

tion of second engineer, with no agreement as to the amount of his wages in the new position, is possible, but it is not probable. But when, in addition, it is remembered that libelant's story is overthrown by the great weight of evidence, the court has no alternative but to reject it altogether.

After making the proper deductions for the time the libelant was absent from the barge, he has received all that he is entitled to. The occurrence on the twenty-sixth of June, if not a payment, amounted, at least, to a tender of the sum due. The respondent's rights can in no way be affected by the fact that the libelant handed the money to the engineer. That the engineer subsequently paid it back to the libelant is undisputed.

Both parties are British subjects. They reside at the same place. The Canadian courts were open for the settlement of this trivial dispute.

The evidence fails to show any justification of the libelant's conduct in "tying up" the barge in a foreign port, where her master was a comparative stranger, and could in all probability procure her release with less expense and annoyance by paying the claim than in any other way. The presumption is a strong one that the libelant was actuated by other motives than a desire to collect an honest debt. Though the courts are zealous always in guarding the rights of seamen in every meritorious demand, the libelant, as shown by this record, is beyond the pale of such protection.

The libel is dismissed, with costs.

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### THE NORTH STAR.<sup>1</sup>

#### STORCK v. THE NORTH STAR, etc.

(District Court, S. D. New York. November 19, 1886.)

#### **COLLISION—TWO SCHOONERS—ATTEMPT TO CROSS BOWS—FAILURE TO KEEP COURSE—APPORTIONMENT.**

Where the schooner L., sailing free, and the schooner N. S., sailing close-hauled, approached each other nearly head on, in the night, and, when about abreast of the Stepping Stones light, in Long Island Sound, came in collision, it was held that the collision was due to the fault of both vessels,—the fault of the L. being an attempt to cross the bows of the N. S., by putting her helm hard a-port, when the circumstances did not justify porting; the fault of the N. S. consisting of a failure to keep her course, which the fact of her being close-hauled required.

#### **In Admiralty.**

*Shipman, Barlow, Larocque & Choate*, for libelant.

*Abel Crook*, for claimant.

<sup>1</sup>Reported by Edward G. Benedict, Esq., of the New York bar.

BROWN, J. The collision in this case took place on the night of the sixteenth September, nearly abreast of the Stepping Stones light, a little over a mile N. N. E. of Throg's Neck. The libellant's schooner was bound outward, and the schooner North Star bound inward. The channel course there runs N. N. E. and S. S. W. The evidence shows that the wind must have been a little south of west, and that the North Star was sailing close-hauled upon the starboard tack. The Lillie, in rounding Throg's Neck, as her captain states, kept well off from the buoy, and was therefore probably a little to the eastward of the channel course which the North Star was pursuing. As the Lillie was rounding Throg's Neck, each saw the other's green light, when they must have been some two miles apart. The captain and lookout of the Lillie testified that the two vessels seemed to be approaching nearly head on; that the lights of the North Star changed several times from green to red and red to green; that he steered, not by compass, but by the Stepping Stones light, keeping it to leeward. Shortly before the collision he put his helm hard a-port, and the North Star struck the Lillie about amid-ships, and nearly at right angles, as both sides agree.

The captain of the Lillie states that the North Star seemed to be following him, as he kept off to the eastward, and charges the collision to that cause. The captain of the North Star testifies that he kept her upon her course, by compass, S. S. W., and did not change; that the green light of the Lillie was about a point off the North Star's starboard bow; and that there was no danger of collision, had not the Lillie, when near, ported, and run across his bows. He states, however, that he did not see any change of light of the Lillie after seeing her green light.

As the Lillie was sailing free, and the North Star close-hauled, the former was bound to keep out of the way, and the latter to keep her course. I think the weight of evidence is to the effect that there would have been no collision had not the Lillie attempted to cross the bows of the North Star by porting. The circumstances did not justify putting her helm hard a-port when she did. The positions at the collision show that the captain could not have had and kept the other's red light in view for the length of time testified. I cannot, however, credit the testimony of the North Star that she kept her course. I find it impossible to account for the large angle at which the collision occurred, viz., at least seven points, unless the North Star had helped to make that great angle by keeping off to port, or else the testimony of the libellant's witnesses is untrue and fabricated; for, if the Lillie had changed as much as seven or eight points, she must have been previously, *i. e.*, before porting, so far to the westward that only the green light of the North Star could have been visible. The channel is such that the two vessels must previously have been going upon nearly opposite courses, varying therefrom not over a point, and probably not over half a point; the North Star probably

heading a little closer to the buoy at Throg's Neck than the distance at which the Lillie rounded it. The fact that the captain of the North Star did not observe any other than the green light of the Lillie convicts him at least of inattention. The lookout could not have noticed a little change of course to the eastward; and such a change would have been not unnatural, on the part of the North Star, to give Throg's Neck buoy, in the night-time, a wide berth. This seems to be more probable than that the entire testimony of the Lillie's witnesses as to the changes of the North Star's lights should be false. From the large angle at the collision, which I cannot otherwise explain, I must hold that the North Star contributed to the collision by a change of her course also to the eastward, and that the damages should therefore be divided.

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THE WILLIE.<sup>1</sup>

THE LUDGATE HILL.

CAHILL *v.* THE WILLIE and another.

(District Court, S. D. New York. November 19, 1886.)

**COLLISION—CANAL-BOAT IN TOW—STEAMER'S PROPELLER—UNUSUAL CONSTRUCTION OF PROPELLER—UNJUSTIFIABLE POSITION FOR CANAL-BOAT—LIABILITY OF TUG.**

The tug W., with libelant's boat in tow, attempted to enter a slip, the opening to which, owing to vessels along-side the piers, was only some 60 feet wide. In going in, libelant's boat was swung under the counter of the steamer L. H., which was lying along the wharf, struck her propeller blade, and sunk. The steam-ship had double screw propellers, which are unusual in the port of New York, and project nearer the line of the vessel's side than ordinary single propellers. *Held*, on the evidence, that libelant's boat was swung under the steamer's stern to an improper and dangerous degree, even in reference to single screw propellers; that the tug was therefore solely in fault.

In Admiralty.

*Carpenter & Mosher*, for libelant.

*Biddle & Ward*, for the Willie.

*Hill, Wing & Shoudy* and *C. C. Burlingham*, for the Ludgate Hill.

BROWN, J. On the ninth day of May, 1885, between 10 and 11 A. M., as the steam-ship Ludgate Hill was lying along the upper side of the slip between Piers 42 and 43 North river, with her stern about 30 feet inside the end of the pier, the tug Willie, with the libelant's canal-boat lashed on her port side, came into the slip, for the purpose of landing her tow. On the opposite side of the slip were two

<sup>1</sup> Reported by Edward G. Benedict, Esq., of the New York bar