

injury sustained does not appear further than that his leg was fractured. There is no evidence as to the expense incurred in his cure, and it is understood that he was cared for in the Marine hospital without charge.

My judgment is that the libelant ought to be compensated for the loss of his time caused by the injury, and nothing more. The wages he was receiving, with board and lodging, indicate that his time was worth \$75 per month.

The libelant alleges that he was not yet able to work when he filed his libel, April 22, 1887, while it is averred in the answer that by the middle of April he was as able to work as before the injury. There is no other evidence on the subject.

I find that the time lost after January was two and two-thirds months. This, at the rate of \$75 a month, makes \$200, for which sum, and costs and disbursements, the libelant is entitled to a decree.

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### THE FRANK P. LEE.<sup>1</sup>

#### INSURANCE CO. OF NORTH AMERICA *v.* THE FRANK P. LEE.

(Circuit Court, E. D. Pennsylvania. March 10, 1888.)

##### 1. COLLISION—SCHOONERS.

The schooners A. and B. were sailing off Cape Cod, between 9 and 10 o'clock at night. Both vessels were heading W. by N., on their starboard tack, B. being a quarter to a half mile in the rear of A. The wind was coming from the N. N. W. There was from five to seven miles of navigable water between the vessels and the shore. B. changed her course about two points southward, and ran under A.'s stern. Soon after B. again changed her course to go about across A.'s bows, missed stays, and before getting off was struck, and sunk. No light was displayed from B.'s stern after passing A. *Held*, that B. was guilty of negligence, and that there could be no recovery against A.

##### 2. SAME—LIGHTS AND SIGNALS—ABSENCE OF TORCH.

Failure to display a light or torch, required by the statutes, is negligence, if there is a possibility that a collision would have been avoided had the requirements of the statutes been observed.

Affirming 30 Fed. Rep. 277.

In Admiralty. On appeal from district court. 30 Fed. Rep. 277.

*Charles Gibbons, Jr., and Morton P. Henry, for Insurance Company of North America.*

*Henry R. Edmunds, for Frank P. Lee.*

McKENNAN, J. The only real controversy here is in the collision case. The facts involved are so few, and they are so fully stated in the opinion of the learned judge of the district court, and that opinion deals so satisfactorily with the case, that both are adopted as the finding of facts and opinion of the court. Both libels are therefore dismissed, with costs.

<sup>1</sup>Reported by C. Berkeley Taylor, Esq., of the Philadelphia bar.

CHICAGO, B. & Q. RY. CO. v. BURLINGTON, C. R. & N. RY. CO. *et al.**(Circuit Court, S. D. Iowa. March 23, 1888.***1. CARRIERS—COMMON CARRIERS—DUTY TO CONNECTING LINE—BOYCOTTS AND STRIKES—COURTS—FEDERAL JURISDICTION.**

The duty imposed upon railroad companies in Iowa by the laws of that state and by the "interstate commerce act," (Act Cong. Feb. 4, 1887; St. at Large 1885-87, p. 379,) of receiving from connecting roads freight and passengers, is one which the federal courts sitting in that state will enforce by mandatory injunction where the injury resulting from its non-performance is continuing; and it is no defense to such relief that a strike of locomotive engineers and firemen has been ordered on plaintiff's road, and that if defendant's road should accept cars from the "boycotted" road its own men would be called out.

**2. INJUNCTION—MANDATORY—GRANTING—NOTICE.**

As to defendants to a bill who have not been served with notice, and who have not appeared, a mandatory injunction will not issue on motion, but "if there appears to be danger of irreparable injury from delay," within the meaning of Rev. St. U. S. § 718, a restraining order, to be served upon said defendants with notice of the time and place of hearing, will be granted.

**In Equity.** On motion for injunction.

*Anderson & Davis, (Thomas Hedge, Jr., and Joseph G. Anderson, of counsel,)* for complainants.

*S. K. Tracy,* for defendants.

LOVE, J. Whoever, in my opinion, in a legal proceeding considers a railway company as a corporation for mere pecuniary profit to the owners of the property, without taking into account their character as *quasi* public corporations having public duties to perform, takes a view of the subject altogether narrow and misleading.

It is one of the duties of government to provide and regulate public roads and highways. It is a duty of government because roads and highways are indispensable to society, and because individuals are incompetent to establish and control them. No government can rightfully delegate to individuals or corporations its high duties so far as to place them beyond its own power, supervision, and control. The collection of the public revenue is a duty of government. It has been sometimes delegated to individuals as farmers of the revenue, but no government could rightfully place the collection of the public revenue beyond its own supervision and control. It would be absurd to treat the collection of the public money by farmers of the revenue as a mere private business. They would, on the contrary, have committed to them a public business—a duty of the government, in which the whole people would have a vast interest. So it is with the railway service. It is a *quasi* public business. The building, equipping, and management of a railway is not strictly a private enterprise. It would not be authorized by the government solely for private profit. That could not be done within the law of eminent domain. The railway company, and all who are engaged in the building, equipping, repairing, and keeping open a railroad as a public highway are performing one of the great duties of the government. The govern-