

Fed. 266; *Id.*, 170 U. S. 655, 18 Sup. Ct. 753. But that is a wholly different case from a mere leak between adjoining cargo compartments. In the latter case, if the ingress of water in the first compartment is due to sea-perils, or to negligence in the "management of the ship," the extension of the damage to an adjoining apartment by a leak in the bulkhead is of the same nature, unless some representation or warranty can be invoked as a separate ground of liability. Where a ship, moreover, is supplied with adequate pumps, any minor leaks in the sluice-valves are not naturally calculated to damage the cargo, if the pumps are properly attended to; and hence such leaks have no analogy to insufficient water tanks, and any resulting damage is to be set down to negligence in not properly attending to the pumps. *Steel v. Steamship Co.*, 3 App. Cas. 72; *The Silvia*, 15 C. C. A. 362, 68 Fed. 232.

I have considered the more fully the latter aspect of this case, because upon the evidence there may be some doubt whether the sluiceway was not leaky through wear at the time the vessel sailed. Contradictory opinions are expressed on this point. But as the pipe carrying and protecting this valve was found bent after the voyage, and had to be lined up, and no other cause of this injury has been suggested, I think this injury should be ascribed to the same heavy pitching that sprang the tank; and this, by making the plug untrue, would sufficiently account for the leak. The leak from wear alone, if any, must have been of a very minor character, and within the easy control of the pumps in their ordinary use; and hence in no aspect of the case could the wear of the valve amount to unseaworthiness at the commencement of the voyage.

Decree for respondent with costs.

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## THE MONARCH.

### THE WILL.

(District Court, S. D. New York. October 21, 1898.)

#### ANCHORAGE GROUND—WRECKING OPERATIONS—ACT OF MAY 16, 1888—APPLICATION FOR PERMIT WITHIN 24 HOURS SUFFICIENT UNDER REQUIREMENT OF IMMEDIATE NOTICE.

Upon the sinking of the steamer *Catskill* by collision in the middle of the Harlem river, the wrecking derricks *Monarch* and *Will* went to her assistance and made fast to her. Though touching bottom the *Catskill* drifted with the tide, taking the *M. and W.* with her, and on the following morning she was towed by them to the flats on the west side of the river. In an action to recover a penalty for anchoring outside of anchorage ground (1 Supp. Rev. St. p. 586), it appearing that the claimants had received permission from the department to go to the assistance of wrecks, provided immediate notice thereof was given; *held*, that notice mailed the same day to the department and an actual permit issued within 24 hours, were sufficient to relieve the vessel from any penalty, without reference to the question whether the act of congress embraced anchoring for the purpose of wrecking operations or not.

Wallace Macfarlane, U. S. Atty.

Harington Putnam, for the derricks *Monarch* and *Will*.

BROWN, District Judge (orally). It is not necessary in this case to decide the general question whether wrecking operations are

within the act of May 16, 1888 (1 Supp. Rev. St. p. 586). See *The Chauncey M. Depew*, 59 Fed. 791. Such operations vary greatly in character. This case it is true presents an almost extreme instance of necessity for immediate action; and I have no doubt that a vessel approaching another vessel in distress and mooring to her for the purpose of immediate removal, though the vessel in distress may touch the bottom, is not within the contemplation of this act of congress.

The act authorizes the secretary "to define and establish an anchorage ground for vessels in the Hudson and East rivers"; it also adds "and to adopt suitable regulations in relation thereto."

Now it often happens that wrecking operations are protracted. Some are brief; and some, like this, are for the simple purpose of hauling a sunken boat to the nearest flats out of the way of traffic, where the sunken vessel is herself a very dangerous obstruction, particularly in the nighttime. In other cases there may be long-continued obstruction when large vessels like the *Monarch* and *Will* are used for wrecking operations, and the place may be so narrow that the long-continued presence of a fleet of wrecking vessels would be felt to be, and would really be, a great impediment to ordinary navigation.

