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Collisions in United States Admiralty Jurisdiction

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THESIS.

COLLISIONS

IN

UNITED STATES

ADMIRALTY JURISDICTION

ENTERED

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C O N T E N T S.

T A B L E O F C A S E S.

INTRODUCTION.

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The subject of Collisions in United States Admiralty Jurisdiction is a most important one in respect to all matters of navigation. Two ships collide. One or both of them is injured or completely lost, the cargo is damaged, human life is destroyed. Has there been any negligence, who is to blame, who may recover, what may be recovered and when may it be recovered, are a few of the many questions that arise when a case of this kind is brought into Court. Fully half of the Admiralty cases that come before the United States District Courts arise out of Collisions. This being the fact it is important to know what the law is upon the subject and where to find it.

However in spite of the importance of this subject, it does not seem to have ever been separately treated by any text writer. If noticed at all in any text book on Admiralty law, it is given but little space in proportion to its importance,

and that space is largely given up to a statement of what the rules of navigation are and a comparison of American and English cases. For the past thirty years even that degree of attention does not seem to have been given. During that time changes have been made in the rules of navigation, the statutes of limited liability have been broadened and further construction of the rules pertaining to navigation been rendered, thus changing in many respects the law as then existing. This being the fact in order to discover what the law of Collisions is, aside from such indirect light as other branches of Admiralty law may afford, it is necessary to go to the statutes and adjudicated cases.

It may be asked, "Though this is so, of what value is such a knowledge of the Admiralty law of Collisions-- when gained?" To the Admiralty lawyer it is of course, a necessary knowledge in order that he may proceed with a case at all intelligently. To those who do not follow Admiralty as a specialty, it must be admitted it is of comparatively little importance. But suppose such a case does come to one not an Admiralty lawyer, which frequently happens, and he has no

general knowledge of the different application of Common Law principles, of the construction of the technical rules laid down for the guidance of ships at sea, priority of liens, and the many other questions that commonly arise in a case of Collision. He must either decline the case, or run the risk of almost certain defeat because of his ignorance. He may from a lack of knowledge as to the different effect of contributory negligence bring his suit in the state court and because of such negligence lose everything, when by going into the United States District Courts, at least half could have been saved for his client.

So because of the importance of the subject as has been stated and the necessity of going to the original sources for information, this subject of Collisions has been chosen. It is the purpose of the thesis to show what the law is as applied to collisions in United States Admiralty Jurisdiction. In doing so, Statutes that seem to demand no explanation, as those stating what are proper lights, signals etc., will only be referred to and their force and effect indicated.

JURISDICTION OF THE ADMIRALTY COURTS.

At the outset of this discussion, it is necessary to know in what waters and in respect to what vessels a question in collisions may arise and come under the Jurisdiction of the United States courts. The constitution simply says that the "Judicial power of the United States shall extend to all cases of Admiralty and Maritime Jurisdiction," leaving the extent of that jurisdiction to be decided.

As to Territory.

The jurisdiction as it exists to-day is territorially as follows; The High Seas, harbors, rivers, the Great Lakes and other inland waters. The High Seas are usually defined as all tide waters below low water mark. But from this broad definition are usually excepted coast waters and harbors and rivers affected by the tide. Otherwise, every ocean port in the United States as well as such tide rivers as the Connecticut, the Hudson, and the Mississippi would be included for a great portion of their length. From the harbors, rivers and other inland waters must be excepted all waters not forming a part of a continuous waterway from one state to another state or

nation. Waters thus completely within the state and forming no part of an interstate or international water-way are under State authority and exempt from Admiralty Jurisdiction. Any of the small navigable lakes wholly within a state and forming no part of such a water-way, would be examples of such exemption. Admiralty Jurisdiction may be gained however, by connecting such waters by a canal so as to allow vessels to pass out on a continuous water-way to another state. Of this artificial mode of gaining Admiralty Jurisdiction, Cayuga Lake is a good example. Canals must be included as inland waters and under Admiralty Jurisdiction. The Ohio River and the Chicago Canal are examples of connecting waters both natural and artificial.

The conflict over the United States' authority being extended to the Great Lakes in questions of Admiralty was long and bitter. It was finally decided in two collision cases. The first, "The Propeller Genessee Chief" 12 How. 443. which was strengthened and furthered by "The Eagle" 8 Wall 15.

As to Vessels.

Admiralty Jurisdiction extends "to all vessels". As to what constitutes a vessel there are many decisions. The fact

that the craft in question is not propelled by oars, steam or sails, or is wholly engaged about harbors and docks and moved about by tugs, does not prevent its being looked upon as a vessel. Examples of what has been allowed as a vessel are the following: A steam dredge (a) A barge without sails or rudder,(b) A floating bath house,(c) Sail-boats and row-boats are also recognized by the rules of Congress. But a floating hotel,(d) and a ship not sufficiently complete to control its own movements,(e) have been denied the right to come within admiralty cognizance.

In brief the admiralty jurisdiction of the United States over collisions extends to all cases arising on the High Seas, coast-waters, navigable harbors, rivers, canals and other inland waters forming a part of a navigable water-way extending

(a). The Starbuck, 61 F. Rep. 502.

(b). Desbrow,v.Walsh Bros.36 F. Rep. 607.

(c). Public Bath, No.13, 11 F. Rep. 692.

(d). The Steamboat Hendrick, 3 Benn. 417.

(e). Steamboat Vermont, 6 Benn., 115.

beyond the limits of a single State, and the Great Lakes, and to all craft that the courts will dignify with the name of vessels. This authority extends by right only to cases where an American vessel is one of the parties, but the jurisdiction of Admiralty Courts may be extended to cases of collisions arising between foreign vessels, when such vessels request a hearing before them. The exercise of this jurisdiction is a matter of discretion with the court, but there should appear special grounds for refusing it, when asked. It is a matter of courtesy to the ship asking such jurisdiction and to the nations which they represent. Such vessels will be bound only by the law of their domicile.

WHAT CONSTITUTES A COLLISION.

A collision occurs "whenever two vessels come in contact." Thus any touching of one vessel by another technically constitutes a collision. Such a meeting of vessels may occur under three general conditions.

First: Both may be underway ,

Second: Neither ship may be underway,but both riding at anchor.

Third: One ship may be underway and the other riding at anchor.

An example of the first would be, two vessels persuing courses that cross and at such point of crossing the collision occurs.

The second is illustrated by two vessels riding at anchor, but one or both so negligently secured as to allow them to be thrown against each other by the action of wind and water.

The third case occurs when a ship in an attempt to pass into its slip runs into another vessel riding near at anchor. In whatever way the collision may occur, it is within the province of the Admiralty Jurisdiction to find out the party or parties at fault and decide the case accordingly.

NEGLIGENCE.

A collision having occured it is necessary to discover first, whether there has been any negligence causing it, second, of what the negligigence consists, and third, who the negligent party or parties are, in order that liability may be fixed for the damages sustained. On examination of a case, it may be found that one of three conditions exist. It may be found,

First, that no one was negligent:

Second, that only one or part of the parties were negligent:

Third, that both or all the parties were negligent.

Whether the parties are two or more is not important so far as the principles of law applied are concerned, so for most purposes but two will be considered.

These three cases will be taken up in their order, but first it is necessary to consider what generally speaking amounts to negligence in a case of collision.

Defined.

Negligence in collision cases has been variously defined but the definitins on the whole amount to this; that,

"Negligence is a failure to exercise the ordinary skill, care and courage of a competent seaman." Formerly, there seems to have been a tendency to require a very high degree of care when in a trying position. But such certainly is not the requirement at present . Ordinary care and skill is deemed to be sufficient to demand of a seaman in an emergency, because the difficulty of the situation is such as to render even that hard to exercise.

Ordinary care and skill must be looked upon as a comparative term. To determine whether such care and skill has been used the circumstances under which the same were employed must be taken into consideration. What might constitute ordinary care and diligence on the open sea, might be extreme negligence in a crowded harbor, or, again a steam-ship might proceed with perfect safety over a course which a sailing vessel could not follow without great risk of collision. Or, a strong vessel of any kind might safely go without negligence where an old and weak ship could not proceed except with great danger. Examples might be multiplied, but it is enough to show that the term of "ordinary care and skill" is comparative with the circumstances

under which the case arises and that the seaman must be one competent to act under the conditions.

Inevitable Accident.
Act of God.

When a collision takes place without fault of either ship its cause is termed "Inevitable Accident". An Inevitable Accident occurs when the accident could not have been avoided by any care or skill. But in collisions, the term is applied where the use of ordinary care and skill would not have avoided the accident. This broader use of the term in Collisions admits many cases that would otherwise be excluded. An act of God, however, would come within the more narrow definition. A hurricane driving two vessels together with a force beyond their power to resist would be an example of such an act. Vessels so colliding could in no way be held in fault. Another example would be an unexpected calm following a strong breeze or wind, or a sudden veering of the wind that could not have been anticipated. Such a calm or veering must clearly have been beyond all reasonable expectation. So in a case where a light variable wind was blowing, which at times would suddenly fail, and a vessel while tacking was made to collide with another,

because of such a failure of the wind, the defense of an act of God could not be set up. The momentary calms were not sufficiently unexpected to prevent a preparation against their occurrence . Previous warning that the wind might fail at any moment had been given by its reported failure previously. To constitute an act of God, therefore, it must be such an act as human foresight could not provide against either because of its suddenness or overpowering force. Strong currents caused by the usual action of the tides, no matter how swift and powerful, if known to exist, can not be classed as such acts. An act of God being shown as the cause of a collision all imputation of negligence is at once removed.

From the nature of the case, practically the only acts of God that can concern a collision are those in the nature of a storm, high winds or unexpected failure of the wind. A collision might arise because of unknown currents or a tidal wave, but such cases are so improbable as to be of value only as examples.

Inevitable Acts.

Besides the cases where an act of God has occurred, there are many others which are looked upon as inevitable accidents.

What such cases are will be best seen by examples.

Two ships are lying side by side, another passes and by the swell it creates, causes one ship to be thrown against the other. As between the two ships thus at rest the accident is inevitable. It could not have been prevented by any ordinary care and skill. Had the respondent vessel been run into by another and in that way driven against the other ship, the same defense would exist.

Examples are found, in the drawing of a spile to which the ship was properly fastened and consequent damage ensuing; (a) extreme darkness may prevent either vessel from seeing the other until too late to avoid a collision,(b) a vessel set adrift by some vis major, as a mass of ice or drifting lumber thrown against it. (c) A dense fog in which a ship is proceeding as slowly as possible and runs foul of a ship at anchor.(d)

(a) The Mary L. Cushing, 60 F. Rep.110.

(b) The Morning Light, 2 Wall. 550.

(c) The Transfer, 56 F. Rep. 513.

(d) Bridgeport, 35 F. Rep. 159.

