

creek. The master of the tug says: "We had just come around a turn a short ways when the accident happened. The tug was straightened up, and had been about a minute." That the libelant kept as nearly behind the tug as was reasonably practicable, is shown, I think, not only by her master's testimony, but also by that of Capt. Stander-ing. While the respondent's witnesses testify otherwise, they seem to be plainly contradicted by the circumstances of the case. If the libelant ran off to port, as they say, she could not have passed over the obstruction encountered by the other boat. The fact that she hit the obstruction well to her port side, while the other boat, lashed to the tug, seems to have passed directly over it, shows that she must have been pretty nearly astern of the tug,—as nearly as could have been expected. Her master was on his guard from the start, having provided himself with a new tiller especially adapted to the occasion.

A decree must be entered in favor of the libelant.

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CRAWFORD, Master, v. JESSUP & MOORE PAPER Co.

(District Court, E. D. Pennsylvania. May 29, 1885.)

DEMURRAGE—CROWDED WHARF—DILIGENCE IN UNLOADING VESSEL.

Where a vessel loaded with wood was delayed several days by reason of the crowded condition of the wharf, and it appeared that due diligence was used to unload her, *held*, that her owner was not entitled to demurrage.

In Admiralty.

*Henry R. Edmunds*, for libelant.

*E. Hunn Hanson*, for respondent.

BUTLER, J. The respondent was bound to take the cargo with reasonable diligence. This was the extent of his obligation. That he did take it with such diligence seems clear. I am not satisfied that he could have done more than he did, under the circumstances. Furthermore, he appears to have warned the libelant, on arrival, that he would not be responsible for the vessel's detention; and advised him to go elsewhere, if unwilling to remain with this understanding. The weight of the testimony sustains this view.

The libel must be dismissed.

## TYGERT Co. v. THE CHARLES P. SINNICKSON.

(District Court, E. D. Pennsylvania. May 29, 1885.)

## CARRIER OF GOODS BY WATER—DAMAGE TO CARGO OF KAINIT—DELIVERY OF PART ONLY.

In this case the vessel was held liable for the damage to the cargo and the failure to deliver the whole of the kainit taken on board.

## In Admiralty.

*Theodore M. Etting*, for libellant.

*Henry R. Edmunds*, for respondent.

BUTLER, J. The cargo, kainit, was taken on board in good order, and put off damaged, by water. For this damage the respondent must pay. It is not shown to have occurred from "peril of the sea." I am convinced, also, that the quantity delivered was not the whole quantity taken on board. The weighing on delivery was not so careful as on loading, and the precise extent of shortage may be difficult, if not impossible, of ascertainment. The disadvantage of this must fall on the libellant, whose agents are responsible for want of care. But that some allowance should be made on this account seems clear. How the shortage occurred, whether in pumping out the water, with which the kainit became mixed, or otherwise, need not be considered. The burden of accounting for it is on the respondent, and he has failed to give us any information. The commissioner appointed to assess damages may hear further testimony respecting the amount lost; and will be careful to avoid charging the respondents excessively, confining his allowance to the loss clearly shown.