, and was consequently in fault; and *held*, further, that the privileged vessel was not in fault for not reducing her speed, or for starboarding so as to reduce the angle of collision. 78 Fed. 653, affirmed.

Appeal from the District Court of the United States for the Southern District of New York.

Petition for limitation of liability.

This proceeding was instituted by the petitioner in the district court, Southern district of New York, in consequence of a collision which occurred between the steamer Mexico and the steamer Nansemond, December 21, 1895. The Nansemond, as a result of the collision, sank, with her cargo, and all became a total loss. The Mexico sustained no damage. In May, 1896, libels were filed by the owners of the Nansemond, and by the underwriters of a portion of her cargo, against the Mexico, in the Southern district of New York, and thereafter petitioner filed its petition for limitation of liability. The value of the petitioner's interests in the Mexico and in her freight was duly appraised, and a bond given for the amount. Under the monition issued in the proceeding, claims were filed on behalf of the owners of the Nansemond and her cargo. The cause coming on to be heard, the district court held the Nansemond solely in fault for the collision, and entered decree accordingly. 78 Fed. 653. Appeal from said decree is prosecuted by the un-