

CONOVER v. THE JOHN S. DARCY.

NEW YORK, L. E. & W. R. Co. v. THE I. L. FISHER.

(Circuit Court, S. D. New York. March 25, 1889.)

WHARVES—RIGHT TO SURROUNDING WATER.

The fact that a ferry-boat lays such a usual course as to bring her within 10 or 20 feet of the corner of a pier, not itself the boundary of her slip, hugging it as closely as she can, does not give any superior right to so much of the water around the pier as may be required for the uses for which it was erected.

In Admiralty.

Appeals by both vessels from decree of district court under cross-libels, dividing the damages. *The John S. Darcy*, 29 Fed. Rep. 644.

E. D. McCarthy, for the I. L. Fisher, cited:

The Favorita, 8 Blatchf. 541; *The John Cooker*, 10 Ben. 488; *The Columbia*, 8 Fed. Rep. 716, 25 Fed. Rep. 844; *The Monticello*, 15 Fed. Rep. 474; *McFarland v. Lead Co.*, 17 Fed. Rep. 253; *The Fanwood*, 28 Fed. Rep. 374; *The Delaware*, 6 Fed. Rep. 195; *The Sigel*, 6 Ben. 550, 14 Blatchf. 482; *The Pavonia*, 26 Fed. Rep. 110; *The Manhasset*, 34 Fed. Rep. 422; *Fay's Case*, 15 Pick. 253; *The Alabama*, 1 Ben. 483; *The Ariadne*, 7 Blatchf. 212; *The Mary T. Wilder*, Taney, 567; *The Farragut*, 10 Wall. 338; *The Ariadne*, 13 Wall. 478.

Geo. Bethune Adams, for the John S. Darcy, cited:

The Pavonia, 26 Fed. Rep. 110; *The C. H. Seuff*, 32 Fed. Rep. 237; *The Free State*, 91 U. S. 200; *The Galatea*, 92 U. S. 439; *The Ferry-Boat Relief*, Olcott, 104; *The Favorita*, 18 Wall. 598; *The Monticello*, 15 Fed. Rep. 476; *The Edwin H. Webster*, 22 Fed. Rep. 171; *The Ottawa*, 3 Wall. 268; *St. John v. Paine*, 10 How. 563; *The Genesee Chief*, 12 How. 443; *Haney v. Packet Co.*, 23 How. 287; *The Ariadne*, 13 Wall. 475; *The City of Paris*, 9 Wall. 634; *The Ant*, 10 Fed. Rep. 294; *The B. B. Saunders*, 25 Fed. Rep. 729; *Goslee v. Shute*, 18 How. 463.

LACOMBE, J. The decision of the district judge holding both vessels in fault is affirmed. Such affirmance, however, is not to be taken as an assent to the proposition that the ferry-boats at the Twenty-Third street ferry have "the exclusive use of the clear water about 108 feet in width, between the Twenty-Second street pier and the lower ferry-rack." The fact that a ferry-boat lays such an "ordinary and usual course" as will bring her within 10 to 20 feet of the corner of a pier, not itself the boundary of her slip, "hugging it as closely as she can," (as the witnesses put it,) is not sufficient to give any exclusive or superior rights to the occupation of so much of the water area surrounding the pier as may be required for the uses to subserve which it was erected. *The Mary Powell*, 36 Fed. Rep. 598.

THE ANNEX No. 3.¹

HOGG v. THE PENNSYLVANIA ANNEX No. 3.

(Circuit Court, E. D. New York. March 8, 1889.)

ADMIRALTY—PRACTICE—MOTION FOR NEW TRIAL.

A motion for a new trial in an admiralty cause in this court comes too late if made after the term in which the final decree was entered.

In Admiralty. On motion for new trial. 35 Fed. Rep. 560.

Evarts, Choate & Beaman, for libelant and appellant.

Goodrich, Deady & Goodrich and *R. D. Benedict*, for claimant and appellee.

BLATCHFORD, J. In this case a decree dismissing the libel was entered on the 20th of July, 1888. On the 28th of July, 1888, and during the same term at which the decree was entered, affidavits made by William J. Dalton, Andrew Clemens, and Treadwell Cleveland, were presented to me, and on them I made an order that the claimant show cause on October 1, 1888, why the decree should not be vacated, and a new trial had, and why the libelant should not have leave to take the testimony of Dalton and Clemens as to the facts set forth in their said affidavits, and such other and further testimony as he might be advised, for use on such new trial. Further affidavits were served by the libelant for use on the motion so pending. In response to the order the parties appeared, affidavits were put in by the claimant, affidavits in reply by the libelant, and rebutting affidavits again by the claimant. The motion was fully heard by me on oral argument in December, 1888, and I have since been furnished with full written briefs by both parties. At the close of the oral argument I distinctly intimated my view that the motion could not be granted. On a careful review of the case, I am still of that opinion. The briefs submitted to me cover not only the questions raised by the special affidavits furnished by the libelant for the motion, but to some extent other questions on the merits involved in the hearing which resulted in the decree. I have carefully reviewed the whole case, and am still of the opinion announced by me in my decision herein, filed July 5, 1888, (35 Fed. Rep. 560,) "that the libelant has not established by sufficient proof the allegation of the libel that the steami-boat or ferry-boat known as the 'Pennsylvania Annex Boat No. 3,' on the occasion mentioned in the libel, ran into and upon the steam-ship mentioned in the libel, and then called the 'Western Texas,' and caused damage and injury to her."

On the 5th of February, 1889, and after I had been furnished with the papers and briefs on the motion above mentioned, the libelant presented to me certain affidavits, namely, that of William F. Ward, sworn

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