

time to avoid the collision, when the Dentz was seen approaching to the westerly half of the channel around Hallett's point. Her pilot claims that when this was observed he could not stop, on account of the currents of that locality. I cannot accept this statement as an excuse. The Pilgrim, just astern of him, was able to stop, and did so without difficulty, and passed the Plymouth Rock some five minutes afterwards. The flood tide, since the removal of the shoals from Hallett's point, runs true between that point and Flood rock. The Dentz, according to the pilot's statement, was seen hauling to the westward after passing Astoria ferry; and the Plymouth Rock had sufficient notice of her course to have kept entire control of herself, or, if need be, to have kept astern of the Dentz, as required by the inspectors' rule, until all danger was past. Both vessels must therefore be held in fault, and a decree for the libellant be rendered against both, with costs.

ETHERIDGE v. CITY OF PHILADELPHIA.¹

(District Court, E. D. Pennsylvania. November 16, 1885.)

1. MUNICIPAL CORPORATION—LIABILITY FOR DEFECTIVE DRAW-BRIDGE—COLLISION—JURISDICTION.

The schooner Elm City had engaged a tug to tow her from Pine street wharf, on the Schuylkill, to Port Richmond. The tug made fast to the schooner and signaled those in charge of defendant's bridge to open the draw to let them in. The draw was opened in response to the signal. The vessels proceeded on their way. There was a high wind blowing at the time. Those in charge of the bridge, owing to its being out of order, were unable to fasten the draw securely. It got beyond their control, swung round, struck and damaged the schooner. *Held*, that the admiralty court had jurisdiction, and that the municipal corporation was responsible for the negligence.

2. SAME—DEFECTIVE BRIDGE—NEGLIGENCE—NOTICE.

When the draw of a bridge is turned to remove obstructions to navigation, it must be securely fastened. Failure to do this is negligence.

In Admiralty.

The cause came up to be heard on libel, answer, and proofs.

Driver & Coulston, for libellant.

McMichael & Warwick, for respondent.

BUTLER, J. The question of jurisdiction is settled by the following cases: *The Ceres*, 7 Wkly. Notes Cas. 576; *The Plymouth*, 3 Wall. 35; *The Rock Island Bridge*, 6 Wall. 215; *Ailee v. Packet Co.*, 21 Wall. 390; *Railroad Co. v. Steam-boat Co.*, 23 How. 219; *Leathers v. Blessing*, 105 U. S. 626; *The Maud Webster*, 8 Ben. 551.

It is quite clear that the accident resulted from defect in the bridge. When the draw is turned, to remove obstruction to navigation, it is intended to be secured in place by an iron bolt and socket. This ar-

¹ Reported by C. B. Taylor, Esq., of the Philadelphia bar.

rangement is essential to safety, and when employed renders an accident, such as befel the libelant, impossible. On the occasion involved, the provision for securing the draw was out of order, and useless. Had this not been so the accident would not have occurred. The character of the weather, at the time, made the defective condition of the bridge especially important.

That it was the respondent's duty to keep the bridge in repair is not questioned. Failing to discharge this duty, it became liable for the loss thus occasioned. The defect existed for many months. After so great a lapse of time it should have been discovered without notice. The exercise of proper vigilance would have discovered it much earlier. The testimony shows, however, that the respondent was notified of its existence long before the accident. The cases cited by respondent's counsel are inapplicable to the facts here involved.

I find no evidence of contributory fault in the libelant.

A decree must be entered accordingly for the libelant.

THE NEW ORLEANS.¹

NATIONAL BUREAU OF ENGRAVING & MANUF'G CO. v. THE NEW ORLEANS.

(Circuit Court, E. D. Louisiana. December 31, 1885.)

1. CARRIER OF GOODS BY WATER—BILL OF LADING—EXCEPTIONS IN.

An exception in a bill of lading that the carrier shall not be liable for loss or damage from heat is lawful, and is binding on the shipper to the extent that thereby the carrier shall not be discharged from the consequences of his own neglect or misconduct.

2. SAME—BURDEN OF PROOF AS TO NEGLIGENCE OF CARRIER.

The preponderance of American authority is said to be in favor of the rule in England that refuses to presume negligence where none is shown, and considers the carrier is excused upon his showing that the loss arose from a cause for which, according to his contract, he was not to be held responsible.

3. SAME—GOODS NOT SHIPPED ON DECK.

If bill of lading be silent as to mode of storing, goods must be carried under deck; and if goods were carried on deck and lost or damaged, the carrier would not be allowed to prove by parol a consent by the shipper to the deck storage. Hence a notice marked on the goods that they were to be carried on deck, not called to the attention of the carrier, and not mentioned in the bill of lading, ought not to increase the carrier's responsibility.

Admiralty Appeal.

W. S. Benedict, for libelant.

E. W. Huntington, for claimant.

PARDEE, J. The case shows that the damage to the libelant's goods resulted from heat, but does not show how and where the heat origi-

¹Reported by Joseph P. Hornor, Esq., of the New Orleans bar.