I am not prepared, therefore, to say that the authority of the secretary of the treasury to provide suitable regulations in regard to the anchorage of vessels may not extend to wrecking operations where their continuance would obstruct commerce and navigation. The circumstances are so different in different cases that I do not think it desirable to attempt to define any universal rule.

In this case the purpose was to tow the *Catskill* immediately away from mid-river where she was sunk and constituted a dangerous obstruction. This was really in aid of the exact purpose of the anchorage law.

The department, while claiming jurisdiction of wreckage cases, has generally treated the matter in a liberal way. Its letters of May 3, 1893, and of November 17, 1892 (59 Fed. 792), authorized the principal companies here to proceed at once to the aid of wrecks requiring immediate assistance, but with a provision that they must "apply immediately after they begin work for the proper permit." This case has arisen under the application of that regulation. I do not think it would be useful for me to enter into any discussion of the authority of the department to prescribe the regulation in just this form. But it ought to be given a fair interpretation, securing the general objects of the statute, while administered liberally in favor of assistance to wrecks.

The requirement that "notice must be given immediately after the work is begun" is a condition subsequent, not a condition precedent. The usual legal rule allowing 1 day or 24 hours in such cases may properly be applied here. I know no other rule that is applicable in determining what is immediate notice.

The evidence shows that the application here was really mailed on the same day that the wrecking boats went to the assistance of the *Catskill*; and that the permit itself was signed by Capt. Stodder, in less than 24 hours after the work was begun. The general

permission given to the wrecking company seems to furnish a fair and sufficient scope for the exercise of wrecking operations with celerity; and any further questions as to the application of the act may be left to future consideration.

As no penalties were, therefore, incurred, the libels should be dismissed.

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CAR FLOAT NO. 4.

(District Court, S. D. New York. October 26, 1898.)

1. TUG AND TOW—TOW IN CONTROL OF NAVIGATION.

The steamer C. in coming to her wharf under her own steam and in charge of her pilot, but with the assistance of several tugs, pressed against Float No. 4 in a high wind, so as to cause the float to break away partly from her mooring; *held* that the tug R., one of the helpers, was not liable for the consequent damage, it not appearing that the R. was chargeable with any independent act of negligence of her own, but was acting wholly under the direction of the steamer and her pilot.

2. SAME—DUTY TO CARRY SPARE LINES.

It further appearing that after the tug had partly broken loose, she was held by one line for a considerable time, and might have been held fast had other spare lines been on board to make good the broken ones, *held* that the float was also in fault for not having spare lines, and was therefore liable for the subsequent damage done by her breaking completely adrift.

Peter S. Carter, for libelant.

Wilcox, Adams & Green, for Erie R. Co.

James J. Macklin, for the Raymond.

BROWN, District Judge. The above libel was filed to recover for the damages caused on the 3d of April, 1896, to the libelant's canal boat Corner Stone, which was laid up for the winter in Erie Basin, and was injured by Car Float No. 4, belonging to the New York, Lake Erie & Western Railroad Company, which had broken adrift in a high wind and come down upon the libelant's boat. The tug C. P. Raymond was made a party defendant under the fifty-ninth rule, upon the allegation that the tug C. P. Raymond was solely in fault for the collision, inasmuch as that tug having in tow the steamship Cacique, in bringing her into the basin negligently caused her to strike the port side of the float as the latter was moored at the end of the Raymond street pier, and to break loose, in consequence of which the injury to the libelant's barge occurred.

The evidence shows that the Cacique came into the basin under her own steam for the purpose of mooring upon the northerly side of the wharf, at the end of which No. 4 lay moored, and that the steamship was assisted by three tugs, of which the Raymond was one; that her navigation was still in charge of the pilot who had been in control of her navigation, to whose orders the tugs were subject. The float at each end projected beyond the sides of the wharf. As the Cacique came in, her pilot caused her to approach the float for the purpose of requesting the float to move further to the southward, so as not to overlap the side of the pier where the