

caused to lose. *Sprague v. West*, Abbott, Adm. 554. And as, in the eye of the law, maritime, upon commercial reasons, the master of the ship is deemed to contract, in respect to the freight, rather with the merchandise than with the shipper, and his rights are, therefore, not made to depend upon any doctrine of agency. *Hyperion's Cargo*, 2 Low. 94. So, upon the same grounds, the contract to remove this merchandise—which merchandise, it must be remembered, was the cargo of the brig actually on board as such—should be deemed to have been made with the merchandise as well as with the buyers thereof, and the merchandise, in consequence, is chargeable with the loss arising from the non-performance of that contract.

There must be a decree in favor of libellant for the sum of \$120, and costs.

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THE CHOTEAU.

(Circuit Court, E. D. Louisiana. June, 1881.)

I. SALVAGE.

Salvors cannot force themselves on a vessel against the will of the master.

In Admiralty.

*M. M. Cohen*, for libellants.

*A. Micou*, for claimants.

PARDEE, D. J. In this case I have found no necessity to elaborately find and write out the facts. There is disagreement on only two points: (1) Whether the Choteau rang her bell rapidly for assistance. (2) Did the Protector get her line aboard the Choteau and throw any water on the fire and render assistance? Both of these I find against the libellants. The bell of the Choteau was rung three times for a landing, and was not rung for assistance. The fact is that the Protector's captain, hearing of the fire, and hearing a bell rung, run his boat alongside the Choteau, and attempted to assist in quenching the fire, but his offers of assistance were rejected, and his attempts prevented by the master of the Choteau, who was able and willing to and did take care of his own boat. Salvors cannot force themselves upon vessels in distress against the will of the master. It is at his option to accept their services or not, and if he refuse them compensation cannot be recovered for assistance subsequently rendered against his will. *The Brig Susan*, 1 Sprague, 502. That the sailors have no right to act against the will of the master. *The Dodge Healy*, 4 Wash. 657; *The Bee*, Ware, 332.

When services are rendered without any beneficial results no salvage can be allowed. *Schooner Elvira*, Gilpen, 60; Conkling, Adm. 280; *The Whitaker*, 1 Sprague, 282; *The Dodge Healy*, 4 Wash. 657.

Under this state of facts and these authorities libellants have no claim for salvage against the Choteau, nor do I think that under the general facts of the case libellants are entitled to any allowance for labor and expense in going to the assistance of the Choteau. It was in the port of New Orleans. The Protector's sole business is as a salvage boat. She is owned and run by an incorporation of insurance company presidents for harbor protection. The crew are under pay for such service, with a contract waiving salvage. The boat had steam up, ready to go to any point. The boat is of iron, and neither she nor her crew ran any risk. Besides, in trying to aid the Choteau against the will of her master, the captain and crew of the Protector were violent and aggressive, and apparently disposed to lay the foundation for a salvage claim. See the case of *The Straton Audley*, 3 Maritime Law Cas. 285.

The proctor for libellants has made a vigorous effort to recover costs or to divide them. There is no doubt the question is within the discretion of the court. The good faith of parties should be considered among other matters. In the court below the decision was against the libellants, and the judge seems to have doubted the good faith of the parties from the incipency of the suit, and gave costs as well as judgment against them.

On the appeal this court substantially coincides with the district judge. The claimants have been at considerable necessary, unavoidable expense on account of this action, which has no merit. They should not be saddled with the costs besides.

Let the libel be dismissed, with costs.

See 5 FED. REP. 463.

## THE NAHOR.

(District Court, S. D. New York. May 21, 1881.)

**1. COLLISION—LIBEL BY OWNER OF VESSEL FOR LOSS OF CARGO—LIBEL BY OWNER OF CARGO—PETITION TO BE MADE CO-LIBELLANT—ORDER CONSOLIDATING ACTIONS—COSTS—TWO SAIL-VESSELS ON CROSSING COURSES, ONE OF THEM WITH THE WIND AFT—CHANGING COURSE BEFORE COLLISION—LIGHTS—LOOKOUT—VESSEL TO WINDWARD—SEVENTEENTH RULE OF NAVIGATION.**

A vessel, arrested upon the libel of the master and owners of another vessel, who, with the crew, libelled her for loss, by collision, of vessel, cargo, pending freight, and personal effects, having been released, on giving bail for the full amount claimed, is not liable to be again arrested on a libel by the owner of cargo, setting forth the same cause of action as to loss of cargo contained in the first suit. The proper and usual course in such a case for the owner of cargo, if he desires to be made personally a party, is to petition to be made a co-libellant in the first suit. Although an order upon the trial, consolidating the actions, in effect produces the same result, still, the commencement of the second action being improper, the second libellant should be charged with the costs of his action, and the bond given therein should be cancelled without regard to the result of the first suit.

Where the bark N. collided with the libellant's schooner P., about 75 miles south-east of Sandy Hook, about half past 5 o'clock A. M. in November, 1879, striking her on the stern a little to the port of the stern post and causing her to sink, and the P. was sailing on a north-east course, wing and wing, the wind being south-west, and the P. claimed that she did not see the N. until just before the collision, when, to diminish the force of the blow, or possibly to avoid the collision, she immediately changed her course, but not more than two points to port, and that the collision was caused by the N. having no lights, and not luffing to avoid it, and not keeping out of the way of the P.; and the N. claimed her course had been N. W. by N. and not N. by W., as claimed by the P., and that she kept that course and did not change to a more northerly course, as claimed by the P., but that the P. changed her course as much as four or five points, and that the collision was caused by the fault of the P. in bringing herself on a line with the N. instead of keeping out of her way, and in not sooner seeing the N.,—*held*, on the evidence, that the P.'s green light was first seen by the N. distant about a mile, and from two and a half to three points on her port bow, and that the N. was heading at the time N. W. by N. and not N. by W., as claimed by the P. Also *held*, the evidence showing that at the instant of the collision the courses of the vessels diverged about two or two and a half points, that the P. must have changed her course just before the collision more than two points to the port, and as much as four and a half to five points; that the disappearance of the P.'s light from the view of those on the N. after it was first seen was due, not to the alleged change in the course of the N., but to the fact that the P. was not kept steady in her course; that the N.'s port light was kept burning brightly, and could have been seen by the P. as soon as the N. saw her green light; that the collision was due to the fault of the P. in not keeping a good lookout, and in not sooner seeing the N.'s light, and, being to the windward of the N., in not keeping out of her way, as required by the seventeenth rule of navigation; that the N. was not in fault, but kept her course, as she had a right and was bound to do under the seventeenth rule.

In Admiralty.