

hour and a half before. He knew, or should have known, of the unusual current, the high water, and of the eddies and cross currents caused by the wind and water rushing through the slips. He knew, generally at least, what vessels were in the harbor, and where they were moored. If he were unable to bring in the Syracuse safely, he should not have attempted it. If she were at fault for not employing two tugs, the Danforth was at fault also for attempting so dangerous a task alone. Although it would have shown a commendable prudence to have procured another tug, the court is not prepared to say that the failure to do so was negligence. The journey could have been made with one tug had ordinary prudence been observed. Of course the Danforth was going at the same rate of speed as the Syracuse, and was as responsible as the propeller for this recklessness if she directed or acquiesced in it. She insists that she repeatedly protested by signaling the propeller to check down and back, but this the propeller denies, and thus a question of fact is presented which is an exceedingly difficult one to determine. Assuming that the tug protested against the steamer's reckless speed, no criticism can be made of her course until the propeller commenced the fatal sheer. It is admitted on both sides that she took a position at right angles to the propeller, and pulled to starboard with all the power at her command. At the time the line was thrown off, the tug was careened over to port so that the water was over her port rail, had run through the hatches and into the firehold, and wet the coal on that side of the tug so that it could not be used. She was, in short, in imminent danger of capsizing. The court is inclined to the opinion that the tug had reached the climax of her usefulness. She could not overcome the sheer in the position in which she then was. She might have pulled a few seconds longer, but, whether rolled over or not, her capacity to help was about exhausted. After the propeller had run past her the tug's ability to pull the propeller's bow to starboard was greatly reduced. The fault of the tug was not so much in throwing off the line as in permitting herself to get into a position where such a course was necessary, where she might be "tripped up" and thus rendered useless. With a steamer going at the rate of five or six miles an hour it seems plain, if permitted to outrun a tug attached to her bow by a short line, that the tug and not the steamer must give way, especially when the size of the two boats is as unequal as in the case at bar. The situation in this regard was similar to that condemned by this court in the case of *The Alpha*, 27 Fed. 759, where the court said:

"When within a few hundred feet of the slip [Commercial Slip] the tug in her efforts to bring the barge safely around the curve, put her helm hard a-port, thus heading for the south side of the river. In this position the barge passed the tug, and, in seaman's parlance, 'tripped her up.' They were proceeding against the current at the rate of about four miles an hour, their courses forming an angle of about 45 degrees. A tremendous leverage was thus brought upon the hawser, which rolled the tug up almost upon her beam's end. No ordinary line could resist such a strain. It broke about a minute after the helm was put hard a-port. There can be no doubt that it was bad seamanship for the *Alpha*, with so short a line, and so heavy and unwieldy a tow, to permit herself to get into such a dilemma. This was negligence, and to it the collision is alone attributable."

It is seldom that two cases are so nearly parallel upon the facts. If the Danforth had been capsized, and her owners had libeled the Syracuse for the damages sustained, is it not plain that the court would have been compelled to say that her own fault was responsible, in part at least, for the disaster? The conclusion cannot be avoided that, had the Danforth kept in a position where she could have continued to pull, the injury to the Elk might possibly have been avoided, and at all events would have been much less severe. The libellant is entitled to a decree against the Syracuse and the Danforth, with costs, and a reference to compute the damages.

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THE LE LION.

THE ATLAS.

PHINNEY v. THE LE LION.

DUMONT v. THE ATLAS.

(District Court, E. D. Pennsylvania. February 11, 1898.)

Nos. 77 and 80.

1. COLLISION—BARGE ANCHORED IN CHANNEL.

A barge may properly anchor for the night near the middle of the channel of Delaware Bay, inside the capes, where it is four or five miles wide.

2. SAME—STEAMER WITH ANCHORED BARGE.

An anchored barge, which was run into by a steamer shortly after Act Feb. 19, 1895, prescribing one anchor light instead of two, will not be held in fault for having two lights, when the steamer saw only one, and therefore could not have been misled by the other.

3. SAME—BURDEN OF PROOF.

The rule that a vessel, clearly shown to be guilty of fault adequate of itself to account for the collision, has the burden of clearly proving contributory fault by the other, is peculiarly applicable where the other was at anchor, since there is a presumption in favor of an anchored vessel, and a presumption of fault on the part of a vessel running into her.

This was a libel against the master of the barge Atlas against the steamship Le Lion, and a cross libel by the master of the latter, to recover damages growing out of a collision.

Horace L. Cheyney and John T. Lewis, for the Atlas.

H. R. Edmunds, for the Le Lion.

BUTLER, District Judge. About 8 o'clock of March 24, 1895, the barge, in tow of the tug Shawmut, on her way from Boston to Philadelphia, anchored in the Delaware Bay, inside the capes, near the center of the channel,—which is upwards of four miles wide at this point. She put up the usual white light forward, and left her stern light, which had been up previously, burning. The tug anchored the fourth of a mile further up. A proper anchor watch was set upon the barge, and she remained in this situation, her stern swinging up stream, with the incoming tide, until near midnight. At that time the steamship, which was also coming up to Philadelphia, ran into her.