

decree of the district court is reversed, and the cause remanded to the district court, with instructions to set aside the decree appealed from and dismiss the libel.

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THE THOMAS PURCELL, JR.

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

No. 17.

**TOWAGE—LOSS OF TOW—LIABILITY OF TUG FOR NEGLIGENCE.**

A tug is responsible for the loss of a tow, a barge laden with coal, which she anchored in the evening in an exposed place, proceeding to another port, where, by reason of not keeping a watch during the night, her master was not advised of an approaching storm in time to reach and save the barge before it was sunk.

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

This cause comes here on appeal from a decree of the district court, Southern district of New York, holding the appellants, as owners of the steamtug Thomas Purcell, Jr., responsible for damages sustained by the sinking of libellant's barge F. B. Morris and her cargo of coal, laden on board about noon on the 19th day of March, 1896, in Stamford Harbor. The Purcell arrived at Stamford Harbor between 6 and 7 o'clock on the evening of the 18th, and, the tide being too low to admit of taking the Morris up the dugway, she anchored her near the lighthouse, and proceeded with her other three tows to Wilson's Point, where she arrived a little before midnight.

The following is the opinion of the district judge (BROWN, District Judge):

The evidence shows it is not customary to leave boats off Stamford in stormy weather; but to take them in to Wilson's Point, four miles further on.

In threatening weather the same rule would require the tug to keep a lookout on the weather, and to return to Stamford to take along a boat left there, in time to prevent damage.

It is plain from the proofs that when the Purcell arrived at Wilson's Point, about 12, a storm was threatened; and it was her duty to go at once, and bring the libellant's boat from Stamford to Wilson's Point. She could have done so easily in 1½ hours. But the master was ill; and the pilot, who was in charge, turned in, kept no watch on the weather; and when he got on deck, at 8 a. m., he found the weather too bad to be able to go to Stamford for the boat he had left there. He cannot take advantage of his own negligence. Had a watch been kept, it would have been plain by daylight—at 5 a. m.—that he should go at once for the Stamford boat, as he might even then have done, and been back by 6:30 a. m., when it was only half a gale. I must hold the tug, therefore, liable. *The Governor*, 77 Fed. 1000; *The American Eagle*, 54 Fed. 1010; *The Battler*, 55 Fed. 1006.

I do not think I should hold the boatman negligent in not beginning earlier to throw coal over, so as to get on the hatches. He had a right to expect the tug to come for him for a time; and later the storm became too fierce for him to get the covers on alone; and I doubt whether the covers, if on, would have saved the boat.

Decree for libellant.

Samuel Park, for appellants.

Le Roy Gove, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. Concededly, no attention was paid to the weather by those on the tug from the time she anchored at Wilson's Point

till her pilot turned out, at 8 a. m. the next morning. In view of the evidence from the weather bureau that the wind from midnight until 11 a. m. was southwest, and the testimony of the disinterested witness from the Pennsylvania barge as to the indications of a storm at Wilson's Point, when he got up, at 4 a. m., we concur in the conclusion of the district judge that, had a watch been kept, the master of the tug would have been advised of the necessity of returning to care for the *Morris* in ample time to have saved her from disaster. The decree of the district court is affirmed, with interest and costs.

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THE ROBERT R. KIRKLAND.

(District Court, D. New Jersey. March 1, 1899.)

ADMIRALTY—JURISDICTION.

A court of admiralty has no jurisdiction to try the title to a vessel, where the petitioner's claim is based on an equitable interest merely, and not on the legal title, especially where the parties holding such title are not parties to the suit.

Benedict & Benedict, for libelant.  
 Foley, Wray & Taylor, for respondents.

KIRKPATRICK, District Judge. The libel in this action sets out that in the year 1892 the steamtug *Robert R. Kirkland* was owned by the National Dredging Company of Wilmington, Del., and that on October 12th of that year the said dredging company entered into an agreement to sell the said tug and other property to certain parties, whose names are not given; that the libelant and one Schermerhorn were the agents of said parties, with the power to make payments, and receive the said property, and receive bills of sale therefor; that afterwards the said tug was delivered to libelant and said Schermerhorn, and has since remained in their possession; that afterwards Petze, the claimant herein, and others, the respondents, were made the agents of the unnamed parties who had contracted with the dredging company for the purchase of the tug; and that on July 13, 1896, in fraud of the duties as such agents, they accepted, and there was delivered to them by the dredging company above mentioned, an absolute bill of sale of said tug, which was on July 10, 1898, recorded in the custom house at New York. The libelant further alleges that in February, 1898, he purchased the said tug from the parties who originally agreed to buy her from the dredging company, for the sum of \$1,600, agreed to be paid by him, and took possession of the tug, and caused repairs to be made upon her. The libel also sets out that, after the execution and delivery of the bill of sale to the respondents, as aforesaid, the respondents requested the delivery of the tug to them by the libelant, and that libelant agreed to give a transfer and release upon the payments of bills of repair, but the offer was refused. The libelant alleges that he is the true owner of the tug, and offers to pay the purchase price for same on receipt of bill of sale from respondents, and asks the court to decree that he is such true owner, and has title superior to respondents, and that