Also when an intervening object shuts out of view another vessel, which, because of that fact, is discovered too late to prevent a collsiion. This would be the case when an advancing steamer or a hulk is in the way. Neither vessel can see the other and each supposes it has only the steamer and other visible objects to deal with. Both having exercised due and reasonable care, the accident must be looked upon as inevitable.(a) Had the intervening object been a projecting headland such as to shut out a part of the path of navigation, and around which ships were liable to appear, the excuse of an inevitable accident because of an intervening object could not be employed. The vessel colliding must be held negligent for not looking out for just such ships as might come out from behind the headland. The difference in these cases seems to be largely, if not entirely, one of probability. That one vessel in motion should remain hidden behind another, whether in motion or at rest, sufficiently long to endanger collision is much more probable than when a headland intervenes which may easily conceal an oncoming ship for a considerable distance. There is dicta to

(a) The Java, 14 Wall. 189.

the effect that when such a collision occurred in waters unfrequented by vessels, being removed from the usual course of ships, that it may be regarded as inevitable accident. The probability of a collision under the circumstances is here again brought into consideration.

A disabled vessel may be one of the parties to a collision. If the vessel with which it collides does not know of its disabled condition and is otherwise navigating in a proper manner, no fault can be attributed to it. The weak vessel in order to free itself from fault must at least have endeavored to give proper warning of its injured condition. Having so endeavored to fulfill its duty promptly and failed because of its weakness the collision which ensues may be looked upon as inevitable. The vessel's weak condition at sea will always act as an excuse for fault attributable to its condition, if not due to its own wrong doing. But when a vessel deliberately puts to sea in an unseaworthy condition, there is no doubt that her feeble state is no defense, but rather evidence condemning her. Whether such a defense may be set up, and inevitable accident claimed when the injury disabling a vessel has been

caused by another collision, for which she was more or less to blame has been questioned. But to so hold when a vessel is acting properly in the second collision would it is considered be too severe, and inevitable accident may be pleaded as when not in fault for the prior accident. The James Rumsy 30 Fed. Rpt.280., is an example of the necessity of a weak or injured vessel giving warning of its condition. The use of proper care by both vessels must have been exercised as above indicated, or a case of inevitable accident will not be adjudged to have occured.

When a collision occurs by the snapping of a chain, or the parting of a tiller rope, or the binding of the steering gear, or any other similar accident, not the fault of those superintending that which fails to act, a case of inevitable accident will be allowed. A latent defect is usually a good defense, if proved. But if in any way due to the carelessnes of those who should attend to the thing broken as where a wire rope was used with one or two broken strands.(a) or a chain with badly worn links, no such plea can be sustained, but instead a clear case of

(a) The Olympia 61 F. Rept. 120.

negligence exists . Where a nut was shown to have been allowed to work off, the defence cannot be sustained.(b) These were things under the direct supervision of the ship master and crew and by ordinary care would have been seen to and kept in a safe and fit condition for the purpose for which they were intended.

In these cases considered, an act of God is the only instance where the accident is in the nature of things strictly inevitable . In the other cases an extremely high degree of care would as a rule have avoided the collision. The reasons for looking upon an act of God as excusing are plain. Such an act cannot be guarded against by man's care and forethought. It may occur when he is using the highest degree of skill and care and force one ship against another. No blame can attach. In the other cases where an Act of God is not present, it is simply a question of whether or not the court will look upon the care and skill used by the respondent as equal to the ordinary care and skill of an ordinary competent seaman in a like position. To require a higher test would tend to make collisions never excusable and apply a harsh rule upon all those who

(b) The Altenower 39 F. Rep. 118.

conduct navigation.

It must not be understood that the mere fact that at the time ordinary care and skill could not prevent the collision will make the case one of inevitable accident. If it is due to the negligence of either party that such conditions have arisen, it is not sufficient to show that as soon as the danger was perceived it could not be avoided, though everything was done that could be done under the then existing circumstances. The ordinary care and skill must have been exercised not only at such time when the danger was perceived, but also for such a time previous as would have been required to prevent a coming into the position where such efforts would not be effectual. A vessel proceeding at too high a rate of speed in a place crowded with ships, until too late to avoid the accident or without a lookout, will be regarded as having no claim to the plea of inevitable accident however well they may have behaved in the presence of immediate collision, (a) A violation of the rules of navigation of which the above would be an example, will prevent the successful use of such a plea, if in any way

(a) The Twenty-one Friends 33 F. Rpt. 190.

such non- compliance contributed to the accident. Nothing will be presumed in favor of the collision being without fault in such a case. If the accident was inevitable apart from the violation, the respondent may show it. It rests entirely upon him however, to do so. This question of burden of proof will be separately considered.

In brief, inevitable accident may be shown when the care, courage and skill of an ordinarily competent seaman under the circumstances would not have averted the collision. And such an accident being shown, no negligence is deemed to have existed.

It is next necessary to consider the cases where negligence was present causing the collision. The ways in which a vessel may be negligent are almost as varied as her motions and the conditions under which she may be placed. It is possible therefore, only to indicate generally the various kinds of negligence. Negligence may be roughly classified first, as negligence consisting of a direct violating of the rules of Navigation or failure to follow a well regulated custom, and second, when the rules of navigation and customs have been practically followed,

but there has been carelessness while following them. Under these two heads all kinds of negligence may be brought. The main point of value in this distinction is in respect to questions of burden of proof. A violation of the rules being shown, the burden is upon the party so violating. In case of a collision also it has been previously pointed out that one or both of the vessels may be in fault, and yet remain in court.

The mere fact of a collision does not of itself raise any presumption of negligence on the part of either ship. Two ships have collided. Both are to be deemed free from fault until something is shown denying such an assumption. Such an assumption may be denied by showing a violation of rules and customs , also by the circumstances under which the collision occured, or by some clearly negligent act on the part of one or both vessels, aside from such rules and circumstances.

Violation of Rules.

The rules are violated most frequently in cases of too high a rate of speed, and in the use of lights and other signals, It is the law of the sea as of the road "to turn to the right",

and a needless failure to so do must be looked upon as negligence. So in all cases a violation of the law of navigation or a failure to follow a well recognized custom will always be looked upon as negligence until evidence is brought to show that such violation of the law or failure to follow a well established custom did not contribute to the collision. The laws are given as defining the scope in which a vessel may act in entire safety from any legal blame. Having disregarded these commands shaped in the form of rules, an imputation of negligence must follow when a collision has thus occurred or the rules would lose their force. A well regulated custom has practically the force of law, in fact amounts to an unwritten law. That such customs are to be observed is clearly stated in the rules relating to navigation, (a) This general statement concerning a violation of the sailing rules is supported by all the cases. To consider them all separately would only result in deducing the general rule stated of such violation being prima facie evidence of negligence.

(a) 26 Statut at Large P. 320.

(Better Methods) no Excuse for Violating the Rules.

The question naturally arises,would it be considered negligence in a vessel, if it pursued a course contrary to the rules laid down by Congress, but looked upon by the best seamen as a much safer mode of navigation than that prescribed by law. By many attorneys appearing for a desperate respondent, such a course has been stoutly argued as the only proper one to pursue. At first thought, it might seem that such care having been used, all imputation of negligence ought to be removed. The best of seamen are the ones who should best know what constitutes the safest mode of navigation. The purpose of the laws is to make navigation safe and if the acts of the re respondent are such as tend more surely to further that end, according to the opinion of those most competent to judge, what reason can there be for holding the vessel so acting, guilty of negligence? As this argument is frequently used it is well to notice it. The trouble with allowing such a contention any weight, rests in the fact that,however true the opinion of expert seamen may be as to the propriety of allowing such a

method of navigation, it is not a general rule. The next company of experts that come together might well have an entirely different opinion of what was best and so lead to hopless confusion. The rules of navigation as given would be of no effect, and each case would have to be tried out in court to decide whose system of navigation was best. For safety there must be a given set of rules to be disregarded only at the peril of those so violating. It is plain that without such a system one ship would not know what to expect of another. One who takes a course forbidden by law does so at his peril and the excuse that the unlawful way is the best, will not save him, and in a case of collision in Admiralty there is no good reason why the rule should be varied. If the master of a ship prefers to run such a risk, he may, but he and his ship will be held to blame for any collision occuring thereby.

A good example of cases involving this theory is seen where greater speed has been maintained than was allowed by law. In fact, it is in connection with the question of speed that this argument usually has been presented. Section 4233 of the

Revised Statutes reads, "Every steam vessel when approaching another vessel so as to involve risk of collision shall slacken her speed or if necessary stop and reverse and every steam vessel shall when in a fog go at a moderate speed."

This section came up for interpretation in the City of New York 15 F. Ref. 624 and again in the Clare, admr. v Providence. S.S.Co. 20F. Rep. 535. In the later case, the steam vessel in fault was steering from one light of a narrow channel across to another at full speed in a heavy fog. Experienced seamen agreed in saying that this was safer than going at the moderate speed required by law, so long as that speed meant less than full speed. It was said that by going at a slower rate, collision would be more apt to occur as the ship more easily lost her way not being able to tell so accurately how long it would take at the reduced speed to come in sight of the opposite light as it was possible to do when going at the usual rate. The judge, however, looked upon the law as of first consideration, and importance. Whatever the section might mean by 'moderate speed' it was clear it meant less than the usual rate. The

laws of navigation demanded that a certain mode of navigation be followed. If the laws were unwise, it was the province of Congress to enact new ones not that of the courts or expert seamen. Any other decision on this question would of necessity nullify the law.

Circumstances Raising Presumption of Negligence.

The circumstances under which a collision occurs may be such as to impute negligence to a vessel when shown, though the bare fact of a collision does not. The relation of the two vessels may be such as to leave no reasonable ground for any other conclusion. In The Bridgeport 7 Blachford 361, a steamboat ran into a vessel lying moored to a wharf, striking her nearly head on about amid-ships. At the time a heavy fog prevailed hiding the ship and wharf. The lights above the wharf, however, were visible and the locality was known by the person steering the vessel. The court held that under such circumstances a presumption of negligence was raised, by the fact of a collision against the vessel in motion. No vessel could be seen, but it was known that the locality was one where vessels were very likely to be. This was shown by the lights visible

above the wharf. This decision has since been sustained, and is still indicative of the rule that negligence may be presumed when a collision occurs because of the surrounding circumstances. When the collision takes place and one ship is out of her course, the presumption of contributory negligence arises from the fact that a rule of navigation has been violated, rather than from the circumstances aside from any violation. A ship in motion colliding with a ship at anchor always tends to raise a presumption against the moving ship. The presumption thus raised as in the violation of the rules of navigation may be overcome.

Where no Presumption Arises.

The cases where a presumption of negligence arises have been considered. As to what constitutes negligence aside from these special cases, there is no marked difference, between Admiralty and Common law. The acts complained of must be shown to have constituted negligence which aided in bringing about the collision. In every such case, where there is no presumption, the entire question of negligence is one of unaided fact. In a search for negligent acts, the court will not

always be satisfied by finding fault in one or even in both vessels but, if the negligence is very slight on one side and very great on the other, it may endeavor to discover whether the negligence contributing to the disaster was sufficient under the circumstances to hold the party responsible at all. In such cases, where the negligence is very slight, if any, the court may disregard it as not being of sufficient importance and certainty to be given any insight. This would apply only to cases where the neglect complained of relative to the consequences to be suffered if held to create a liability would be entirely disproportionate. In such instances the neglect on the part of the other vessel is considered as being sufficient to have caused the damage.

