

COFFIN *et al.* v. THE OSCEOLA.¹

(District Court, E. D. New York. April 9, 1888.)

1. COLLISION—DAMAGES—DEMURRAGE.

Demurrage may be recovered for the detention of a boat while undergoing repairs rendered necessary by collision, though it appears that the work that the injured boat would have done but for the collision was done by another boat owned by libelants, and which was at the time without other employment.

2. SAME—PERMANENT DEPRECIATION.

No additional allowance should be made for permanent depreciation as a result of a collision without positive proof of such depreciation.

In Admiralty. On exceptions to commissioner's report.

Edward H. Hobbs, for libelants.

Carpenter & Mosher, for claimant.

BENEDICT, J. The exceptions in this case cover two questions which deserve attention: First, whether the libelants can recover demurrage for the detention of their boat while undergoing repairs, when it appears that the work that the injured boat would have done but for the collision was done by another boat owned by the libelants, and which was at the time without other employment. The commissioner allowed demurrage, and I think he was right. It is true that this is not like the cases of *The Cayuga*, 1 Ben. 171, and *The Favorita*, Id. 30,—an action for detention of a ferry-boat,—but it is within the principle of those cases. The next question is whether the libelants should have been allowed for permanent depreciation. The testimony certainly indicates that for some reason or other the boat was not as available after the repairs as she was before the collision, but it does not appear to me to be sufficiently certain to justify the allowance of any additional sum as damages caused by the collision. It is hardly a case where intrinsic and inevitable diminution of value is shown to have resulted from the collision because it was not possible to make complete repairs.

¹Reported by Edward G. Benedict, Esq., of the New York bar.

THE NEW YORK.¹BARRETT *et al.* v. THE NEW YORK.HUMPHREYS *et al.* v. SAME.

(District Court, E. D. New York. April 9, 1888.)

SALVAGE—VESSEL AT DOCK—FIRE—COMPENSATION.

The steam-ship New York, loaded with cotton and other goods, lay on the upper side of the Morgan Line pier, on the occasion of the breaking out of fire on that pier in February, 1887. The fire spread along the pier with remarkable rapidity, and threatened the New York, which had no steam up, and could not get away by her own motive power. The tug Jason, which was near the slip when the fire broke out, and the tug Goodwin, which had laid up for the night in the slip, took hold of the New York, and towed her out into the stream, accomplishing the service in about an hour. The New York was entirely unharmed. Other tugs which might have performed the service were in the vicinity when the fire broke out. The value of the New York and cargo was some \$488,000. *Held*, that each tug should be awarded \$2,000 as salvage.

In Admiralty. Libel for salvage.

Wing, Shoudy & Putnam, for Barrett and others.

Carpenter & Mosher, for Humphreys and others.

Chas. H. Tweed and R. D. Benedict, for the New York.

BENEDICT, J. This is one of several actions for salvage instituted in this court to recover for services rendered on the occasion of the disastrous fire that occurred at the pier of the Morgan Line of steamers in the North river, on the 28th day of February, 1887. The fire seems to have broken out on a lighter lying at the end of pier 37. On the south side of that pier lay the steamer Lone Star; on the north side of that pier lay the vessel here proceeded against, the steamer New York, with a full cargo on board, consisting of cotton, wine, and other goods. When the fire broke out a strong wind was blowing from the north-west, in fact, a gale. Pier 37 was covered by a shed, the front doors of which were open, and which was full of cotton, piled 20 feet high. The consequence was that the fire, fanned by the gale, spread with great rapidity up the pier, so that not only the cotton in the shed, but also the shed, the pier, and the Lone Star herself were consumed. The fire came so fast as to drive the firemen off the pier, and compel them to take refuge on a tug. According to one witness, it came up the pier towards the New York nearly as fast as a man could walk. When the fire broke out the steam-tug Jason, seeing it, at once turned back from her course, and pushed into the slip for the purpose of towing the New York away from the burning pier. The master of the steam-ship hailed her, as she came near, to take a line from the steamer, which was promptly done. The Goodwin, a more powerful tug, had laid up for the night in that slip,

¹ Reported by Edward G. Benedict, Esq., of the New York bar.