

But this, as I have already said, is not the fault of the respondent; but of either the libelant himself, or of the surgeon under whose charge he voluntarily placed himself. The exceptions to the commissioner's report are overruled, and the libel is therefore dismissed for want of equity.

CARD v. HINES.

(District Court, E. D. South Carolina. December 28, 1887.)

SHIPPING—CHARTER-PARTY—ACTION ON—PLEADING.

In an action on a charter-party, a copy thereof should be filed with the libel.

In Admiralty. Libel on charter-party *in personam*.

J. N. Nathans, for libelant.

J. P. K. Bryan, for respondent.

SIMONTON, J. This is a motion by respondent that libelant be required to file with his libel a copy of the charter-party on which he brings suit. The libel states fully the articles in the charter-party; but it does not profess to set out the charter-party in full. The practice on this point does not seem to be fixed. Mr. Benedict (2d Ed., form 105, p. 582) gives the form of a libel exactly like this, not accompanied by a copy of the charter-party. That is a libel *in personam*, and *in rem* for the violation of a charter. But in precedent 104, p. 579, in a form of libel *in personam* on a charter-party against the charterer for money, he annexes a copy of the charter-party, and craves reference thereto. In form 102, a libel on bill of lading, he adds "annex copy of bill of lading." In form 101, libel on bottomry bond, he puts copy of bond as an exhibit. See, also, 2 Conk. Adm. form 103, p. 505, in which a copy of the charter-party is annexed as an exhibit. See, also, 2 Conk. Adm. 485. It cannot be said that the libelant has violated any rule in omitting the copy. There, however, seems excellent reason for annexing it. As a matter of good practice, let it be done in this case, and in all future cases within this jurisdiction.

THE TWENTY-ONE FRIENDS.

THE JOHN H. MAY.

THE TWENTY-ONE FRIENDS *v.* THE JOHN H. MAY.

(District Court, E. D. Pennsylvania. November 28, 1887.)

COLLISION—LOOKOUT—WHAT CONSTITUTES—ATTENTION TO VARIOUS DUTIES.

Libelant, having the right of way, was run into by respondent in a thick night. It was in evidence that the respondent's lookout had been dividing his attention between looking out and reefing sail. Held that, where a vigilant lookout might possibly have prevented the result, the plea of inevitable accident should not be sustained when that duty was neglected.

In Admiralty. Libel for damages.

The Twenty-One Friends, libelant, sued the John H. May, respondent, for damages, the result of a collision.

Flanders & Pugh, for libelant.

Edmunds & Tilton, for respondent.

BUTLER, J. I will do no more writing in this case than is necessary to indicate the grounds on which the decision rests. As in all similar cases, the testimony is conflicting and irreconcilable. If an analysis of it were desirable, I would not have time to make it. I do not see, however, that it could answer any useful purpose.

The libelant had the right of way. The respondent was therefore bound to keep off. She did not, and the burden is on her to show why. (The libelant's admission that the weather was "thick" does not remove it.) The excuse assigned is inevitable accident, arising from inability to see. To support this assignment she avers, and has called witnesses to prove, that a vigilant lookout was maintained; and that the libelant was not seen, and could not be, until too close to be avoided. If this averment is proved, her case is made out; if not, she is responsible for the collision. The night required a most vigilant lookout. If the respondent failed to maintain it, her negligence tended directly to the disaster, which must therefore be attributed to it, in the absence of clear, unerring proof that some other cause intervened to which the result should be assigned. In the presence of such proof, the question of lookout is unimportant, as said in *The Farragut*, 10 Wall. 333, and *The Watanata*, 95 U. S. 610. Where the circumstances, however, are such that a vigilant lookout might, even possibly, have guarded against the result, the allegation of "inevitable accident" should not be sustained when this duty has been neglected. In such case, it is impossible to know that the faithful observance of it would not have avoided the disaster. Where, therefore, it is shown that the duty was neglected, (or, more accurately, where it does not affirmatively appear to have been observed,) we cannot say the accident was inevitable. One who sets up this de-