Proximate Cause.

In both law and admiralty it is sought to discover what is the proximate cause of an injury suffered and the negligence of a party is judged accordingly. In the previous cases, certain facts being shown, they were at once connected as the proximate cause of a collision by means of a rebutable presumption. In cases where no such presumption arises not only must

a negligent act be shown, but also some evidence that such an act contributed to the collision. So in a given case though negligence might be proved on the part of either libellant or respondent, if such negligence is not in some way connected with the disaster either by presumption or direct evidence as the proximate cause of the injury in whole or in part, it will not be considered. When a presumption has been raised it must be removed by showing that the negligence in no way contributed to the disaster.

It may be that both vessels were in fault, but one vessel had every chance to have avoided the collision. In such a case, if one vessel is to be looked upon as alone to blame, it will be that one which had the last clear chance to avoid danger. Though the injured ship was guilty of some negligence, that negligence will not count against it, if the other vessel had ample opportunity to see the position of the vessel injured and did nothing to avoid a collision, but instead was itself guilty of neglect, contributing directly to the disaster. The McCalden, v. The Edgewater, 65, F. Rep. 527, is a good illustration of what is here meant. Two tows were passing, one up

the other down the river. Just beyond one of them the vessel of the libellant was proceeding at a high rate of speed, with its masts extending fifty or sixty feet above the tow, though thus in nearly full view, the respondent, after waiting for the tows to pass, started ahead at full speed and collided with the libellant. The negligence of the respondent was held to be the proximate cause, and that, that vessel alone must bear the loss. The libellants negligence consisted in not complying with the Starboard rule. But the fact that it did not so comply had no effect on the result, as the respondent could easily have seen and avoided the danger, had it been tending to its duty. It was a vessel at rest, about to start in motion at full speed, before doing so it had the last clear opportunity to have avoided any possibility of a collision. Having entirely disregarded this opportunity,it must suffer the consequences of being held alone in fault for the proximate cause of the collision. Had the libellant been on the proper side of the tows, it was not thought that the result would have been any different. In either case the respondent should have seen her, and had the last clear chance of avoiding collision by

so doing.

The Portia, 64 F. Rep. 811, is a case involving this same question of proximate cause. A line of tugs was coming up a river and a steam-boat was going down. The line of tugs was violating the rules of navigation, but the steam-boat had a full view and plenty of room in which to avoid them. In trying to do so, the steam-boat herself violated the rules and thereby caused a collision which would not have occurred but for such a violation. The act of the steam-boat was looked upon as the proximate cause. She had every opportunity to avoid the tow, and being handled with greater ease, was possessed of the last clear chance to do so. (a)

Negligence may consist in a defective equipment, or in a ships putting to sea in an unseaworthy condition. A steamer on meeting a schooner, puts her helm over to avoid that vessel and the rudder chain snaps, causing a collision; If in such a case the chain was badly worn, and though open to ready inspection, had not been attended to, the fact will be looked upon by the court as constituting negligence on the part of the owners.

(a) The Clara, 55 F. Rep. 1021.

A defective engine on a steam-boat, failure to employ a tug when required; an insufficient or unskillful crew, and a sailing vessel not in good trim, are further instances of such negligneces on the part of the ships owner. In all such cases the owners are permitted to show that they properly equipped the vessel and carefully looked to its being in good condition and properly manned at the time it started out. They would also show that they took care to keep the same in needed repair. Such evidence if sustained, would constitute a good defense.

As has been said, a loss may arise where the party in fault does not come into actual contact with the ship injured. A good example of such a collision is found in the case of The James Gray, v. The John Frazier, 21 How. 184. The James Gray was lying by in the channel in Charleston harbor, but without any light, contrary to the harbor regulations and otherwise at fault. The John Frazier came into the channel in tow of a tug. There was plenty of room to pass and the James Gray was clearly visible. When about four hundred feet distant, the tug carelessly cast off without giving the John Frazer any

warning. The impetus of the vessel, in spite of all that could be done to prevent a collision, carried it against the James Gray, doing a considerable damage. The court held that the tug must be looked upon as the boat whose negligence caused the collision and not the John Frazier, which actually collided. The James Gray was also looked upon as in fault for its violation of the harbor rules. The only ground upon which the John Frazier could have been held negligent, would have been that of agency. But that too, ought to fail for the reason that no such act as that of hurling the vessel free in the channel could in any way be looked upon as authorized by the principle in employing the agent.

Whether two vessels or one are in fault, no different questions arise in respect to negligence. What constitutes negligence in one ship will constitute negligence in another as a general rule. Exceptions to this statement may occur. An example would be when one vessel is compelled to hold its course and the other to keep out of the way, as is the case with sailing vessels and those propelled by steam. But if the vessels are in an equal position, the general statement applies.

Acts in Extremis.

In considering what constitutes negligence, it must not be understood that an act committed, or an omission to act, in the extremity of the moment of collision, will be regarded as negligence, when the difficult position is not due to the fault of the ship so acting. An example would be the putting of the helm to post, when it should have been put to starboard, the circumstances being such as to confuse a seaman of ordinary nerve and experience. An arbitrary admiralty rule might vary this holding. The Galileo, 38 F. Rep. 469, was a case where in the presence of inevitable collision the engines were reversed, but an anchor was not dropped which might have averted the collision. Such an omission in the extremity of the moment was looked upon as excusable. In another case,(a) a steamboat allowed a sailing vessel to get too near and then in the extremity of danger, committed an error. This was held inexcusable as the ship so doing was not free from blame before the error was committed.(b) So in order to have an act or its

(a) The Carroll, 8 Wall. 302.

(b) The Elizabeth Jones, 112 U.S. 514.

omission excused, when done in the excitment of the moment before the collision, the ship so acting must be otherwise free from blame. That such acts in extremis should be excused, is sustained by the equitable side of the court's powers. Where both vessels are so acting or fail to act, in a case otherwise free from fault, the case becomes one of inevitable accident which has been previously considered.

Pilot's Negligence.

If a pilot is directing the course of a ship when a collision occurs, the question naturally arises, will the negligence of the pilot be attributed to the ship under his care? When the pilot has been taken volentarily,there is no doubt but that it should and would, he being the ship's volentary agent for the purpose of navigation. The contention arises when a vessel is compelled to take a licensed pilot by force of law. It is said that such a pilot cannot be looked upon as an agent of the vessel, but rather as an agent of the law, so that the ship ought not to be liable for a collision caused alone by his negligence. In the China, 7 Wall. 53, the question arose squarely in a case of negligence on the part of the pilot

which caused a collision. It was held that the negligence of the pilot must be looked upon as the ship's negligence. This discussion has been cited with force in later cases.(a).(b). Siderainda v. Mapes, 3 F. Rep. 873, is cited as supporting a contrary doctrine, but it is not at all in point. The pilot in that case is being sued by the owner of the vessel he was piloting and no question of injury to a third vessel arises. In following the principle laid down in The China, the English rule has been refused as not tending to the best public good. The pilot , it is true, is placed upon the ship by force of law, and without one a ship must pay a fine and proceed at her peril. But just as a requirement that a vessel shall be seaworthy when she starts out and shall have a proper equipment, etc., is for the good of such vessels as well as for the public, so is the regulation requiring a pilot for the ship's benefit. No vessel can know all harbors and channels, but a trained pilot may be thoroughly acquainted with his own harbor and channel,and conduct a ship in safety when she could otherwise proceed only with danger. Further, the pilot is liable to the

(a) Barnes, v. The District of Columbia, 91 U.S. 546.

(b) Sherlock, v. Alling, 93 U.S. 107.

ship for improperly piloting her, so the burden placed upon the vessel is not so onorous as at first may seem. The public are best served by such a law, first, by their interest being placed in the best of care and second, by having a responsible party, as the ship's owner to look to who will usually be better able than a pilot to make good any loss that may be occasioned. The United States holding seems equally as just as the English rule and is based upon better public policy.

Wilful Negligence.

The harm may be caused by what is sometimes called wilful negligence. Negligence implies a lack of any intent to do the harm complained of. But here the party in fault has brought about the collision by his own wilful carelessness or wrong doing. In a case where two vessels wilfully collide, it is laid down as a dictum of the courts, (a) they might see fit to look upon them both as criminals and refuse to adjudge the loss, leaving each to suffer the consequences of its acts. Certainly as between themselves they could merit nothing from the courts, but punishment. If, but one of the parties was shown to be

(a) Sturgis, v. Clough, et al 21 How. 451.

wilfully in the wrong, no protection or excuse could be offered for him. Ralston, v. The State Rights, Crabbe 22, is an early case which serves as an excellent example of such wilful collision. The States Rights deliberately and repeatedly ran its iron ice beak into the ship of a rival company. The court said that in such a case not only was the ship so acting, alone in fault, but that punitive damages might also be given.

In brief, negligence consists of any violation of the rules and customs of navigation or in specific acts aside from such rules and customs. It must be contributory to the collision. If no such negligence is shown, the collision must be looked upon as caused by an inevitable accident. From the mere fact of collision , no presumption of negligence arises.

BURDEN OF PROOF.

The burden of proof in a case of collision rests first, upon the libellant. As has been indicated the mere fact of a collision raises no presumption of negligence and consequently creates no burden. The libellant has first to make out a prima facie case of negligence on the respondents part which might reasonably be supposed to have in some degree contributed to the collision. If there is doubt as to whether the evidence presented is such as to make out a prima facie case for the libellants contention, the burden has not been created and the action must fail. But the burden of proof does not rest on the libellant all through the case. Having once made out a prima facie case of negligence against the respondent, the burden then rests upon that party to show that his negligence did not contribute to the loss in whole or in part. This is simply a following of the general rule at law. The respondent may in turn place a burden of negligence on the libellant, which must be sustained in a like manner. According as this burden is

sustained, one, both or neither will be liable. The placing of this burden is illustrated by any case where one vessel accuses another of being in fault for a collision.(a) For example, if a ship proves that while at anchor in a proper place another ran into the anchorage ground and collided with her, negligence has apparently been shown on the part of the moving vessel and the burden is upon her to remove all such imputation.

The burden of proof may be raised against another ship in two ways. First, it may be that the mere circumstances of the collision will be sufficient when shown, to raise a presumption of negligence and a consequent burden without giving any further evidence to connect those facts with the collision. Second, certain facts may be shown but, it is necessary to give evidence connecting them with the collision as its cause. In one instance the law raises a presumption, in the other it does not.

Violation of Rules.

A violation of a statutory regulation raises a presumption of negligence and without further showing the court will usually consider the burden as upon the one violating to prove that the

(a) The Drew, 35 F. Rep. 789.

negligence complained of did not contribute to the collision.(a) In the Conoho 24 F. Rep 758., the burden was placed upon the respondent for a violation of the statute as to lights. The Conoho had only a white light burning which gave it the appearance of being a vessel at anchor. An approaching vessel steered its course accordingly and a collision ensued. The court said that the burden of proof was upon the vessel whose lights were attacked, to show by clear proof that her lights were properly placed and burning at and just before the collision. To create this burden of proof, the violation complained of must have been such as could have contributed to the collision. The Supreme Court has said that the mere fact of a violation of a rule would not place the blame and burden upon the one violating where it could not possibly have had anything to do with the collision. An example would be where there was no lookout at the time when a ship collided with a sunken hulk, whose presence was not known and could not have been discovered had the lookout been in his place. So in considering whether the violation of a rule would put the burden of proof upon the one

(a) The City of Washington, 92 U.S.31.

violating, the court may use its discretion in such instances. However it seems certain that nothing but a clear case as in the above example, would prevent the burden from falling.(a)

Collision of a Ship at Anchor.

