

the bond, was deceived, or did not properly perform his duty, the court must assume that the bond is sufficient.

The rule to show cause is discharged.

THE CO. F. YOUNG and THE SARAH C. HAGAR. ¹

(*District Court, E. D. New York.* February 25, 1885.)

COLLISION—CONFLICTING EVIDENCE—PROBABILITY.

Where the evidence in a collision case was conflicting, and one version of the accident made it necessary to suppose that the collision must have been intentional, while the other version did not, the latter was believed to be the truth.

In Admiralty.

Hyland & Zabriskie, for libellant.

Alexander & Ash, for the Hagar.

Benedict, Taft & Benedict, for the Young.

BENEDICT, J. Upon the evidence in this case the libellant can recover against one of the tugs proceeded against, but not against the other. He can recover against the Co. F. Young if he and the witnesses produced by the Sarah C. Hagar tell the truth. He can recover against the Sarah C. Hagar if the witnesses produced by the Co. F. Young tell the truth. I incline to believe the account given by those in charge of the Co. F. Young, for the following reasons: This account is not improbable, while it is highly improbable that the Co. F. Young, with the Sarah C. Hagar and her tow in plain sight, would start up and run into the canal-boat, as the witnesses from the Hagar say she did. Such an act was so uncalled for that the witnesses for the other side say that the collision must have been intentional on the part of the Co. F. Young. Moreover, the testimony given by the libellant and the witnesses for the Hagar is far from harmonious, whereas the testimony given by those from the Co. F. Young is not open to such a criticism. In addition to this, the witnesses who testify to the account contended for by the Sarah C. Hagar are outnumbered by the witnesses for the Co. F. Young. In such a state of the evidence, the libel, as against the Co. F. Young, must be dismissed, and the libellant may have a decree against the Sarah C. Hagar, with a reference to ascertain his damages.

¹Reported by R. D. & Wyllys Benedict, of the New York bar.

THE G. W. PRATT and THE BLUE BONNET.¹

(District Court, E. D. New York. January 5, 1885.)

COLLISION—DAMAGE—EVIDENCE OF UNSEAWORTHINESS.

On all the evidence in this case it was held not to have been proved that the libellant's boat was so old and unseaworthy as to prevent his recovering against the tug B., towing his boat, the damages which his boat sustained by collision with another, by fault of the B.

In Admiralty.

Hyland & Zabriskie, for libellant.

Beebe & Wilcox, for the Blue Bonnet.

Benedict, Taft & Benedict, for the Pratt.

BENEDICT, J. The collision which gave rise to this action was not caused by any fault on the part of the G. W. Pratt, but was caused by the fault of the Blue Bonnet, in attempting to pass out from pier 4, nearly across the tide, and ahead of the G. W. Pratt. The result was that before she could straighten up in the tide she was carried by the tide down upon the Pratt, and so caused the damage to the libellant's boat. There must therefore be a decree in favor of the G. W. Pratt, and against the Blue Bonnet, unless the breaking of the libellant's boat by the collision was owing to its being too old and weak to sustain the ordinary pressure incident to navigation of this character. Upon this point there is testimony going to show that the libellant's boat was old and weak; but there is also proof that she had on board a cargo of coal, and that she had shown herself able to carry cargoes up to the time of the accident. It also appears that a survey of the damage caused by the collision in question was had, in which the claimants took part, and the report of that survey, while it designates the parts requiring to be repaired, nowhere alludes to any unseaworthiness or insufficiency of the boat; and one of the surveyors, when examined as a witness, says that the boat, with the repairs stated in the report, would be seaworthy. Moreover, one of the persons who held the survey on the boat, and who is called as a witness for the claimants, testifies that he would not hold a survey upon a boat that was unseaworthy prior to sustaining the injury to be surveyed. I cannot, therefore, say that the testimony proves that the damages caused by the collision arose from the fact that the libellant's boat was not sufficient to endure the ordinary strain of navigation of this character.

Let a decree be entered dismissing the libel as against the G. W. Pratt, and directing a decree in favor of the libellant against the Blue Bonnet, with an order of reference to ascertain the damages.

¹ Reported by R. D. & Wyllys Benedict, of the New York bar.