

THE MINA A. READ.¹

THE M. E. BYARD.

CAMP *v.* THE MINA A. READ.NASH *v.* THE M. E. BYARD.*(District Court, E. D. New York. November 12, 1886.)*

COLLISION—TWO SCHOONERS—FAULTY LOOKOUT—CHANGE OF COURSE—VESSEL CLOSE-HAULED ON PORT TACK—STARBOARD TACK.

On the evidence, *held*, that the schooner R. was in fault for the collision between herself and the schooner B., for not seeing the lights of the B. in time to avoid her, and also for a change of course. If the deduction were drawn from the evidence that the R. was close-hauled, and made no change of course, *held*, that her liability would still be clear, as she was close-hauled on the port tack, and hence bound to avoid the B., close-hauled on the starboard tack.

In Admiralty.

Wilcox, Adams & Macklin, for Anson Camp and the M. E. Byard.
Hill, Wing & Shoudy, for Nash and the Mina A. Read.

BENEDICT, J. It is plain that the Mina A. Read was sailing without a proper lookout, and I see no reason to doubt that the collision in question would have been avoided if the Byard had been seen, as she would have been seen by a proper lookout on the Mina A. Read, either when the lights displayed by the Byard became visible, or at the distance at which the lights of the Mina A. Read were actually seen by those on board the Byard. By reason of this fault, about which there is no room for dispute, the Mina A. Read should be held responsible for the collision that ensued. As between the conflicting statements of the respective parties in the pleadings, in regard to a change of course on the part of the Mina A. Read when near the Byard, I think the weight of the evidence to be in favor of the statement of those on board the Byard, and upon such a finding on that issue the liability of the Mina A. Read follows, because of the additional fault of changing her course so as to cross the bows of the Byard, causing the collision thereby. If, laying aside the case stated in the pleadings, it be found, as perhaps it might be found upon the evidence from the Mina A. Read, that the Mina A. Read was sailing close-hauled, and made no change of course, still the liability of the Mina A. Read would be clear. For, in that case, the Mina A. Read, sailing close-hauled on the port tack, was bound to avoid the Byard, sailing close-hauled upon the starboard tack. And this she failed to do, because she kept no proper lookout.

Let a decree in favor of the libelant, with an order of reference, be entered in the first case above stated, and in the second case let the libel be dismissed, with costs.

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

THE PIONEER.¹

HUISMANN v. THE PIONEER.

(District Court, E. D. New York. November 22, 1886.)

MARITIME LIENS—SUPPLIES—STEAM-DREDGE A "VESSEL."

A steam-dredge is a vessel, within the meaning of the law, and, as such, subject to a maritime lien for supplies.

In Admiralty.

Noah Tebbetts, for libellant.

Goodrich, Deady & Goodrich, for claimants.

BENEDICT, J. This is an action to enforce a lien against the dredge Pioneer for provisions supplied for the support of the crew while engaged in working the dredge. The decisive question of the case is whether the Pioneer is a vessel, within the meaning of the law. The Pioneer is a scow, with deck, bottom, and sides so constructed as to enable her to navigate the water. Built into her is a steam-shovel, which is worked by a steam-engine located on the scow. She is a dredge used for the purpose of moving the steam-shovel from place to place, upon navigable water, and maintaining the same afloat while being operated to deepen the channel by shoveling up sand, mud, and silt, from the bottom, and depositing the same in other scows. It is evident that, without the ability to navigate and transport the shovel and engine on navigable water, secured by the method of her construction, the structure in question could not perform the work for which it was intended, and, without this ability, the shovel would be substantially useless; while, on the other hand, without the steam-shovel, the scow would still be available as a vehicle of commerce. A certain form and certain characteristics have been given her, for the sole purpose of enabling her to navigate the water, and to transport from place to place and maintain afloat the shovel placed upon her; and her occupation is to transport and maintain afloat on navigable water the shovel, the engine, and the coals used to work the engine. It is also to be observed that the shovel is devoted to the purpose of deepening the channels of navigable water, an occupation in itself incident to navigation. I have been referred by the claimant to the case of *The Dredge Nithsdale*, decided by the maritime court of Ontario, in 1879, where a structure similar to this was held not to be a vessel. I judge from the opinion in that case that the decision was affected by the fact that the question before the court was narrowed to the definition of a ship or vessel used in the navigation, as expounded in the interpretation clause of the vice-admiralty court act, 1863. But, however this may be, I am unable to agree with the conclusion there arrived at. As I understand it by the law of the United States, the absence from the

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