Where it has been shown that the respondent collided with the libellant ship when at anchor in a proper place, the burden is at once laid upon the respondent by the aid of the presumption that the moving vessel was to blame. Such a burden may be removed in many ways, as by showing that the vessel at anchor was not obeying the rules in respect to lights or signals and that the respondent was navigating properly. It seems following the general Admiralty rule, that even if the libellant vessel was in fault in such matters as proper lights, signals, a sufficient watch, etc., that the respondent must have used due and ordinary care under the circumstances in order to escape free from blame.(b) In a recent Federal case, (c). where a collision occurred between a moving ship and a dredge at anchor, it was considered that those facts being shown, the burden

(a) The Farragut, 10 Wall. 334. The America, 92 U.S 432.

(b) The Drew, 35 F. Rep.789.

(c) The D.H. Miller, 76 F. Rep. 877.

of proof had been met and transferred to the respondent, to show that it was not within its power by reasonable care to prevent the collision. The presumption of negligence and consequent burden of proof was looked upon as clearly against the moving vessel in this and all cases, when one ship was at anchor. It was further held as a rule of admiralty law that such a presumption could not be removed by attributing the collision to a deceitful tide, in a harbor where the tides were well known, nor by the raising of mere presumptions or suggestions of fault on the part of the libellant. To sustain such a burden the proof must at least, be as clear and decisive as that which placed the respondents burden upon him. Plothmer, et al v. The F. and P.M. No. 1, 45 F. Rep. 703, is a case holding to the same principle of law, but somewhat peculiar in its facts. Two propellers were aground, but for the moment had stopped their efforts to get free. It was plain however that they were about to make another attempt. A third propeller, the respondent, tried to go by them, but so near as to be put out of course by the current, caused by a fresh attempt to get free and was driven against a schooner moored at

a pier. The fact of a collision with the ship at anchor along side the pier raised a strong presumption of negligence which was further strengthened by the carelessness shown in approaching too near the grounded propellers. The burden thus raised was sustained. (a) It may be that the vessel at anchor is shown to have been improperly anchored or by some other act to have probably contributed to or been entirely in fault for the collision. A burden is then upon the libellant to free itself from blame. This may be the case whether the respondent has entirely freed himself or not. If the libellant was anchored in the usual course of ships, the burden would be upon him to show that such an act did not contribute to the collision.(b)

Special Circumstances.

Circumstances may be proved that would compel the vessel at anchor to show not merely that it was at anchor when the collision occurred, but also that damages sustained were due to the collision and not to some outside force. In The Maryland, 14 F. Rep. 367. About the time of the collision, ice was

(a) The Michigan, 52 F. Rep. 501.

(b) The Armonia, 67 F. Rep. 363.

drifting heavily around the ship at anchor, with a force sufficient to have caused the damages sustained. Under such circumstances the burden was also put upon the libellant to show that the damages were caused by the collision rather than by the drifting ice.

Many other questions may be raised which the libellant must meet, as when passage was very difficult to thread, because of a derrick working at one side, or by reason of the tempestuous condition of the weather, or that the ship at anchor was hidden by some intervening object. In such cases the libellant will have the burden of showing that these conditions would not have caused the collision, had the respondent been navigating properly.(a) In the Passaic, 76 F. Rep. 460., the same rule was sustained in principle, though both parties were held in fault. The steamer was to blame for going needlessly close to the ship at anchor. The schooner was at fault for unnecessarily remaining at anchor near a wreck on a windy night, in the way of cross currents and in the path of navigation, and also for being in such a position with both anchors

(a) The Depew, 59 F. Rep.791.

out making it most difficult to escape in the presence of threatened collision. The burden here placed upon the libellant by the respondent was done without the aid of any legal presumption.

Steamboat and Sailing Vessel.

If a steam-boat and a sailing vessel collide, the burden is upon the steam-boat to show that the collision was not due to its negligence. (a) The reason for this is that a steam-ship is much more easy to handle than a sailing vessel. Where two such vessels meet, the sailing vessel is obliged to keep her course and the steam-boat to keep out of the way. The steam-boat having nearly every advantage over a sailing vessel, a collision occuring the burden is placed upon it. The Gypsum Prince, 67 F. Rep. 612, holds that the vessel which is bound to keep out of the way must show by a fair preponderance of evidence that the collision was due to fault of the other vessel. In all cases of a violation of the rules, the facts are looked upon as peculiarly within the knowledge of the vessel accused, so the burden is placed upon such a ship to remove the presumption.

In brief the burden of proof may be upon a vessel, because

(a) Donnell , v. Boston Towboat Co.,89 F. Rep. 757.

of a violation of the rules of navigation, from the peculiar circumstances of a collision, or by force of other negligent acts apparently the collision's direct cause.

DAMAGES.

In discussing the subject of damages, it will be more or less difficult to avoid treating of liability at the same time. Damages are to be looked upon as the cause from which Liability may arise. The purpose of the court is always as far as possible to put the innocent party in the same position as before the damages complained of occurred. To do this it is necessary to know what will and what will not be looked upon as damages in any given collision case. Speaking generally, all injuries and losses the direct result of a collision will be looked upon as constituting the damages. In order to discover what damages will be looked upon as direct, and how they are ascertained, it is necessary to take specific instances and there find the various items allowed.

There are some kinds of loss which would usually be suffered in a collision case, that stand out clearly as constituting proper elements of damages, as soon as a search for such elements is made. Such losses would be, the value of the ship

when a total loss, the depreciated value of the ship if only injured, cost of repairs. loss of cargo, loss to baggage, loss of freight. These forms of loss it would seem, would stand out plainly as elements of damage. Others will be discovered on further investigation. Considering the losses from the standpoint of the thing or person sustaining them, they would be generally classified, as loss to the ship, loss to the cargo, loss to seamen, and loss to passengers.

To The Ship.

The loss to the ship may be to her as a ship or in her earning capacity. Having determined that a ship has suffered some damages the difficulty consists in measuring them. If the vessel is a complete loss, in order to ascertain the damages, her market value at the time is to be taken as a proper estimate. If her home port is a suitable market, her value in that port will usually be taken. If in a foreign port at the time of collision, the market value in the home port will always be taken. (a) It may be that the ship has a special value to an owner which the market value would not include. If this special value is reasonably placed upon the vessel, it will be

(a) The Laura Lee, 24 F. Rep. 483.

allowed and damages assessed accordingly.(a) A vessel peculiarly constructed for some special local purpose, or in the furtherance of any particular object not common to nautical interests might well have no market value at all except as so much lumber, while to the owner its timber constituted only a small portion of its worth. The damages suffered by the owner are what the vessel is worth to him. This as a rule is what it will bring in market, but there being no suitable market that method fails. In a case where the special value consists in the assumed value found in an offer of purchase not accepted, it will not be allowed, but the market price will be taken instead. The reason for this is that the court wishes to avoid making the one causing an accident, pay the price set by another's too high valuation. Had the offer been accepted, but title had not passed, it would seem that such a price would be looked upon as properly estimating the libellant's damages, for whether a high estimate or not, it is exactly what he loses because of the collision. If the vessel lost is a pleasure yacht, some method must be adopted for ascertaining its value, because usually there would not be any good ready market. The vessel has a

(a) The Normandie, 58 F. Rep 427.

special value not obtainable at a public sale. In such a case, it may be ascertained by considering the occasional cost of building and its condition at the time of collision. A good inquiry would be what would a person of suitable means give for such a vessel at the time it was lost. In most cases where the ship has a special value to the owner, it might be ascertained in the above manner. (a)

Abandoned Ship.

When a ship has been abandoned at sea and has subsequently become a total loss, the abandonment is not justified by the mere fact of a collision caused by anothers fault. Those on board must have used ordinary courage and judgment in standing by their ship. The court will, however, take into consideration the difficulty of the situation, the probable danger to be faced, if the ship is not left to her fate, as well as the general action of the master and his crew at the time. In an early case,(b) a collision occurred in northern waters between two whaling vessels. One ship was abandoned. Another vessel injured at the same time reached the home port, although

(a) The H.T. Demock, 17 F. Rep. 226.

(b) Swift, V. Brownell, 1 Holmes 467.

in much the same condition as the one deserted. Before abandoning the vessel the master and his crew had considered the matter carefully and had remained by the ship in the face of great danger. The court considered that proper courage and judgment had been exercised, and that the full value of the abandoned ship should be taken in estimating damages. Had the master not been justified in his action, the damages actually suffered by the collision could still be considered so far as they were due to the respondent's negligence. Whether or not an abandonment was justifiable in a given case must be determined by the special facts connected with such disaster.

Weak Ship.

It may be found that the ship lost or injured was in a poor and rotten condition to which condition the loss was attributable as much as to negligence on the part of the respondent. In such a case damages would be divided, it being fully as negligent to go about with such a sickly craft as to navigate in a careless manner. (a)

These damages fall on one or both vessels according as one or both were negligent. Whether or not each shall stand

(a) The John R. Renson, 86 F. Rep. 696.

just one-half the loss is a question of liability rather than damages.

Items of Damage.

When the ship injured is only a partial loss, her depreciated market value, if sold unrepaired, would be a proper estimate of damages. The cost of repairing so as to make the vessel as good as before, and all direct and natural expenses and losses due to the injured condition of the ship are considered when ascertaining damages. If the ships injury is the only loss, the cost of needed repairs would constitute a correct valuation. The ship must be completely repaired at once, or as soon as circumstances will reasonably allow. If time unnecessarily intervenes, or a voyage is taken which increases the damaged condition of the ship, a suitable reduction must be made for the damages thus increased. (a)

Other items of damage to the ship are towage demanded as a necessary consequence of the collision; a survey taken of a vessel to ascertain its condition; demurrage, estimated in the absence of a charter party or a market price by the average net profits of the ship during the trip in question and those just previous; traveling expenses of the ships owner to and

(a) The Henry M. Clark, 22 F. Rep. 752.

from the wreck; and interest, at six-percent usually, upon injuries suffered and expenses necessitated. (a)

Interest.

Interest on the amount representing the ship's loss would run from the time of collision, but on expenses incedental thereto it seems to be computed from the date of such expenditure. The giving of interest on damages rests largely in the discretion of the court. Where a vessel has been put in better condition by the repairs necessitated, than at the time just prior to the collision, no interest will be allowed. (b) Salvage expenses may be figured as a proper item of damages. Costs of raising a sunken vessel, value of sails and tackel lost, seamen's wages, and many other similar expenses may be brought as damages to the ship The expense of trying to raise a sunken vessel is a common item of damages, so long as spent in good faith, even though the attempt was a failure. Also expenses of ascertaining the injuries to such a ship before making any effort to raise it.(c) If both vessels are to blame

(a) The Oregon, 89 F. Rep. 521.

