

part of the *Twilight* to prove that the *Stamford's* whistle was of insufficient power. But I think this failed. Their failure to hear it was undoubtedly owing to the disorder and confusion on board, caused by the collision with the *John Brooks*, and the efforts to recover the hawser. The *Twilight* had no right to proceed until order was restored, and the officers had regained their coolness and self-possession. For this reason I hold her also at fault.

In the first two cases interlocutory decrees are to be entered for the libelants, the damages to be divided. In the third case an interlocutory decree is to be entered for the libelant against both vessels. Ordered accordingly.

EDGERTON v. THE MAYOR, etc.¹

District Court, S. D. New York. April 5, 1886.)

1. COLLISION—OPEN DRAW—VESSEL APPROACHING AT ANGLE—FAULT.

When a tug, with a float, attempted to pass through a draw-bridge on the Harlem river, but did not approach the draw in line with the opening, and the pilot-house of the tug struck the end of the draw, *held*, that the tug was in fault.

2. SAME—ENGINEER OF DRAW—DUTY—CONTRIBUTORY NEGLIGENCE.

The engineer of the draw perceived that the tow was approaching upon an angle, but made no effort to favor its passage by revolving the draw beyond the middle line, as was the custom to do when necessary. *Held*, that failure to perform this simple and customary duty was contributory negligence on the part of the engineer.

3. SAME—CITY CORPORATION—DEPARTMENT OF PARKS—STATE COURT ADJUDICATION.

The state courts having held that the corporation is liable for any negligence in the management of streets or bridges under the department of parks, such adjudication should be followed by this court.

4. SAME—DRAW-BRIDGE—DUTY OF CUSTODIANS—NEGLIGENCE OF SERVANT—LIABILITY.

The duty to take proper care of a bridge includes the duty to make proper provision for the passage of vessels through the draw. The custodians of the bridge are bound to the use of ordinary diligence to avoid accidents to vessels going through the draw in a customary manner, as one of the incidents of the management of the bridge. They are therefore responsible for the want of ordinary care on the part of their servants.

In Admiralty.

Alexander & Ash, for libelant.

E. H. Lacombe and *F. W. Hinrichs*, for respondents.

BROWN, J. At about 8:30 A. M. on the twenty-fourth of February, 1884, as the steam-tug *James A. Langton*, having float No. 4 lashed on her starboard side, was going up the Harlem river with the flood-tide, in attempting to pass through the eastern passage of the open draw of the Third-avenue bridge the pilot-house of the tug struck the

¹Reported by Edward G. Benedict, Esq., of the New York bar.

corner of the draw, causing various items of damage, for which this libel was filed. The tug was about 70 feet long by 19 feet beam; the float, 190 feet long by 34 feet beam. The bridge is 55 feet wide. The whole span of the draw, which revolves on its center so as to open two passages for vessels, is about 212 feet long; and when it is fully open, each passage-way for vessels is $78\frac{1}{2}$ feet in the clear. The abutment on the New York side is 134 feet long; that on the Westchester side, 212 feet; making the whole length of the bridge 490 feet. The whole width of the tug and tow was about 53 feet.

The libelant contends that the draw was not open by some 10 or 15 feet, and that that was the cause of the collision; that he came up the river in line with the east passage, and headed directly through it; and that the float went within three or four feet of the Westchester side. The respondents' witnesses allege that the draw was open exactly true; that the tug and float came up along the westerly or New York side of the river, and appeared to be designing to go through the west passage of the draw; but that when near the bridge they sheered to the eastward, attempting the east passage, and thus threw the boats quartering upon the corner of the draw, rendering the collision inevitable.

I am satisfied that the truth lies between these two accounts. It would have been impossible for the tug, if heading for the western passage, when within 250 or 300 feet of it, as the respondents' witnesses allege, to have turned so cumbersome a float 134 feet to the eastward, so as to enter the eastern passage at all. The tide was running flood at the rate of some three miles an hour, and the boat, though under a slow bell, must have had some considerable headway, or she could not have been steered at all, nor have crossed from one passage to the other. A disinterested witness, standing on the dock about 700 feet below the bridge, testified that the tug and float seemed to be about in mid-river, heading for the east passage. The east passage, however, was from two-thirds to three-fourths of the distance across the river; so that if this witness' statement is to be accepted, the tug and float were not heading directly up river, but must have been heading to the eastward, so as to reach and pass through the eastern passage. To this extent the evidence of the respondents is therefore partially corroborated, although the distance was much greater than they state. The east passage was some 25 or 26 feet wider than the tug and float. Had they been heading from below in a straight line for the east passage, and gone, as the captain says he did go, within three or four feet of the east abutment, they would have cleared the other side by over 20 feet, and the corner of the draw must have been nearly 25 feet less than fully open in order to have struck the pilot-house,—a distance nearly double the distance estimated by the libelant's witnesses.

From these considerations I am satisfied that the tug and float did not approach the draw in line with the opening, as they might and