

All that remains will be simply the computation of the interest upon the sum stated, which may be done by the clerk when the decree is entered.

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LEVECH v. A CARGO OF WOODEN POSTS.<sup>1</sup>

(*District Court, E. D. New York.* April 14, 1888.)

DEMURRAGE—BURDEN OF PROOF.

On the evidence, *held*, that the delay claimed by the vessel against the cargo-owner had not been made out, and the libel should be dismissed.

In Admiralty.

The canal-boat *Martha E. Loomis* brought a cargo of posts from East Haddam, Conn., to New York, and the libel claimed that the vessel was delayed after arrival in New York by the fault of the consignees. It also claimed damage to the boat from floating ice through the fault of the shipper, which latter claim the answer averred had been settled. The claimant asserted that the boat had been sent at once to a proper dock, and that the delay arose from the slowness and absences of the master, and from the fact that he negligently discharged a part of the cargo at the wrong place.

*Peter S. Carter*, for libelant.

*Charles Murray*, for claimant.

BENEDICT, J. The settlement made between Goodrich and the master of the vessel left no claim enforceable except the claim for delay in the unloading of the vessel, which occurred after that settlement. In regard to the claim of a lien upon the cargo for the delay which occurred in unloading the posts, both at Schuyler's dock and at Wallabout, the evidence fails to prove that the delay was caused by fault on the part of the owner of the posts, or of the persons to whom the posts had been sold. The burden is upon the libelant to prove a fault causing the delay. This has not been done. Libel dismissed.

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

DE LELLE v. THE ATALANTA.<sup>1</sup>

(District Court, S. D. New York. April 30, 1888.)

## 1. SHIPPING—LIABILITY FOR TORT—STEAMERS RAISING SWELLS.

In plying about rivers and harbors, steamers raising heavy swells must give heed to the presence of other boats following their legitimate business, and slow or stop to avoid damaging the latter by such swells.

## 2. SAME—NOTICE OF DEFECT.

Masters of old and weak boats are bound to take corresponding precautions to give notice to others of the need of special caution in dealing with them.

## 3. SAME—DAMAGES.

It appeared that libelant's canal-boat was injured through being thrown against a dock by the swells from the yacht A., but it also appeared that the canal-boat was old and weak, and was hence damaged more than a boat in ordinary condition would have been. *Held*, that libelant should recover half his damages only.

In Admiralty. Libel for damages.

*Hyland & Zabriskie*, for libelant.

*Vanderpoel, Green, Cuming and Goodwin*, for claimant.

BROWN, J. The libel was filed for damages caused to the libelant's canal-boat Wm. E. Cleary, while she was discharging brick at the City dock, Yonkers, through the suction and swell caused by the steam-yacht Atalanta in passing down the North river. The evidence shows that the yacht was going at the rate of a little less than 14 knots; that the tide was flood, and within about an hour of high water; that her waves are about the same as those of the largest steamers that go up the North river; that she passed about half a mile from the shore; that she was in the habit of slowing when she received any signal from the dock indicating that a vessel was there unloading; that upon the morning in question she did not slow, no signals being heard; that though the libelant's lines were loose, the rebound of the waves after the first suction thrust the canal-boat with such force against the dock as to snap two of her deck beams and her keelson. There is slight testimony that a signal whistle was sounded from the dock, but as it was not heard, I am not satisfied on this point. But the libelant's boat, while unloading, was in plain sight of the Atalanta as she came down. The libelant's boat was some 14 years old, and was no doubt in a feeble condition. It was nevertheless useful to him, and he had the right to make use of her, subject to the ordinary risks of navigation. The heavy swells from steamers that make waves from one to three feet high are not, however, such ordinary incidents of navigation as boats are bound to take the risk of, whether large or small, new or old. On the contrary, it has been the settled law since the use of steamers in navigation, that, in plying about rivers and harbors where their swell and suction are likely to produce injury to other craft following their legitimate business, steamers must give heed to their presence, and by slowing, or stopping the engine temporarily, as the case

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