(b) The Alaska, 44 F. Rep. 489.

(c) The Oneida, 84 F. Rep. 716.

for the collision, the same principle holds good, the only difference being in liability. The owner of a sunken ship having decided not to raise it, the respondent may do so himself, but cannot it seems compel the former owner to take it as part compensation for damages. Demurrage is also allowed.

Loss of Earnings.

The loss suffered by a ship may be in her earning capacity. Freight having been lost because of the collision, its amount is to form a part of the damages. Probable earnings will be allowed in such a case. The cost of hiring another vessel to take the place of the one injured has been favorably considered. (a) Also, the difference in value between a charter lost in consequence of the collision and a new one granted subsequently. (b) But in a case where the ship was a total loss the prospective catch of fish was refused as an element of damages. The prospective catch was looked upon as too uncertain. The compensation received from the interest allowed on the value of the lost vessel must be looked upon as taking the place of any possible profit from the catch of fish. (c) Had the vessel

(a) The Emma Kate Ross, 50 F. Rep. 845.

(b) The Belgenland, 36 F. Rep. 504.

(c) Guibert, v. The George Bell, 3 F. Rep. 581.

been in the midst of her fishing, and thereby given some indication of what the prospective loss really was, the case might have been looked upon differently.

To The Cargo.

If the cargo is lost, the innocent owner is entitled to have all direct injuries estimated in damages. Whether full damages can be recovered, will depend on the statutes of limited liability. The vessel injured must do all it can to repair the ship and save the cargo from harm. If such care is not taken by the carrying ship, damages that would otherwise not stand against it, because of the limited liability acts, may do so. A case of this nature would be where only a small hole admitted water onto grain or goods, which was not attended to. The vessel in fault alleging such a cause, must prove it.(a)

How Valued.

The cargo may be the property of the owner or master of the ship or of third parties. In either case it forms a part of the damages to be borne in whole or in part by the respondent. The value of the cargo according to Swift v. Brownell, cited above and other cases is to be ascertained by finding its probable value at its home port, or a central market at the

(a) The Gladiator, 79 F. Rep. 445.

time when it would ordinarily have been delivered. In this case the cargo was one of whale oil and bone, and the home port was a central market for that commodity. If some central market was not taken for the ascertaining of value, but the nearest port, or a port to which the vessel was bound or might choose, an unreasonable value would often be placed upon the cargo lost, because of peculiar circumstances existing at that port at such a time. In another case previously cited, Guibert, v. The George Bell, a cargo of fish was allowed in damages, its value being ascertained by the value of the fish in a near by port, such port being a good market for that species. One fourth of the value of the ship's outfit for the season also was allowed, the ship having been out three fourths of the season. Besides these damages, custom house charges in a foreign port were admitted.

It is often the case that time is wanted in which to recondition a cargo damaged but not entirely lost. In such a case a reasonable time is given for reconditioning, but after that all extra loss sustained must be borne by the cargo owners. What would constitute a reasonable time would vary according

to the circumstances and the articles injured. In Nordlinger, v. Nelson, 61 F. Rep. 663, more than a reasonable time had been consumed and in consequence a poorer market at the time of sale. The loss occasioned by not being ready to sell within a reasonable time could not figure as damages against the respondent. Damages to cargo may be refused as against a ship responsible for a collision with a rotten, shaky craft, too weak to go into dry-dock for repairs. This would undoubtedly be the decision when it was shown that had the vessel been fit to be used, no injury to cargo would have occured. (a)

Crew and Passengers.

In a collision, sailors may lose their personal effects. Whether the loss can be looked upon as damages depends upon the fault of the ship which they help navigate. They may have damages assessed in an opposite proportion to the fault of the ship. If the ship is not in any way to blame, then all may be counted. If partly to blame, then only half. If alone to blame, then nothing. A sailor's fortunes are said to follow those of his ship. If the personal effects are the property of passengers, as baggage the owners may recover to the full

(a) The New York, 40 F. Rep. 900.

amount of loss against either vessel or both.(a)

Personal Injuries.

The damages suffered instead of being those to property, may be to person. These injuries may or may not produce death. The remedies for such injuries are the same as at common law, and on being estimated may be allowed as damages. If the injured person was a sailor aiding in the navigation of one of the vessels, it would seem that the damages would follow the rule as to personal effects. In order to have damages figured for such injuries, the collision must be their proximate cause, and only actual damages can be considered. What may enter as items of actual damage is well illustrated by an early case.(b) A skiff was run down and the libellant badly injured and his son drowned. The libellant's injuries were such as to partially disable him for life. As damages the court allowed him to recover for the injuries to his skiff, fo loss of its use while being repaired, expenses of his illness, loss of earnings of himself and son up to the time of the decree, compensation for his sufferings and for his partial permanent disability.

(a) Jacobson, v. Springer 67. F. Rep. 948.

(b) Miller, v. The W.G. Hughes, 1 Woods 363.

No damages for the loss of the son's life were given.

Loss of Life.

For loss of life, by collision, the laws of admiralty give no right of action and consequently no damages aside from some special act of Congress or a law existing in the district where the collision occurred or the ship belonged. This was finally decided in The Harrisburg, 119 U.S.199. That case did not clearly decide however that when such a statute existed a personal representative might bring an action for damages. The reason for giving damages is that it is inequitable to do otherwise, in the case of life negligently destroyed. In the Harrisburg, Justice Waite answers this by saying that it is the duty of courts to declare the law, not to make it. That the law of maritime nations gives no damages aside from statute is well settled. Congress has passed no statute upon the subject. It seems that when such a question does arise under a state statute that the damages would be sought in personam, unless the statute especially made way for an action in rem by giving a lien upon the ship in fault. In a late case in the Circuit Court three seamen were drowned as a result of the vessel in fault not standing by according to Admiralty law. Damages were given, the administrators of

the deceased,not for the loss of life, but for the physical suffering endured before death. That the damages accorded were not to be taken as for the loss of life, was expressly stated. (a)

Previous to the decision of The Harrisburg there was a strong tendency to disregard what Common law or the laws of Admiralty were as incorporated into our legal system, and judgment was given as the equities of the case seemed to demand. As most of the states have by statute provided a right of action to be brought by the personal representative of the deceased, any equitable objections that might be raised, are greatly modified, the Supreme Court having not yet decided that an action under such a statute may not be maintained in Admiralty.

Speaking in general terms, all losses the direct consequence of a collision and which may be measured with reasonable certainty may be figured as items of damage with the exception of loss of life, unless given by some special statute. What will be looked upon as a direct loss has been indicated. If in any case there are more than two vessels in fault, the

(a) The Robert Graham Dun, 70 F. Rep. 270.

damages will be assessed pro rata subject to the rules of limited liability. (a) If neither vessel is in fault, then no damages are to be assessed. (b).

(a) The Doris Eckchoff, 41 F. Rep. 156.

(b) The Clara, 102 U.S. 200.

LIABILITY.

Stating the rules broadly as to liability, the wrong doer in a collision is liable for all the loss occasioned by his negligence. The common law rights of action being reserved, the liability may be either that of the common law in personam or the liability ascertained by an action in rem against the ship. In the common law action, every wrong doer is included and may be held liable for damages. The action proceeds in personam against the wrong doing owner or master or charter party as the case may be. In the action in rem the ship itself is looked upon as the wrong doer and held liable. This further difference between the liability at common law and that in admiralty must be noticed, namely, that at common law any contributory negligence on the plaintiff's part frees the defendent from all liability, while in admiralty it divides the damages or if very slight on the part of one may not affect the result at all.

If the owner is a wilful wrong doer, he will be held liable not only for the loss to the full value of his own

vessel, but for the entire damages actually suffered by the innocent libellant, and no statute or rule of common law or admiralty will aid him.

Subject to the statutory limitation of liability, the innocent owner of a damaged ship may recover his whole loss from the parties in fault. If both are in fault, then but half damages can be collected. The cargo owner, also subject to the same statutory regulation, may recover full damages, holding the owners of either or both of the two vessels liable for the injuries suffered. In a case where both are liable and one has paid more than his share, such a ship owner has a remedy against the other for the amount paid over and above what was his true liability.(a) This is also the case where the damages are for loss of personal property or personal injuries. If pending the suit, however, one of the ship owners purchases the claims of the owners of his cargo, he is limited in his recovery from the other ship to the amount paid for them. The court will not force speculation of such a nature. The cargo not being in fault cannot be held liable for the losses on the other vessel, except to the amount due for accrued

(a) The Dorris Eckhaff, 41 F. Rep. 156.

freight. This is the case even if the cargo owner and the owners of the ship are one. If no statute of limited liability interferes, the cargo owner is entitled to a complete compensation for his losses. (a)

Limited Liability.

But with this general statement concerning liability must be taken into consideration the statutes limiting liability in particular cases. These statutes frequently enter into a case and entirely change the liability from what it would be but for their existence. Section 4283, of the Revised Statutes, limits the liability of a ship owner for loss by collision and otherwise, when not occasioned by any priority or knowledge of his, to the value of his interest in the ship and freight, then pending. If a man has so acted as to come within this limitation he is free from all liability so far as the rest of his property is concerned, no matter how great the loss. This protects him from the wrongful acts of others at whose mercy his whole property might otherwise be placed . If there are several owners, the liability is to be apportioned between them

(a) The Bristol, 29 F. Rep. 867.

according to the interest each one has in the ship to blame for the collision. Whether the owners are one or more the greatest sum that can be collected from them, is the value of the ship and its pending freight. By Section 4289, of the Revised Statutes, the privilages granted by Section 4283, were not to apply to canal-boats, barges or lighters nor any other vessel of any description used on rivers or in inland navigation. But, Section 4289, was substituted by Section 4, P.494, of the supplement Vol.I., which removes the limitation and allows Section 4283 to apply to all the vessels formerly excepted. There seems no satisfactory reason why the exemption from liability should not be applied to these last mentioned vessels as well as to others.

From the fact that liability in such cases attaches only to the ship and the accruing freight, it follows legally that when a ship is a total loss the debt against her owners through her has ceased to exist. But the fact that one of the two vessels is a total loss, while freeing it from further liability does not in turn free the other vessel from its liability toward the one so lost. In the North Star, 106 U.S. 17, the

section came up for interpretation on this point. Two vessels collided and both were held in fault. One vessel was sunk, becoming thereby a total loss, while the other was only injured. The damaged ship desired to avoid paying for any part of the loss sustained by the other over and above its own injuries and in support of that contention claimed that as the vessel sunk was freed from all further liability, that they, who were only in equal fault, were also exempt. The court considered this too broad an interpretation of the section, and held that while the vessel sunk was, by force of the statute, freed from all further liability, that, that fact did not exempt the surviving ship from standing its share of the loss. In this case the loss would be properly shared by the surviving vessel paying the owner of the one sunk, half the difference between the value of the vessel lost and the damages suffered by the other ship. If in such a case one ship came under the section and the other did not, the owner so protected could claim its aid while enforcing full liability against the owner of the other vessel. The same method of equalizing damages applies in every similar case coming under the statute, so long as half the

combined damages of both does not exceed the value of the ship upon which they are imposed. If the ship has been a total loss, in such a case it is looked upon as surrendered to the deep, and the owner is freed from liability. If the vessel in question still has value, the complete yielding up by the owner of his interests in the same absolves him from all further indebtedness. In this last case, it will be sufficient according to Section 4285, if all interests are put in the hands of a trustee.

