

These are a portion of the claims of small value, which seem to have been inserted for the purpose of covering every possible patentable feature of the invention. The tenth claim is for the purpose of covering the rocking motion of the screw against the perforated plate, by which it adapts itself to the face of the plate. In the defendants' machine, this rocking motion exists, but their plate is not adjustable; their knife is adjustable, and the plate is stationary. I think that this claim, which is merely for the purpose of protecting one of the minor details of the Baker machine, is to be strictly construed; and, as it requires that the plate should be adjustable, and as the defendants' machine has no adjustable plate, the claim is not infringed. I cannot conceive any patentable invention in the thirteenth claim. It is said by the plaintiff to relate to the mounting of the knife upon the end of the screw in such a manner as to be readily removable and detachable for the purposes of repair upon the removal of the perforated plate. I suppose that the plaintiffs' theory of the nature of the claim is a correct one, but I can see nothing which is akin to invention in the manner in which the knife is mounted upon the screw.

Let there be a decree for an accounting and an injunction against the infringement of the first, second, and sixth claims.

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THE LEO.

THE ELEANOR.

THE LEO *v.* THE ELEANOR.

THE ELEANOR *v.* THE LEO.

(*District Court, D. South Carolina. February 6, 1888.*)

**COLLISION—BETWEEN SCHOONER, WHILE WAITING FOR PILOT, AND PILOT-BOAT.**

After a pilot-boat has put off a pilot in a skiff for a schooner, it is the duty of the schooner to wait for the skiff, and it is the duty of the pilot-boat to keep out of the way of the schooner. So, where a collision occurs between the pilot-boat and the schooner while so waiting, the pilot-boat is in fault, and responsible for the damages which may ensue.

In Admiralty. Libel and cross-libel for damages.

*McCrary, Sons & Bacot*, for the Leo.

*I. N. Nathans*, for the Eleanor.

SIMONTON, J. These are a libel and cross-libel for a collision occurring off the bar of Port Royal.

On the morning of 1st December last, the three-mast schooner Eleanor, bound for Port Royal, was spoken by the pilot-boat Leo. It being at that time of the morning—6:30 A. M.—quite dark, the pilot instructed

the schooner to lay to until daylight, when he would put a pilot on board of her. After speaking the Eleanor the Leo tacked out to sea in order to turn and get up to her. On coming back to the place where the Eleanor had been, she found that the schooner had gone on, and had crossed and was just within the north breaker, still, however, on the bar. The master of the Eleanor says that he attempted to lie to; but the sea was very high, the wind was blowing a gale from N. N. E., and this, with the heavy flood-tide sweeping westward, caused his vessel to drift so much that he feared that he would get to leeward of the bar. For this reason, after waiting some 20 minutes, he went in. The pilot pursued the schooner, and overtook her within the north breaker. Coming in around her stern the Leo lay nearly abreast of the Eleanor, under her lee, quite close, and again hailed her, offering a pilot. The offer was accepted. A skiff was put out from the Leo with a pilot, who reached the side of the Eleanor. The sea was very high. Before the pilot could get aboard the collision occurred.

In their effort to explain how it did occur, the crews of the Leo and of the Eleanor give accounts of the occurrence which cannot be reconciled. The crew of the Eleanor say that when the pilot put off in the skiff to come to her, she was on the starboard tack, forging ahead. That the skiff, finding it difficult to catch up with her, her sails were hauled, and she was brought nearer to the wind, so as to lessen her speed. That the Leo then went out on her starboard tack, then tacked again and came on her port tack, steering as if to pass across the bow of the schooner. Fearing a collision if this should be attempted, the master of the Eleanor drew her sails a little more, and brought her nearer to the wind, so as to give a chance to the Leo to pass. The Leo came down on the Eleanor, and, despite of the effort of the master of the Leo to avert a collision by lowering his mainsail, the latter struck the former at about a right angle at the mizzen rigging. All the crew of the schooner and her master swear that, from the time of the approach of the Leo up to and including the moment of collision, the schooner was on her starboard tack, moving slowly ahead. On the other hand, all the crew and the pilots of the Leo swear that, after the skiff had left the Leo, and she had gone off on the starboard tack, she came upon the port tack. As she did so they saw the schooner also on the port tack. That the Leo at once followed her for the purpose of picking up the skiff, and was astern of her, a little leeward, about 300 yards. When the Leo got about 50 yards from the schooner she found the latter coming rapidly astern down on her, and before she could get out of the way, and in despite of every effort to do so, the schooner came crashing on her. They also all say that the schooner had sternway on her when the skiff reached her, and did not go ahead at all. They explain this by the facts that the wheel of the schooner had been becketed, and had been left alone, and by the further fact that the master of the Eleanor had managed his sails unskillfully.

It is not necessary to attempt to explain this contradiction, nor to decide between them which story is most credible. According to the

statement of the crew and pilots of the Leo, the schooner was lying to, waiting for a pilot to board her, as she was bound to do. The Leo, having sent the pilot, could go where she pleased. She determined to go back to the schooner to pick up her skiff. For this purpose she put herself on a course following the Eleanor, immediately astern of her. She was bound to keep out of the way of the Eleanor. The Eleanor was as close to the wind as she could get, waiting, and being bound to wait, in response to a lawful summons. The pilot-boat was free. The rule of navigation is imperative. Applying rules 17 and 22 (Rev. St. 823) it was the duty of the Leo to keep out of the way. As the Leo failed to observe these rules, she was in fault, and by her own admission.

It is ordered that the libel of the Leo be dismissed, with costs. Let it be referred to the clerk of this court, as special master, to inquire and report the items of damage sustained by the schooner Eleanor.

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THE MARCELIA ANN.

BLADES v. THE MARCELIA ANN.

(Circuit Court, D. Maryland. November 22, 1887.)

MARITIME LIENS—UNDER STATE STATUTES—PRIORITIES—WORK AND LABOR—SEPARATE CONTRACT.

Under Code Md. art. 87, giving (section 44) a lien upon certain vessels for materials furnished and work done upon such vessels, but providing (section 48) that the lien "shall not entitle the claimant to preference over creditors or claimants secured by mortgage or bill of sale properly executed and recorded before the claim to be secured by such lien shall have accrued," where there is no entire contract for the repairing of a vessel, but the repairs are done from day to day upon the orders of the owner, only such repairs will have preference over a mortgage duly executed and recorded as were done prior to the date of the recording of such mortgage.

In Admiralty. On appeal from district court.

*Thomas S. Baer* and *William P. Lyons*, for appellants mortgagees.

*Thomas S. Hodson*, for appellee lienor.

**BOND, J.** The facts in this case are that on the 6th of October, 1886, the schooner *Marcelia Ann* was libeled in the district court for wages. By order of the court under that libel she was sold, and after the payment of the seamen's wages found to be due, the remainder of the proceeds of sale were paid into the registry of the court for distribution to proper claimants. The schooner was the property of *George S. Holland*. The remaining proceeds are now claimed by *Sunmer W. Dana*, by virtue of a lien under a Maryland statute relating to liens for work and labor, and by *George S. McCready*, under a mortgage from *George S. Holland*, properly executed and recorded on the 17th of June, 1884. The first item in the account for which a lien is claimed is of June 5, 1884, and the last is dated Oct. 17, 1884.