

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.

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FLANAGAN and others v. UNITED STATES & BRAZIL MAIL S. S. Co.<sup>1</sup>

(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

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

part of the cargo. The men were sent home by the consul on the steamer *Advance*, a vessel likewise owned by the defendant. Of course, they were not entitled to wages for their services on the *Advance*. The statute made it their duty to work, if able.

The libel must be dismissed, with costs.

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THE ELLA WARNER.<sup>1</sup>

HASKELL v. THE ELLA WARNER.

(District Court, E. D. New York. October 4, 1886.)

**COLLISION—TWO SAILING VESSELS—VESSEL CLOSE-HAULED—VESSEL SAILING FREE—LUFF.**

The evidence indicated that the collision in this case was caused by a luff on the part of the schooner *E.*, when it was her duty to hold her course, being close-hauled, and meeting the vessel *E. W.* sailing free. It not being shown that her luffing was necessary to avoid immediate collision, *held*, that the luff was a fault, and the *E.* solely liable for the collision.

**In Admiralty.**

*Goodrich, Deady & Goodrich*, for libelant.

*Pritchard, Smith & Dougherty*, for claimant.

BENEDICT, J. The immediate cause of the collision was a luff on the part of the schooner *Eloise*, when it was her duty to hold her course, being close-hauled, and meeting a vessel going free. Her master claims that his luff was made when the *Ella Warner*, displaying a green light, was crossing his bow, so near that his schooner would have struck the starboard quarter of the *Ella Warner* if he had not luffed; but the conceded fact that the *Ella Warner*, while luffing, struck the *Eloise* at her starboard fore-rigging, shows to me that the *Ella Warner* could not have been crossing the bows of the *Eloise* in the manner described by the captain of the *Eloise* at the time of the luffing by the *Eloise*. It seems to me that the *Eloise* has failed to show that her luffing was necessary to avoid immediate collision. Such being the case, her luff was a fault. It is entirely plain that, if the *Eloise* had held her course, there would have been no collision. The cause of the collision was her fault in luffing when she did. No fault is proved against the *Ella Warner*. She took all precautions to see the *Eloise*, and the *Eloise* was seen in time to avoid her by luffing. The *Ella Warner* was luffed as soon as the *Eloise* was seen, and that luffing would have avoided collision if the *Eloise* had held her course.

The libel must be dismissed, with costs.

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