Effect on Wrong Doer.

This limitation of liability does not take away any remedy against the wrong doer nor does it lessen any duty or responsibility placed upon the vessel by law. It is not the laws purpose here any more than elsewhere to protect those in fault, but simply to lighten the burden otherwise placed upon innocent ship owners. This limitation applies against both cargo and ship damaged by a collision under such circumstances. The liability as to cargo is further restricted by a subsequent act so most of the discussion relating to such loss will be reserved for that connection.

When Applied.

The limitation of liability is not to be applied until the balance of damages has been struck. When both vessels are

in fault and both file libels, the court may if it sees fit consolidate the suits into one proceeding, and grant a single decree. The innocent shippers or consigners of a cargo may proceed in rem or in personam , against either vessel or its owner. Where a collision between two vessels has occasioned damage to the cargo of a third ship not in fault, proceedings may be had in rem against either one for the full loss. (a) From this it appears that the limitation applies only to the carrying ship. A party may plead that he is not liable at all, but that if he is found liable request that he be allowed the benefits of Sections 4283 and 4285, of the Revised Statute.

Value When Taken.

But if a vessel which has been in a collision has a right to the privilages of Section 4283, the following question arises, when is the value to be taken. Is it at the time of collision, at the time of reaching the end of its voyage, or when sunk, if it is so lost? It has been shown that the owners liability does not extend beyond the value of the ship after collision and the freight then pending, but the time when that value is to be ascertained will often make a great difference. In the City of Norwich, 118 U.S. 468, this question was fully discussed.

(a) The Atlas, 93 U.S. 302.

In this case a vessel was in fault for a collision and was sunk. Later it was raised and repaired. The libellant cargo owners wanted to have the ships value taken as repaired. The court held however that the value of the ship was usually to be taken at the end of the voyage,otherwise at the time of sinking. Here the voyage was never completed, so the ships value was taken at the time it sunk. Had the vessel become a total loss by the collision as would be the case, if it sank beyond recovery, nothing could be gained in a suit by the cargo owners against the owners of the ship for at the time of taking its value, the vessel was worthless. The respondents in this case recovered insurance, but it was not looked upon by the court as such an interest in the ship as to be attachable by the owners of the cargo. Only the value of the ship when sunk, and the freight actually earned could be considered. This limited liability is applicable to actions either in rem or in personam. The owner of the injured ship must stand in the same position as the owner of the damaged cargo, so if the funds realized are not sufficient to pay both, they must share pro rata. (a)

(a) Norwich Co., v. Wright, 13 Wall. 219.

In another case tried at the same term of the Supreme Court, as the City of Norwich, the doctrine that the value of the offending ship is not to be taken until it completes its voyage or is sunk, if the voyage is never completed, was carried to an extreme length. In this case, "The Great Western, 118 U.S. 520, the ship in fult was not materially injured by the collision and started on her voyage the same day, through her own fault, in no way caused by injury received in the collision, she went ashore and was wrecked. From the materials of the wreck a small sum was realized. An Insurance Company paid the insurance on the vessel to its owners. The majority of the court held to the strict rule and would allow the cargo owners and others to recover only the sum realized from the sale of wreckage, the insurance remaining with the ship owners. A minority of the court dissented vigorously on the ground that the cause of the ships loss was its own subsequent negligence and not the collision,and that in such a case the ships value should not be allowed as at the time of sinking but at the time it would have completed its voyage but for such negligence on its own part. The dissent seems fully as reasonable an

interpretation as the prevailing opinion.

This liability of the vessel must be understood as arising regardless of ownership. The liability attaches when the collision and injury occur. This is the case even when a compulsory pilot has been taken aboard and the collision is due to his fault. (a) In such a case of compulsory pilotage the ship owner is not liable in personam but in rem.

Sunken Vessel.

It is necessary to consider the liability arising against an owner of a sunken vessel, when another ship collides with it and is damaged and also the liability of the vessel colliding, if any exists. In the first case, the general rule seems to be that a ship owner may abandon his vessel when sunk and incur no liability for a subsequent collision. Ceasing to claim any property in the ship, the loss has been caused by nothing of his. Certainly no liability can then attach without some special order being violated issued by the harbor master or other competent authorities. So where a sunken canalboat was left by the owner until ordered to be removed by the pilot commissioners, the owner was not liable for a collision with the hulk before such orders were received. The law creats no

(a) The China, 7 Wall. 53.

general duty to remove a wreck. The harbor authorities may remove one and charge the owner for such removal when he has neglected to do so after being ordered to attend to it himself. (a) If the owner does not elect to treat the vessel as a wreck, it would seem only reasonable, if sunk in a place where collision would be apt to occur that some indication of its presence be made, not only for the benefit of the ship sunk, but in behalf of others as well. This has been suggested in some cases. There being no regulation by Congress, such a requirement would have to be local.

The ship colliding with a wreck will not be held liable, unless, there are sufficient and proper signals to give warning of its presence. In a case, where a boat was sunk in a narrow way through which ships were continually passing and repassing, the court said it was a reasonable obligation that some signal of warning should be given of its presence, that it might not be injured by collision, but that no prescribed signals had been fixed. (b) In this case the lights had been

(a) Ball v. Barwind, 29 F. Rep. 541.

(b) H.S. Nichols, 53 F. 665.

displayed to locate the sunken boat, and then it was further guarded by a vessel on watch. Here the boat was not abandoned. As to what effect that would have had upon the question of giving warning, the court does not say. The signals were placed there to protect the sunken boat. Following the general rule, the owner might have abandoned the vessel without fear of liability for subsequent collisions. The respondent who had injured the sunken boat under such conditions was held liable for damages arising from the collision. On his part, however, it was a plain case of negligence. The light was seen and carelessly run into. In a case where only a mast stuck above water to indicate the presence of a sunken ship, and a tug with an injured vessel in tow ran into it because of the sheering of the injured vessel, sufficient warning under the circumstances was not considered to have been given , in order to render the tug liable,in the fog which prevailed, the tug failed to see the ships mast, until too late to avoid a collision. So while there is no maritime duty to remove sunken vessels, in order to prevent owners from being liable, the duty of a ship under way not to damage a sunken vessel is practically, the same as

in the case of a ship at anchor, if its whereabouts is properly indicated. The visible part of the ship or a light or buoy to mark the spot will serve as the necessary signals to give warning of its presence.

Collision with Anchor.

As to damages from colliding with an anchor which is unbuoyed, it is held that, if the vessel whose anchor has caused the injury was acting as ordinary vessels do on the anchorage ground, no liability ensues. (a) The case implied that liability would arise where such ordinary customs were not followed.

Claims Against the United States.

The rule as to claims against a United States vessel for damages in a collision is opposite to that of England. A claim is allowed to be brought into the courts and if just to be satisfied by suitable damages being given. Here however, none of the usual proceedings against the vessel are allowed. The Government is looked upon as the party liable. No costs can be rendered against such a respondent. On this question The Siren, 7 Wall. 152, is in point.

Fractional Liability.

The liability being ascertained, it is borne entirely by one, if one alone is in fault, and usually by two or more equally,

(a) Baxter v. International Contracting Co., 65 F. Rep.250.

if more than one vessel is to blame for the collision. But the question arises must the two vessels in fault always share equally as far as possible the damages caused by their combined negligence, when one is not in fault nearly so much as the other. There has been some strong dicta and also a few cases to the effect that such a division does not necessarily follow. If a division is allowed according to the negligence of each, it will apply in principle whether any limited liability is present or not. In settling a question of liability, however, both would have to be taken into consideration in order that it might be properly adjusted. In an early case, Ralston, v. State Rights, Crabbe 22, it was said that the rule would not apply when the fault of the parties was "egregiously unequal". The Continent, 103 U.S. 710, gives similar dicta.

In the Max Morris, 137 U.S. 1., an action was brought for personal damages, after declaring that both were in fault, and that damages were to be divided the court says:

"Whether in a case like this the decree should be for exactly one half of the damages sustained or might in the discretion of the court be for a greater or less proportion of such

damages is a question not presented for our determination, upon this record and we express no opinion upon it."

This dictum certainly seems very strongly in favor of not always adhering to the strict rule of one half damages to each of the two in fault. In the Victory v. The Plymothean, 68 F. Rep. 395, a case arose in point. Two steamers collided in broad daylight. One was coming up the side of the river channel lying on her port hand, which was contrary to law. The other was proceeding down the river on the same side according to law. The vessels were in full sight of each other and there was plenty of room in the channel. The vessel going down signaled, but the up coming steam-boat did not reply. Both vessels kept their course and collided. Both were held in fault. One for obstinately disregarding the rules, the other for making no effort to avoid the collision which was meritable from their course if continued. It was held that when as in this case the fault of one vessel is extremely disproportionate to that of the other the liability of each may be measured by its contributory share of negligence. The relative liability was thought to be properly estimated in this case by making the two

steam-boats share equally the harm done to themselves, while the ship most to blame, should also make good the loss to the cargo to the full value of the ship, then over to the other for the remainder , if any. This case carries out the spirit of the dictum in "The Max Morris", and establishes the rule in the lower Federal courts, there suggested, so far as damages to freight are concerned. This tends to more truly make the wrong doer liable for the reasonable consequences of his negligence than to divide the loss equally. The courts hesitate to so divide, however, because of the long line of precedents where damages have been equally divided and also from the fact that it is not easy to accurately apply such fractional liability for negligence. However, it does not seem that difficulty of application should prevent the courts from giving at least appropriate justice. From the dictum in the Max Morris, and the decision in The Victory, the right to award damages in this manner seems fairly well established. There is no decision directly in point in the Supreme Court, since the Max Morris.

Owners.

As to who may be looked upon as owners and thereby entitled

to this limited liability in a proper case, it is obvious that those would be included who are commonly so classed, namely, the holders of full or part title in the ship. There are also statutory owners. The charter parties of any vessel,who victual and navigate her for a special trip,time,or purpose are such owners. Charter parties are specially mentioned in section 4286, of the Revised Statutes as having the privilages of limited liability. Owners are also classed as general or special according to the interest they may have in a ship. So far as a party is owner he comes in for his rights under a limited liability whether his ownership be that of a common owner or a charter party.

Priority.

As to what constitutes priority or knowledge, the general meaning of the words indicate with sufficient clearness. Where an owner is navigating the ship himself as master, he will be deemed to have had a knowledge of the fault complained of.

History of.

As a historical fact, this idea of limited liability originated in the Maritime law of Europe . The civil and common law held owners responsible to the whole extent of damages caused by the wrongful acts or negligence of the master or crew.

