

of one of the briefs submitted by respondents, "the theory of the libel *in rem* against the Sydney and the libel *in personam* at bar is the same." There is no way fairly to distinguish the two cases. In the light of this controlling authority the situation is a simple one. Armour, Plankinton & Co., as owners, had a cause of action against the respondents as common carriers. Armour, Plankinton & Co. were alone insured as owners of the cargo. By paying them the libelants were subrogated to all their rights. Morse & Co., as carriers and advancers, were also insured, but it was for \$520 only, the extent of their actual pecuniary interest in the cargo.

The considerations now urged by the respondents may properly be presented to the circuit court on appeal, but it is thought that this court cannot with propriety consider them. It follows that the libelants are entitled to a decree for the amount agreed upon at the trial, with costs.

PROVIDENCE WASHINGTON INS. CO. v. WAGER *et al.*

(District Court, N. D. New York. February 28, 1888.)

ADMIRALTY—PROCEEDINGS IN REM AND IN PERSONAM.

An action in admiralty *in rem* is not a bar to an action *in personam*, growing out of the same facts, and the respondent in the action *in personam* is not entitled to a stay of the proceedings pending an appeal in the action *in rem*.

In Admiralty. Libel *in personam*.

Edward D. McCarthy, for libelants.

Hyland & Zabriskie, for respondent Wager.

Clinton & Clark, for respondents Morse.

COXE, J. This is a motion, in an action *in personam*, by the respondent Charles E. Wager, for a stay pending an appeal to the supreme court, taken in an action *in rem*, growing out of the same facts. *The Sidney*, (Dist. Ct.) 23 Fed. Rep. 88; *The Sidney*, (Cir. Ct.) 27 Fed. Rep. 119. It is entirely clear that the suit *in rem* is not a bar to the present action. In view of the authorities it is, at least, doubtful whether the respondent is right in his theory that the libelants can, in the action *in rem*, by motion and amendment, obtain a decree *in personam*. But even if this can be done, it in no wise prevents them from proceeding in a separate action if they elect so to do. The weight of authority seems to sustain the proposition that the remedy against the vessel and the remedy against the owner cannot, in circumstances like the present, be united or enforced in the same action; certainly no case has been cited, or found by the court, which disputes the right of a libellant to pursue them separately. *The Jessie Williamson, Jr.*, 108 U. S. 305, 2 Sup. Ct. Rep. 669; *The Sabine*, 101 U. S. 384; *The Zodiac*, 5 Fed. Rep. 220; *Insurance Co. v. Alexandre*, 16 Fed. Rep. 279, and cases cited; *Hale v. Insurance Co.*, 2 Story, 176; *Newell v. Norton*, 3 Wall. 257; Admiralty Rule 15.

The libelants, if they have a cause of action, are entitled to enforce it. It would be most unjust to require them to await, without security, the result in the supreme court. The motion is denied.

HADDEN v. THE J. H. RUTTER, (two cases.)¹

(District Court, S. D. New York. May 22, 1888.)

1. COLLISION—TUGS AND TOWS—NEGLIGENCE—ANCHORS.

It is not reasonable prudence to undertake navigation, especially at a season of the year when violent squalls are not infrequent, without anchors adapted to the boats in use. If such anchors are not provided, it must be at the owner's risk of the natural consequences.

2. SAME.

The steam-tug R., while towing two heavy car-floats, encountered a violent squall, which she was unable to breast, and the tow drifted towards a dock where several boats lay moored, and collided with the latter, and libelant's boats were injured. The R. had only one small anchor, wholly insufficient to hold the tow against the squall. The vessels at the dock exhibited no lights. *Held*, that the tug was solely liable for the collision.

3. SAME—LIGHTS—BOATS MOORED BY A WHARF.

Boats moored in the usual way alongside a wharf, and not in the way of other boats, are not required to exhibit lights.

In Admiralty.

Hyland & Zabriskie, for libelants.

Carpenter & Mosher, for claimants.

BROWN, J. On the night of the 18th December, 1887, at about 11 o'clock, the steam-tug J. H. Rutter left Barclay street, with two loaded car-floats in tow, both lashed upon the port side, bound for Sixty-Eighth street, North river. When off Forty-Second street they were struck by a sudden squall, with a high wind from the northward or north-west, and thick snow. The Rutter was unable to keep her tow headed up river, though using all her force, and in going up they continued to drift towards the New York shore, until she found herself approaching the long pier at the foot of Fifty-Fifth street, along which numerous boats lay moored. She was unable to stop in time to avoid striking some of the boats, and they were knocked about so as to injure two of the libelant's boats, for which injury this suit was brought. When the Rutter left Barclay street the weather was threatening from the north-east, but the wind was not so strong as to prevent proper handling of her tow. It is plain, however, that the tow was so heavy that she was unable to cope with the squall that struck her when the wind hauled to the northward and westward; and she had only a small anchor aboard, wholly insufficient to hold so heavy a tow.

Without reference to the other charges of negligence, I cannot hold it to be reasonable prudence to undertake navigation, especially at a season

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