

steamer, the supreme court in *Peck v. Sanderson*, 17 How. 178, 182, say:

"Where, as in the present case, they are brought suddenly and unexpectedly close to each other, and the ordinary rules of navigation will not prevent a collision, it is the duty of each to act according to the emergency, and to take any measure that will be most likely to attain the object."

The master states that he would have ported his helm, and could have avoided this collision, if the steamer had given him their signal whistles to indicate that she was backing; and it is charged as a fault against the steamer that she did not give these signals. But, as article 19 of the new regulations expressly declares that the "use of these signals is optional," it is not in itself, independently considered, a fault that they were not given. Notwithstanding the fact, however, that the signals are made optional, when their great utility in promoting a mutual understanding between a steamer and a sailing vessel comes to be better understood, it may then be a legal duty on the part of the steamer, as one of the obligations of reasonable prudence, to give those signals, whenever the situation is such that the steamer cannot alone avoid collision, and when the steamer knows, or ought to know, that the other vessel, guided by such signals, but not without them, might safely change her course so as to avoid disaster. I do not need to pass on that question now. In the situation of these two vessels, the master of the *Willey*, without knowing whether the steamer intended to go ahead of him or astern, or even whether she had reversed her engines, (in which latter case the steamer could not materially change her course,) could not prudently change his own course in time to be of any service. I cannot, therefore, hold the *Willey* in fault on that ground. The cases in which steamers fail to hear the fog-horns of sailing vessels until quite near are too frequent to warrant the inference that the horn was not properly blown, because not sooner heard. For the *Willey's* speed, however, in that situation, and for her failure to attempt to check it after the approaching whistles of the steamer were several times heard near in the thick fog, I must hold her to blame; and the damages and costs must, therefore, in both cases be divided.

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THE JAMES H. BREWSTER.

THE CHAMPION.

THE LAWTELLE.

THE JAMES H. BREWSTER *v.* THE CHAMPION *et al.*

(*District Court, E. D. Pennsylvania. February 7, 1888.*)

1. TOWAGE—GROUNDING OF TOW—BURDEN OF PROOF.

A barge was grounded, while in charge of a tug, without any fault of her own. If the accident occurred where the libellant's witnesses say that it did, it was at a place which was known to be dangerous. The defense claimed that it occurred in the customary channel, and in consequence of extraordi-

narily low water. There was nothing in the evidence to sustain the allegation of extraordinarily low water, except the fact of the grounding; no evidence that any other such vessel grounded in the channel about the same time, nor that any such vessel ever grounded at the point where respondents claim that this occurred. *Held*, that the burden of proof was on the defense, and that the evidence was insufficient to sustain their position.

2. SAME—GROUNDING OF TOW—DAMAGES—REPAIR.

When, through the negligence of the tug, a tow is run aground and damaged, and subsequently the owners of the tug put the tow in as good condition as she was in before the accident, damages can be recovered only for the unnecessary delay caused thereby.

In Admiralty. Libel for damages.

*Flanders & Pugh*, for libellant.

*Driver & Coulston*, for respondents.

BUTLER, J. The Brewster was injured by grounding, while in charge of the respondents, without any fault of her own. The defense is inevitable accident; that she grounded in the customary channel, in consequence of extraordinary low water. The witnesses on the one side and the other disagree respecting the point at which she grounded. If it is where the libellant's witnesses say, the defense fails. The barge should not have been taken there. The place was dangerous, and known to be so. If it occurred elsewhere, the result must be the same. There is nothing in the evidence to justify the allegation of extraordinarily low water, except the fact of grounding; no evidence that any other such vessel grounded in the channel about the same time, or that such a vessel ever grounded at the point where the respondents assert that this occurred. No reason is shown or suggested for the extraordinary shallowness of the water set up. The burden is on respondents, and the evidence is insufficient to sustain their position. The weight of the evidence justifies a belief that the respondents' witnesses are mistaken respecting the point where the grounding occurred. After the injury the respondents took charge of the vessel, and had her repaired. They showed a commendable desire to discharge their duty towards her. If the repairs put her in as good condition as she was before the accident, the libellant is entitled to nothing, unless it be for delay. The case must go to a commissioner on this question.

PLATT and others v. THE GEORGIA.<sup>1</sup>

(District Court, E. D. New York. November 4, 1887.)

## MARITIME LIEN—QUARANTINE COMMISSIONERS—CARE OF SICK SEAMEN.

The services of the quarantine commissioners, in the care and treatment of sick seamen in the quarantine hospitals, are maritime in their character, and the lien of the commissioners on the vessel, arising out of such services, required by state statute, can consequently be enforced by a proceeding in admiralty.

*Goodrich, Deady & Goodrich*, for libelants.

*Sidney Chubb*, for claimant.

*R. D. Benedict*, for libellant in another suit.

BENEDICT, J. This is a proceeding *in rem* against the brig *Georgia*, by certain officers of the state of New York, designated "commissioners of quarantine," to enforce a lien for the care and treatment of some sick members of the crew of that vessel, who, by direction of the health officers of the port of New York, were sent to one of the quarantine hospitals in New York harbor, and there treated and maintained; the vessel having arrived with contagious sickness on board. There is no question as to the facts, and upon the facts a lien upon the vessel in favor of the libelants is created by a provision in the statute of the state of New York. The only question in this case is whether a lien of the character in question, created by the state statute, can be enforced by a proceeding in the admiralty. It can be so enforced if the subject-matter—in this case the services rendered—are maritime in character; otherwise not. I see no reason to doubt the propriety of holding these services to be maritime. They are services rendered in the care and medical treatment of seamen attached to the vessel. The seamen were so cared for and treated by reason of sickness incurred in the course of the voyage. Their care and treatment, therefore, devolved on the vessel by the maritime law; and for that reason their cure by the libelants should be considered a maritime service. Moreover, these particular services were required by the quarantine laws of the state to be rendered before the vessel could be allowed to complete her voyage. Such charges might well be deemed port charges, necessarily incurred by the vessel in the due course of her voyage, and for that reason maritime in their character.

My opinion, therefore, is that the libelants have a lien upon the vessel which may be enforced by this proceeding.

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