The Maritime Law only held the owner thus liable when he was personally to blame. If personally free from fault as when he had placed the ship in the hands of a competent master and had equipped and manned it properly, the owner's liability was limited, both the amount of his interest in the ship and freight. By surrendering the ship, the owner became discharged from liability as at present. It is from this ancient custom of the Maritime law that Section 4283, arose . The purpose of this exemption from liability was to encourage commerce. It was thought people would be deterred from engaging in shipping if they were to be made indefinitely liable by the acts of those sailing their vessels. An unscrupulous or careless master or captain could otherwise easily ruin the ship's owner. So the loss of ship and freight was looked upon as sufficient liability to place upon an innocent owner.

The statutory limitation of liability so far cosidered limits the liability for damages arising from a collision and other ways specified to the value of the ship when there is no priority or knowledge on the part of the owner. This limitation, however, is not to be looked upon as taking away any

right of action or remedy against a master, other officer, or crew when they are wrong doers, nor as lessening any duty or responsibility laid upon the owner by law. The statutory provision for limited liability, just considered applies to liability for both ship and cargo injured. The next act to be noticed affects only the cargo on the carrying ship and such a ships consequent liability. The act so limiting is the Harter Act.

HARTER ACT.

The Harter Act, 27 Statutes at Large, P. 445, limits still further the liability of an owner of a vessel. Section 3, says:

"That if the owner of any vessel transporting merchandise or property to or from any port in the United States of America shall exercise due diligence to make said vessel in all respects seaworthy and properly manned, equipped and supplied, neither the vessel nor her owners,agent or charterers shall be responsible for damages or loss resulting from faults or errors in navigation or management of said vessel,nor shall the vessel, her owner or owners, charterers or agent,or master be held liable for losses arising from dangers of the sea or other navigable waters,acts of God,or public enemies,or the inherent defect, quality or vice of the thing carried or from insufficiency of package or seizure under legal process,or for loss resulting from any act of omission of the shipper or owner of the goods his agent or representative or from saving or attempting to save life or property at sea or for any deviation in rendering such service.

This act as a whole is to be looked upon as a compromise between the common carrier on water and the owner of goods carried. The first part of Section 3, includes the most of what is directly in point in a case of collision. In the first place, it must be understood that this section applies only to cargo on board and not to passengers and baggage not shipped as cargo. So if a passenger is injured or baggage destroyed in a collision, caused as indicated in the above section, the liability remains just the same, as before the act was passed. One or both ships, make good the loss sustained according as one or both are in fault.(a) Further, the section is to be understood as applying only to the carrying vessel and its cargo, and not to the other ship and cargo in collision. The principle that when both are in fault, damages must be divided and the innocent cargo owner recover his whole loss from either vessel is to be followed as closely as possible consistent with the act.

By this section, it is not to be understood that there is any intent to release one vessel at the expense of the other.

(a) The Rosendale, 88 F. Rep. 324.

The liability of the other ship remains unchanged, if not directly benefited by the section.

No Offset.

This section gives no right of offset against the carrying vessel. That would,if allowed, create an indirect liability for part at least of the loss accruing to the cargo under the above circumstances. Such an offset would be given, if when two ships have been in collision and both were in fault, the vessel which was not carrying the cargo should be allowed to set-off against the carrying vessel, damages up to one half of the half damages it had been obliged to pay for the cargo injured. But the cases distinctly deny that any such interpretation was intended by those framing the act.

Owner's Liability.

The liability of the vessel and owners, is not lessened, except in respect to the cargo on board the carrying ship. Otherwise it remains the same as by Section 4283., and 4285 of the Revised statutes and Section 18, P. 443, of the Ist.Vol. of the Supplement. The cargo owners must stand charged under this act with so much of the damages to the cargo as the carrying ship is relieved from, in so far as that is necessary to prevent any increasing of the liability of the other vessel.

A good example of the working of this statute, is seen in The Niagara, 77 F. Rep. 329., where the act is carefully discussed. Two vessels collided in a fog. Both were found in fault. The Hales was a complete loss, both ship and cargo, while the Niagara was but slightly injured, in ship and none in cargo. The Hales was worth $16,000, and her cargo $26,000. The Hales was looked upon as coming within the influence of the Harter Act, section 3. Damages being divided as to the ship's loss, the Hales received $8000. But for the act, the cargo owner for whom the Hales was the carrying ship could get the $8000 to make good his damages. As it was, by force of the act, the $8000 must be his loss. Having apart from the act, a right to sue either offending vessel for his full damages suffered, he could recover from the Niagara $ 8,000, but no more, as a greater amount would increase the burden upon that vessel making it heavier, because of this section, which was not deemed to be its intent. So the burden of loss, to the extent of the $8000., fell on the cargo owner. In this way the liabilities of the Niagara was not increased. But for the statute, the money that went to pay the Hales' half damages for

total loss would have been paid to the cargo owner. The carrier's burden is therefore, made lighter by means of this Act. The Viola, 60 F. Rep. 296, is one of the first cases upon Section 3.

In the Irrawaddy, 171 U.S. 187, the force of the Harter act was considered where a general average had arisen. It was decided that the Act did not let the offending ship into a general average with the cargo the same as for sacrifices subsequent to stranding or colliding. The main purpose of the act is to relieve the ship owner from liability for latent defects not discoverable by the utmost care and diligence, and in the event that he has exercised due diligence to make his vessel seaworthy to exempt him from responsibility for loss due to errors in navigation, but not to allow the owner of the guilty ships to share in a general average.

Having shown the general effect of the Act, Section 3, the interpretation of some special phases may make its meaning more clear. The words "to or from any port in the United States", apply not only to vessels going to or from or between such ports as New York and Boston,but as well to ships plying between two

places on the same bay. It is given "a broad construction and applies to all vessels carrying merchandise to or from any port under Federal Government jurisdiction." Such a case arose in San Francisco Bay. (a) Whether due dilligence has been exercised in any case to make the vessel"seaworthy etc.", is a question of fact to be decided in each instance as it arises. A vessel is properly manned if a sufficient and competent crew is aboard, though at the time of collision, a lookout may not be in his place or a proper officer on deck. Equipment and supplies are sufficiently provided if the ship is properly equipped and supplied on starting out, and possessed of a reasonable amount of material with which to repair. As an example a mechanical fog-horn is out of order, and a collision ensues. If the owners furnished a proper horn and material to repair it with, if needed, they have properly equipped the ship in that respect, and may come under the Statute. Whether or not the loss caused was due to a fault or error in navigation or management of a vessel is also a question that must be decided in each instance aided by the rules and fixed customs of

(a) In re Piper,etc., Co., 86 F. Rep 670.

the seas, harbors, rivers or lakes, where the case arises.

Neither the limitations of liability under the sections of the Revised Statutes nor the Harter Act can be looked upon as allowing a ship to exempt itself by contract from liability for its own negligent acts causing a collision and damage to cargo. Such contracts are looked upon as contrary to public policy, and the court will not enforce them, but hold the contracting vessel responsible for its negligence.(a) This is simply a setting forth of the general rule in respect to common carriers, on land or water.

(a) The Guildhall,58 F. Rep. 796.

PRIORITY OF LIENS.

Having discovered the liability of a ship for damages arising from a collision, it is next necessary to consider the nature of that liability.

Nature of Lien.

Damages having been proved for which the respondent vessel is liable, a lien attaches to the ship in favor of the injured and successful libellant. This lien attaches to and follows the negligent ship wherever she goes. This maritime lien is enforced by an action in rem. Throughout an action for the enforcement of a lien, the ship is treated as the offending party and arrested by the order of the Court. The lien attaches not only to the ship, but also to her tackel, furniture and freight earned at the time of collision. The lien following a vessel as it does whenever the same may go, is just contrary to the force of a lien at Common law where it is lost as soon as out of possession which would usually consist in being out of port.

Form of Action.

The nature of the proceeding in rem is as elsewhere, a proceeding against the res, the thing, the ship, which accounts for the arrest of the vessel itself. In Common Law Courts it

has been the custom to treat vessels as personal property, subject to attachment and execution, but, limiting suit to the persons whose legal rights have been affected and those who have invaded those rights. In Chancery, all interested in the suit are included. But in Admiralty, all who have an interest in the subject of the action, the res, may independently appear and propound his suit. To give jurisdiction in rem, there must have been an actual and valid seizure of the ship by the marshall of the court.

Priority Determined.

Having such a lien upon a ship, arising from a collision, which can be thus enforced, it becomes necessary to know what relation it bears to other liens of the same or a different nature: First, as to liens of the same nature. Two liens attach for damages to the ship and cargo, caused by a collision, in which the same vessel was an offending party. If they arose at the same time, and are of the same nature, those holding them, must be looked upon as possessed of equal rights against the ship in fault. If one is prior in time to the other, the junior lien, though otherwise the same, must give way to that which is senior provided that no such time has passed as to

deprive the possessor of the prior lien of his right of action. (a). But where the contention is one of priority as between liens of a different kind, many questions arise as to which shall take precedence. Priority in any given case, is to be determined always by ascertaining the liens nature, unless they are found to be of the same nature, then the one first in time has preference as previously indicated. It is intended here only to consider the priority of such liens as would usually arise when a collision has occurred.

Damage Lien.

The lien usually most prominent in all collision cases, is that for damages. To determine its priority is therefore of first importance. In doing so the other liens will of necessity be discussed, thereby giving the priority of them all. Over what other liens a damage lien should take precedence there has been some conflict of decisions. That damages should have preference over a lien for repairs, there is no great doubt. (b). There was for a time some dissent to this, but it (c) has been

(a) The Frank G. Flower, 17 F. Rep. 653.

(b) The Pride of the Ocean, 3 F. Rep. 161.

(c) The Amos D. Carver, 35 F. Rep. 665.

over-ruled by the higher courts, and disregarded by subsequent decisions by courts of the same authority. It also takes precedence over mortgage liens, bottomry and respondentia bonds. In the J.G. Stevens, 40 F. Rep. 331, it was held that a maritime lien for damages arising from a collision takes precedence of liens for repairs and supplies, although the latter liens arose prior to the disaster. The court here refused to follow the Amos D. Carver. The reason for giving such a lien precedence is that the person suffering the damages has no option to employ and no caution which it is possible to exercise which the creditor on a mortgage, bottomry or respondentia bond has. Such a creditor may consider all the possible risks and advance his money, material or supplies accordingly. He has an alternative while the libellant for collision damages, has none at all, the damages being forced upon him by the negligence of others. Such a preference is generally had over all ex contractu relations. It is to be further noticed that the fact that the libellant is also somewhat in fault, will not have any affect on the priority of such damages as he has a right to collect despite such neglect. (a). These decisions leave no doubt as

(a) The John G. Stevens, 170 U.S. 113.

to the priority of damage liens over those for prior repairs, supplies, money loaned with a mortage as security and in general all liens ex contractu except wages.

