

independent one,—his master was the boss stevedore. He assumed no risk whatever in regard to the method in which the ship-owner and his servants discharged their duties. If, therefore, this were an action *in personam* against the owner of the ship, the libellant's right to recover could not, in my opinion, be denied. Whether he has a lien upon the ship is a different question. Upon this question I am bound by the adjudication of the circuit court of this circuit in the case of *The Rheola*, 19 Fed. Rep. 926, where, in a case quite similar to this, a lien was enforced. In the opinion in that case the question of lien is adverted to simply to say that the existence of a lien was not disputed. I may, therefore, perhaps, with propriety add that I do not perceive any ground for a sound distinction between a claim for damages founded upon negligence in the navigation of the ship, where a lien always arises, and a claim like this, based upon neglect to provide safe machinery for the discharge of the cargo of the ship.

As to the damages, I think \$450 will be a proper sum to award, with costs. Let a decree for that sum be entered.

THE RICHMOND.¹

HASKINS and others v. THE RICHMOND.

(Circuit Court, E. D. New York. June 23, 1886.)

COLLISION—STEAMER AND SCHOONER IN TOW—SUDDEN SHEER.

The decision of the district court in the same case (28 Fed. Rep. 332) affirmed.

Admiralty Appeal.

H. D. Hotchkiss, for libellants, Haskins and others.

Owen & Gray, (*F. D. Sturges*,) for the Richmond, appellant.

BLATCHFORD, Justice. The reasons assigned by the district judge for condemning the Richmond, and exonerating the tug, were these, the Richmond improperly sheered to the west, and struck the schooner. Even if the tug began to sheer to the west before the Richmond did, such act did not cause the collision, because the tug was, from the outset, to the west of the Richmond, and a swing of the tug to the west would be in a direction away from the Richmond, while the swing of the Richmond to the west was towards the tug, and such swing necessarily brought the steamer and the schooner into collision. The tug and the Richmond were not upon courses crossing, so as to involve risk of collision, and impose on the tug the duty of avoiding the Richmond. I concur in these views, and in the conclusion to which they lead. Let

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

there be a decree for the libelants against the Richmond for \$818.41, with interest from September 17, 1883, and for the costs of the libelants in the district court, taxed at \$192.20, and for their costs in this court, to be taxed.

FLANAGAN and others v. UNITED STATES & BRAZIL MAIL S. S. Co.¹

(District Court, E. D. New York August 5, 1886.)

MARITIME LIENS—SEAMEN'S WAGES—WRECK—TERMINATION OF VOYAGE—SURVEY.

In case of a wreck, it must be left to the discretion of the master to fix the actual termination of the seamen's services, under section 4526 of the Revised Statutes, and his decision will be supported, unless some wrong or injustice be practiced on the seamen. Survey and condemnation of a vessel is not a necessary ingredient of wreck.

In Admiralty.

F. A. Wilcox, for libelants, George Flanagan and others.

Richards & Heald, for claimant.

BENEDICT, J. It is not possible for the libelant to recover. The provisions of the Revised Statutes control. By the stranding of the steamer *Reliance* the voyage was broken up. The case is one where the services of the seamen terminated by reason of wreck, and, by section 4526, the seamen were entitled to wages for the term of services prior to such termination, but not for any further period. Their wages, calculated up to that time, were tendered them in the equivalent of gold, and, upon their refusing to take the money, it was properly paid to the consul. In case of a wreck by stranding, it must be left to the discretion of the master to fix the day of the actual termination of the seamen's services, and his decision will be supported, unless some wrong or injustice be practiced on the seamen. No such case is made here. If, as seems from the proofs, the stranding of the steamer was caused by the intoxication of the master, it was none the less a case of a termination of the seamen's service, by reason of the wreck of the vessel, within the meaning of section 4526.

The point taken in behalf of the seamen, that their services could not be lawfully terminated prior to the condemnation of the vessel on July 9th, is not tenable. A survey is not a necessary ingredient of wreck. In this case the facts justified the master in terminating the services of the seamen when he did, although that was prior to any survey. Nor is the legality of the master's act in discharging the men affected by the fact that natives were employed in the work of discharging the cargo. Under the circumstances, it was humanity to the seamen not to put them at work on decaying hides and coffee, which constituted a considerable

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