

winch by which the timber was handled. *Held* that, even if the accident occurred by the boatswain's negligence, libelant could not recover, as, under the circumstances of their hiring, he and the boatswain were fellow-servants.

In Admiralty.

John J. Allen, for libelant.

Hill, Wing & Shoudy, for claimant.

BENEDICT, J. Assuming that what caused the timber to fall out of the sling, and upon the libelant, engaged at the time in stowing the timber in the hold, was negligence on the part of the boatswain of the ship, who for the moment was in charge of the steam-winch by which the timber was lowered to the hold, still the libelant cannot recover. The operation in hand was loading the ship with the lumber. The libelant was a stevedore, engaged in the loading. He was selected by the boss stevedore to work as stevedore, but paid for his work by the ship's owner. The ship was not loaded under a contract, but by men employed by the ship to do the work required. The boatswain was employed by the ship, and his duties were those of a boatswain on a ship. While hoisting in cargo, the steam-winch was run by the ship's crew, and not by the stevedore's men, and the boatswain who was managing the winch at the time of the accident was not subject to the direction of the stevedore, but was one of the ship's crew. Nevertheless he and the libelant were fellow-servants, for they were engaged in a single operation, and each employed by the ship's owner to perform the same. *The Harold*, 21 Fed. Rep. 429. Being engaged with the boatswain in a common undertaking, he cannot recover for damages resulting to him from the negligence of the boatswain while so engaged.

The libel must be dismissed.

THE WISCONSIN.¹

CUSHING and others v. THE WISCONSIN.

(District Court, E. D. New York. May 6, 1887.)

SALVAGE — RUDDERLESS VESSEL — SERVICES — RISK — DOUBTFUL WEATHER — AWARD.

The steam-ship W. went ashore, and got off with the loss of her rudder. She approached close to the harbor of New York, moving backward, when she was met and taken into the harbor by the steam-ship N. The W. was sound and staunch, and in no especial danger, but the weather was doubtful, and her master desired to be in the harbor before the fall of night, in view of her disabled condition. The N. incurred little risk. Her value was \$450,000. The value of the W., her cargo, and freight, was \$505,234.87. *Held* that \$4,000 salvage should be allowed.

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

In Admiralty.*Wilcox, Adams & Macklin*, for libelant.*Nash & Kingsford*, for claimant.

BENEDICT, J. It is not disputed that a salvage service was rendered to the steam-ship *Wisconsin* by the steam-ship *Nevada*, on the occasion when the *Wisconsin*, having been ashore and been gotten off, was assisted by the *Nevada* into the port of New York. The *Wisconsin*, at the time the services were undertaken, was near the buoy off Fire island, moving astern by the power of her screw, aided by her sails, towards the harbor of New York. She was in distress, having lost her rudder, but, aside from the loss of her rudder, she was sound and staunch. She had been in communication with her agents in New York by telegraph, and was at the time awaiting and expecting the coming of a tug in accordance with her telegram. The weather was good. She had several times been offered assistance, and had declined it, when the steam-ship *Nevada*, a steamer of the same line,¹ appeared, bound out from New York. The *Nevada* was requested to turn back and aid to steer the *Wisconsin* into port. She consented, at some risk of rendering her supply of coal short for her voyage, and, by means of hawsers attached to the stern of the *Wisconsin* during some seven hours, she controlled the course of the *Wisconsin*, so that she came safely to anchor in the lower bay. The service was attended with little risk or extra labor. The *Wisconsin* was at the time in no great peril. She could anchor, and was justified in expecting to be taken in by the tug that had been sent for. She was, moreover, at the very mouth of the harbor of New York. Doubtless the sole reason why the master of the *Wisconsin* desired the assistance of the *Nevada* was the fear that the expected tug would not reach him in time to enable him to get into port before nightfall, and the steam-ship would be thus compelled to spend the night outside. Rudderless as the *Wisconsin* was, with the outlook of the weather doubtful, her master evidently thought it the more prudent course to get inside before nightfall, by the aid of the *Nevada*, rather than wait longer for the expected tugs.

The value of the *Wisconsin*, her cargo and freight, was \$505,234.37. The value of the *Nevada* was \$450,000. On her arrival out, the crankshaft of the *Nevada* was found to be cracked, but the evidence is not sufficient to warrant a finding that the crack in the shaft occurred during the rendition of the salvage service in question.

Taking all the circumstances into consideration, I am of the opinion that \$4,000 will be a proper salvage compensation for the services rendered by the *Nevada* on the occasion in question. The apportionment of this sum among those entitled to share it is left till the entry of the final decree.

¹ Underwriters were the real parties in interest in the above suit. The point as to the ownership of the two vessels was intentionally not raised upon the trial.—[*REP.*]

WOOLF v. CHISOLM and others.

(Circuit Court, S. D. New York. May 27, 1887.)

REMOVAL OF CAUSES—PRACTICE—PETITION—TIME FOR FILING.

Under the act of congress of March 3, 1887, which restricts the right of removal of an action from a state court to the United States circuit court, as it then existed, a defendant must file his petition within the time in which, by the laws of the state or the rules of the state court, he is required to file his original answer or plea, and not within the time when he is required or may elect to file an amended answer.

On Motion to Remand. At law.
Van Duzer & Taylor, for plaintiff.
Dos Passos Bros., for defendants.

WALLACE, J. It was the obvious purpose of the act of March 3, 1887, to restrict the right of removal of an action from a state court to the circuit court, as it then existed. The right is restricted as to the parties who can exercise it, as to the classes of actions in which it may be exercised, and as to the time at which an election to exercise the privilege must be made. The defendants now invoke this act to give them the privilege of removal under circumstances in which it did not exist previously. They had elected not to remove, and had waived their privilege before the new act was passed, by waiting until after the February term of the state court, the term at which the action could have been tried within the meaning of the former removal act. Subsequently, the pleadings were amended, and the defendants filed a petition for removal with their amended answer.

By the true construction of the new act, a defendant must file his petition within the time in which by the laws of the state or the rules of the state court he is required to serve or file his original answer or plea, not within the time when he is required or may elect to file an amended or supplemental answer. The defendants, therefore, have not complied with the conditions upon which their right to remove depends. Much less can they rely upon the language of the new act to revise a lost right of removal. The motion to remand is granted.

v.30F.no.13—56