

Without taking up the consideration of the exceptions *seriatim*, it is only necessary to observe that I have examined the evidence in the accounting record with care; that the wide discrepancy of views of the learned counsel arises from the different theories insisted upon by them on which the master should have proceeded; and that, so far as I find any rule for estimating the damages in such a case, I think the master has followed the one suggested or approved of by the supreme court in the above-quoted case.

The result therefore is that the exceptions to the report must be overruled; and it is so ordered.

THE ELLEN MCGOVERN.

(District Court, S. D. New York. June 4, 1886.)

1. TOWAGE—GROUNDING—NEGLIGENCE—BURDEN OF PROOF.

Where one of a large number of boats in a tow is injured by striking some obstruction on a trip over a common and safe route, the burden is upon the tug to give some rational explanation of the injury or a consistent account of the trip that may satisfy the court that there was no lack of due care in navigation.

2. SAME—CASE STATED—ROBBINS REEF—EVIDENCE—CREDIBILITY OF—TIDES.

The E. McG. was the port-boat in the hawser tier of a fleet of 20 boats in tow of the Y. A. from Amboy to New York. Before reaching Governor's island the strong ebb-tide compelled the fleet to put in to the sea fence at Red Hook. Shortly afterwards the E. McG. was found leaking, supposed by the master to be caused by bumping against the sea fence. This claim was rejected by the owners of the tug. A month afterwards, on raising the boat, a diagonal cut was found across her bottom, with some holes through, indicating contact with some obstruction as the cause of the leak. On the trial the libellant's wife, who lived on the boat, testified that when passing Robbins reef between 1 and 2 A. M., and very near the light, she felt a jar and subsequent roll that startled her and took her on deck. She did not mention the circumstance till the cut was discovered. *Held*, notwithstanding the discredit arising from her silence in the mean time, as the tug offered no other explanation of the injury, and the accounts given by her captain and pilot as regards her passage from Robbins Reef light to the sea fence and as to the tides and currents were irreconcilable, and the wife's testimony being in accord with the pilot's, her account should be credited as the only rational explanation of the injury; and the tug was held liable.

In Admiralty.

Edwin G. Davis, for libelants.

Biddle & Ward, for respondents.

BROWN, J. This libel was filed to recover for the damages done to the libelants' canal-boat, while she was in tow of the tug Young America, caused by running upon some obstruction during a trip from South Amboy to New York. The tug, with her tow of some 20 boats, meeting with a strong ebb-tide when opposite Red Hook, went in to the sea fence near that point, and reached there between 4 and 5

A. M. Shortly afterwards the libelants' boat was found to be leaking. The libelant at the time supposed that the leak was caused by bumping against the sea fence; and such was his statement then made. This claim was rejected by the respondents, and, as the event proved, rightly. A month afterwards, when the boat was raised and put upon the ways, a mark across her bottom was found, running diagonally from beneath the starboard bow to her port quarter, with several holes cut through the bottom along the way. This libel was thereupon filed, alleging the damage to have occurred from running upon rocks near Robbins Reef light.

There can be no question that the injury to the bottom was the cause of the leak, nor that this injury occurred while the boat was in tow of the Young America on the night in question. The tug is not answerable as an insurer, but only for reasonable care, and ordinary nautical skill. Her trip on that night, however, was over a perfectly safe and familiar course. Thousands of boats are constantly passing over the same course, and there are no obstructions in the way that ought not to be avoided by ordinary care. Such an injury as this to the bottom of one of the fleet in tow is not one of the ordinary incidents of such a trip, and is, at least, not likely to happen with ordinary care and skill. The burden of proof is therefore upon the tug to account for the injury; or to satisfy the court, by a reasonable and consistent account of the trip, that she has not failed in her duty to avoid all dangerous points, and that the injury arose through no lack of due care and skill in her navigation.

The captain's wife has testified with great minuteness concerning the events of the trip, giving many particulars bearing the stamp of undoubted truth, and showing quick observation and a retentive memory. She testifies that somewhere from 1 to 2 o'clock A. M., while reclining in the cabin, she felt a jar, as if the boat was rubbing upon something; that she was startled and went on deck, and saw Robbins Reef light off the port quarter, apparently not more than 100 feet distant, and felt the roll of the boat as it left the obstruction. It was inferred from this testimony that the tug had attempted to go between the buoy and the light, as is sometimes done to avoid a strong ebb in the bay. The captain, however, testifies that the boat went to the southward of the buoy, and not inside of it; that he passed it about 11 o'clock P. M., continued up the bay with the flood current, and met the ebb when he was nearly up to Governor's island, and that he went off duty at 1 A. M., as was his custom.

It was high water the evening before at 9:15 P. M. The currents in the Kills run about true with the almanac time. The surface current in the bay, or the North river tide, as it is called, does not change at once, but continues to run on for about an hour and a half, or, sometimes, as testified to in this case, for two hours after the change of tide at Governor's island, as indicated by the almanac and the height of water. The pilot testifies that he went on duty at 1 o'clock