

norance, or design, he has failed to stipulate the rate. It is suggested that the obvious duty of making such an agreement be observed in the future by officers having vessels in charge. The explanation offered concerning the system of keeping his books, wherein the petitioners' superintendent has stated the rate of wharfage in this case to be \$1.50 per day, is of doubtful credit; but there does not appear to be sufficient in such entry to enable the court to affirm that the petitioners have waived the right conferred by the statute.

It must be decided that the petitioners are entitled to the statutory rate for the wharfage furnished, but a decree therefor shall not be entered until the court shall have been furnished with the computation, and shall have approved the same. It is probable that the rate should be upon the registered, and not gross, tonnage. The *Craigendoran*, 31 Fed. 87. There will also be presented to the court a statement of the expenses of this proceeding, and it will be determined to what extent, if any, the fund in the registry of the court shall be further depleted on account of this claim, wherein the wharfingers, pursuing their technical right, have seen fit to discriminate in their charges against property in the care of this court.

THE MARIA DOLORES.

(District Court, D. South Carolina. June 30, 1898.)

PRIZE—ENEMY'S PROPERTY.

A vessel and cargo whose papers, supported by the testimony, show that both belonged to a subject of the king of Spain, *held* lawful prize of war, having been captured by a United States cruiser while on a voyage from one port of the enemy to another.

This was a libel in behalf of the United States against the *Maria Dolores* to procure her condemnation as prize of war.

A. Lathrop, U. S. Dist. Atty.

BRAWLEY, District Judge. This is a cause of prize arising out of the capture of the Spanish bark *Maria Dolores* by the United States cruiser *Minneapolis*. The libel was filed June 10, 1898. No claimant has appeared, and the testimony taken by the prize commissioners, and an examination of the ship's papers, show that the *Maria Dolores* is a bark of 375 tons, owned by Tomas de Gorosica, a subject of the king of Spain; that she was manned by a crew of 11 persons, and under the command of Buenaventura Ferrer, master. She sailed from San Sebastian, in ballast, about the end of March, and on the last days of March and the first days of April, 1898, she took on a cargo consisting of 250 tons of bituminous coal and 250 tons of patent fuel at Avilas, a port of the kingdom of Spain, whence she sailed early in April for San Juan, a port in the island of Puerto Rico; both ship and cargo being consigned to Sobrinos de Azguiaga, Spanish subjects at the last-named port. She was captured in the early morning of May 21, 1898, about 12 miles from San Juan, by the United States cruiser *Minneapolis*, commanded by Captain Jewell, of

the United States navy, and was sent to this port in charge of a prize crew for condemnation. Upon hearing the testimony, and after consideration thereof, it is adjudged and decreed that the bark *Maria Dolores*, with her tackle, apparel, and furniture, and her cargo of coal, be condemned, forfeited, and sold as lawful prize of war; and a decree will be entered forthwith directing the marshal of this district to sell the same after due advertisement.

THE ROBERT H. RATHBUN.

(District Court, S. D. New York. March 23, 1898.)

COLLISION—TOW AND SAIL VESSEL—LEEWAY—REEFING.

The small schooner *G.* meeting the tug *R.* with a tow 4,000 feet long in Long Island Sound went on the tow's windward side in a fresh breeze, and lowered her mainsail shortly before collision for the purpose of reefing, causing her to make unusual leeway, so that though she passed the tug 200 feet distant, she fouled the fourth and fifth boats of the tow. *Held* that the tug was to blame for not starboarding earlier, and the *G.* for reefing so near to windward, or not keeping off.

This was a libel in rem by John Gibson against the steam tug Robert H. Rathbun to recover damages resulting from a collision.

Cowen, Wing, Putnam & Burlingham, for libellant.

Alexander & Green and Mr. Hough, for respondent.

BROWN, District Judge. At about 10 o'clock in the evening of October 9, 1897, as the libellant's small schooner *Genista* was making her way westerly in Long Island Sound bound from Nova Scotia to New Haven, she came in collision with the fourth and fifth barges of a long tow coming eastward, in charge of the tug Robert H. Rathbun, by which the schooner and the barges were all somewhat damaged. The libel and cross libel were filed to recover the damages. The wind was fresh from the north. The schooner was on her starboard tack, heading about W. N. W. Shortly before the collision her mainsail had been lowered for the purpose of reefing. The master was forward as lookout, and the steward at the wheel. The testimony on her part is that the lights of the tug and tow were seen about a mile distant, one or two points on the schooner's port bow; that the schooner kept her course of W. N. W. without change, and at all times had the lights of the tug and tow on her port bow and never on her starboard bow; that she passed to windward of the tug from 50 to 200 feet distant, passed the first and second barges at about the same distance, and the third a little less, but came in collision with the fourth barge by a glancing blow, scraped along her side, and along the hawser connecting with the fifth barge, and that the boat came in contact with the bow of the fifth barge, broke the hawser and passed out to leeward of the rest of the tow. The tug and tow were in all about 4,000 feet long. The boats averaged about 30 feet in length and the hawsers separating them from 80 to 100 fathoms each. The testimony of the different witnesses for the