ELWELL *v.* THE GEORGIA.[1]

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

1. BOTTOMRY—VESSEL IN DISTRESS—FAILURE TO NOTIFY OWNER—WHEN JUSTIFIABLE.

   Where no speedy means of communication exist between the place where a vessel is in distress and the place of residence of the owner, it is permissible for the master to raise money on bottomry without first notifying the owner.

2. SAME—TAKING CHARGE OF DISTRESSED VESSEL.

   A sum of money was paid to a bottomry lender, who was master of another vessel, for allowing his mate to take charge of the vessel borrowing on bottomry. On suit brought on the bond, *held*, while allowing the bond, that it should be reduced by the amount so paid.

In Admiralty.

The brig Georgia was in distress in the harbor of Old Providence, her master and some of her crew having died, and the vessel being in need of supplies and without money. Money was advanced to her by libelant's assignor on request of the consul, and a new master was appointed, who executed a bottomry bond for the money so advanced. No notice was given the owner of any intention to raise money on bottomry. The vessel hailed from Nassau, N. P., being under the English flag. All the proof as to the residence of her nominal owner was that the agent in New York had heard more than a year before that he was in Matanzas, Cuba. There is no telegraphic communication between Old Providence and New York, where the owner's agent resided, and a letter sent between the two places arrives in from nine to sixteen days. One hundred dollars was paid to the bottomry lender, who was master of another vessel, for allowing his mate to take charge of the Georgia as master.

Benedict, Taft & Benedict, for libelant.

Sidney Chubb, for claimant.

BENEDICT, J. I am of the opinion that the objection taken to the validity of the bottomry bond sued on, based on the failure to notify the owner of the intention to raise money on bottomry, is not well taken. The circumstances proved are sufficient, in my opinion, to excuse the failure to notify the owner. I am also of the opinion that the bond should be reduced by the sum of $100, being the amount charged as paid to the bottomry lender for his permission to allow his mate to take charge of the brig as master. For the remainder of the bond, with the maritime interest, the libelant may have a decree.

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

SMITH *v.* HAVEMEYER and others.[1]

(District Court, S. D. New York. November 18, 1887.)

1. WHARVES—UNUSUAL CONDITION—DAMAGE ARISING THEREFROM—LACK OF CARE AND EXAMINATION—LIABILITY OF OCCUPANT.
   The lessee and occupant of a wharf is liable for damage arising from its unusual and dangerous condition, unless he can show reasonable care and examination in regard to the condition of the wharf and slip.
2. SAME—DAMAGE TO VESSEL—STATEMENT OF CASE.
   Respondents' wharf, instead of being perpendicular below the water line, extended considerably into the slip. From one of the beams a spike projected, which injured the bottom of libelant's vessel when she went there to discharge. *Held*, in the absence of evidence of reasonable care and examination of the condition of the wharf by respondents, they were liable for the damage.

Goodrich, Deady & Goodrich, for libelants.
John E. Parsons, for claimants.

BROWN, J. While the bark Formosa was lying along-side the dock that for many years had been occupied by the defendants for discharging cargo, she got upon a projection from the pier below the water-line, and received some injury. Subsequently examination by a diver showed that the side of the pier where the Forunsa lay, instead of being perpendicular below the water, projected considerably into the slip, the successive layers of crib work forming a kind of stairs. A spike projected from one of the beams about six feet above the bottom, and tore off some of the copper of the vessel.

There is no direct evidence to show whether the side of the wharf was originally built in the manner above stated, or whether it had subsequently got into this condition accidentally. There is but a single statement in evidence that has any bearing on the question, viz., that similar vessels had previously been accustomed to lie there without injury. The libelant, in the course of the trial, propounded a question to a witness which, if answered, might have thrown some light upon the cause of the condition of the pier; but, upon objection by the respondent, the question was withdrawn. It was proved, however, that such a shape of the side of the wharf was improper and unusual, and it was clearly dangerous. Such a wharf was plainly not a proper one, or in a proper condition below the water-line to receive vessels for the discharge of cargo. The defendant, as the lessee and occupant of the wharf, is, therefore, *prima facie* chargeable with negligence. To exonerate himself, it was incumbent upon him to show reasonable care and examination in regard to the condition of the wharf and the slip. No proof on this subject being adduced, the *prima facie* liability must stand, and the respondents held to answer for the damages. A reference may be taken to compute the amount.

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