Whether or not a damage lien should take precedence over one for seaman's wages was for a time vigorously disputed. The previous decision of the Supreme Court did not satisfy some judges, as being in accordance with maritime law. In Norwich Co., v. Wright, 13 Wall. 219, it had been laid down that preference should be given to the damage lien. In the Amos D. Carver, 35 F. Rep. 665, Justice Brown did not follow the previous Supreme Court decision, but instead gave preference to the lien for mariner's wages. In The Daisy Day, 40 F. Rep. 538, it was held that a maritime lien for damages, arising from a collision caused by negligent towage must yield to a lien for seaman's wages, if the seamen were not in fault. The Court distinctly refused to follow Norwich Co., v. Wright, which placed damage liens first, because the decision was considered contrary to the Admiralty law of the United States. This agreed with the decision in The Amos D. Carver. There was here an implied holding that if the seamen were in fault that this

preference would not exist. In two later Federal cases, the courts took a different position. In these cases, The F.H. Stanwood, 49 F. Rep. 577, and The Nettie Woodward, 50 F. Rep. 224, it was held that a maritime lien for damages arising from a collision caused by negligent navigation, had precedence over a lien of the crew of the offending vessel for wages earned prior to the collision, but subordinate to their liens for wages earned on board subsequent to it. The lien for wages, does not apply merely to mariners who serve the ship with peculiar nautical skill, but extends to all whose services are in furtherence of the main object of the enterprise in which the ship is engaged, such as engineers, deck-hands, firemen, captain, mechanics, carpenters, porters and others. In the conflict of decisions on this question of priority of damage liens over those for mariner's wages, the later cases as well as the majority of them seem to give precedence to the lien for damages, to do so is certainly carrying out more strictly the idea that a seaman's fortunes follow those of his ship. If his ship is in the wrong, he must wait until those wrongs have been properly compensated. As a rule, liens for seaman's wages also take

precedence over claims ex-contractu. The reasons for this consist in the general reckless nature of seamen, the ease with which they are imposed upon and a desire to save their wages for them. The reasons why their wages earned prior to the accident should give place to the lien for damages suffered by ship and cargo in a collision, rest upon two grounds. First, the seamen are usually in some degree to blame for the acts of the offending vessel, so from considerations of public policy, it is sought in this way to discourage negligence on their part while navigating. Second, it would be inequitable to permit a fund impounded to compensate for a wrong, to be deserted to the payment of a participant in the wrong or to one having a remedy against the owner of the offending vessel denied to the owner of the ship damaged. In The F.H. Stanwood, the owner had no remedy other than that of a lien against the offending vessel because of the effect of the limited liability given by Revised Statutes, 4283. There the above reasoning strictly applied. Admiralty Law follows the doctrines of equity so far as it is possible. It is a settled principle of equity that where one party has but one remedy and the other has several that the

latter will be remitted to his additional remedy and not be allowed to select the only remedy the first person has, when by so doing a just claim would in whole or in part be left unsatisfied. Following this principle the mariner would be obliged to yield to the lien for damages, so far as his lien against the ship would in any way conflict with an injured libellant's rights. Justice Brown who had taken the opposite view, later recognized the weight and authority of the decisions as stated above. So the doctrine laid down in Norwich Co., v. Wright, 13 Wall. at 122, seems to be clearly sustained by the latest decisions in the Federal Courts. What the Supreme Court would do with the question, if it arose there again, does not appear, but it seems reasonable to suppose that it would follow its previous holding which gave priority to the injured libellant. It was thought in the F.H. Stanwood that the decision in the Daisy Day, as to mariner's wages being given precedence where the crew was not to blame, would have been different, had the case of The J.G. Stevens then been decided and brought to the notice of the court. The rule thus deduced is that the lien for mariner's wages gives way to the lien for damages so far

as wages earned on board the offending ship, prior to the collision are concerned, and that the wages take precedence, if earned after the loss. The question as to the crews not being at all in fault raises but little doubt, since they have other remedies.

Salvage Lien.

As to all other liens that might possibly attach to a ship, there seems no room for any other conclusion than that a lien for damages caused by negligent navigation takes precedence in every case, except in that of Salvage. Two ships collide and damage ensues. Both of the vessels are injured. The vessel not to blame, and also the goods it carries have a lien upon the offending vessel. But a salvar also has a lien upon the same vessel. It may have existed at the time of collision for some previous act of salvage, or it may accrue after the collision and be due to damages suffered thereby. Practically the only difference, the fact that the salvage lien was prior in time could possibly make would be if the two liens were ever looked upon as of equal importance. If such was the case here the older lien must as elsewhere, have priority unless by laches

such a benefit had been lost. But aside from such a supposed condition of things arising from the possibility of the two liens being considered of equal importance, an answer to one case would be appropriate to the other. The Salvor's lien seems to be one of the most highly favored. But for his interference, there often would have been nothing for the liens of other parites to attach. This would always be the case where the liability of the vessel in fault is satisfied by its total loss, and but for the salvor's assistance, such a loss would have occurred. The salvor often displays great bravery, risking his own life in saving the property or lives and property of others. That such bravery or even any act, saving the property of others should be made sure of its reward, certainly seems most just and reasonable. By the holding in the Nettie Woodward, salvage liens and liens for damages were put on the same basis so far as their priority over mariner's wages was concerned. Both must give place to wages earned subsequent to the collision. While no case directly in point appears, the general tone of the cases seem to give salvage services a prior lien over every other, except that of mariner's wages

subsequently earned. From the conditions under which the services are rendered and the necessary advantage accruing thereby to other lien holders as well as from the general tone of the cases, it would seem that a salvage lien should be given such priority unless in some way restricted by contract or laches.

General Average.

General Average may be recovered as damages from the wrong doing vessel. As such a condition of things may arise and be of considerable importance in a collision case, it should be here considered as a lien and its priority. A case of General Average would have occurred where a vessel after being in collision without fault was obliged to cut away broken spars or jettison part of the cargo in order to keep the ship afloat. This being done for the common safety of ship and cargo, would demand that a general average be had, average charges incurred by a cargo owner may be recovered as damages caused by collision and a lien for such charges attaches. Like all other liens, it must give preference to mariner's wages earned subsequent to the collision. It certainly takes precedence over a bottomry bond, and money lent to pay it may have the same priority as

the lien which it paid.(a) Such a lien by the ship in collision cases usually becomes absorbed as part of the damages suffered and takes place along with a lien for damages. If by the cargo owner, the lien would probably take a similar position, as it represents damages sustained by him. In a case where a lien for direct damages and one for general average expenses were brought against the same vessel, there seems no reason why one should not have the same priority rights as the other, if both arose from a collision. If the general average was not, the result of a collision, but arose in some other way, as by reason of a storm, it would seem that what ever preference was given, should be to the damage lien arising, because of the negligence of the ship upon which it attaches, rather than to the average lien which arose as much for the protection of the holders property as for the one who threw it overboard in aid of common safety.

The courts in discussing the advisability of allowing average charges as damages have said that there seems no sound reason why both general and particular average charges should

(a) The Dora, 34 F. Rep. 343.

not be recovered as a part of the damages. They are a direct result of the collision, for without it they would not have occurred. The rule of damages is said to be "restitutio in integram. Such a rule clearly demands compensation for such charges arising as they do directly from the collision. (a) The same might be said in substance concerning a lien for repairs or for salvage services, for being paid such liens become items in the amount of damages suffered. Some special attention has been given to this matter in connection with general average, because of the energy with which at times it has been opposed as entering and forming a part of the damages. This satisfactorily answers the case where both arise from the collision, but as to the case where the average lien stands boldly out by itself, the courts are not so clear. It would seem that such a lien must yield to one for damages for the reason previously given.

Repairs.

A vessel having suffered damage in a collision and been repaired, a lien attaches to her for her value of repairs

(a) The Energid, 66 F. Rep. 604.

rendered. This lien is not lost by merely delivering the vessel to the owner before the payment. It is in the nature of a proprietary right, and follows a vessel until such a time has lapsed as will be looked upon as marking its extinguishment. Generally speaking, such a lien must yield to a lien for salvage, damages by collision, mariners wages, general average or bottomry and respondentia bonds. This is shown by cases previously cited in another connection. (a) The Felice while not a case where a collision had occurred is a good illustration of the law on the question. After admiting the general rule that a bottomry bond lien would have preference, the case held that such priority would not be given where the holder of the bond has been guilty of delay in enforcing it or of some action tending to induce repairs to be given by which the value of the ship had been greatly increased. By this it may be seen that these rules concerning priority of liens may be rendered insufficient because of outside circumstances. On the other hand, liens for repairs take precedence over a lien for unpaid

(a) The Pride of the Ocean, 3 F. Rep. 161.

The J.G. Stevens, 40 F. Rep. 331.

The Felice, 40 F. Rep. 653.

premiums of insurance, and are on the same footing with a lien for supplies furnished in a home port , when the repairs were given in a foreign port. If the master is personally liable, the lien for repairs takes precedence over the lien for the master's wages,(a) also over towage, where it is for towing an injured vessel, but if the services had been rendered to a vessel injured by a collision so as to need such services more than would usually be the case, they would probably be classed as salvage services and take priority. In short, the cases seem to show that a lien for repairs has priority over all other liens except those mentioned above as taking precedence, or at most only yielding an equal right to others unless laches have occurred.

These four classes of Admiralty liens arising from damages, to ship and cargo, salvage services, general average and a lien for repairs are the only liens of importance that are liable to arise from a collision. Others may attach, but as a rule they could all be brought under one of these general heads, and their priority determined thereby. The relation as

(a) The Daisy Day, 40 F. Rep. 588.

to priority in these four cases seems to be Salvage services first, Damages second, General Average third, and repairs to an injured ship, fourth.

As between Maritime and Domestic liens, the former must always have priority.

Divesting of Liens.

These liens may lose their priority or become entirely divided in several ways. Proper payment of a lien of course always discharges it. A lien may also be extinguished or lose its priority by laches. The priority lost would be as against a subsequent purchaser or encumbrancer in good faith. The laches may however, be excused if explained in a satisfactory manner. A lien may also be divested by a judicial sale of a vessel, or an action in rem, or by a private sale justified by necessity. Also by a taking of collateral security under a special agreement to divest, and finally by a destruction of the vessel. In this last case, the destruction may be complete as when totally burned or lost at sea, or it may only be a destruction of the ship as such, the component parts still existing, but built into another structure. In either case the lien is lost.

A lien is not divested when a delay is excused,nor when a private sale is not justified by necessity, nor by taking commercial paper for it which turns out worthless. A vessels departure from port does not divest any lien, except wharfage, so far as it has a standing in Admiralty. Nor does a lien divest by an assignment of the claim. The right to enforce the lien is simply changed from one to another. As there is nothing peculiar about a lien's divesting connected with it because arising from a collision, it does not seem necessary to discuss the matter here, more than to show generally, as has been done, the conditions under which liens will and will not divest in Admiralty. All Admiralty liens have not been discussed, but only those which would be most likely to arise in collision cases.

State Liens.

It remains to say a few words concerning liens given by State Statutes and their relation to Admiralty liens arising from collisions. Concerning these leins it is necessary to observe that none can be thus given which will in any way

interfere with liens in Admiralty. If the lien so conflicts, the domestic or State lien must yield priority to all liens maritime. If not in such conflict, a state lien may be enforced in Admiralty, but it can have no place except at the foot when priority is considered. These local or State lien laws are not regarded as amendments to the general maritime law. However, in the absence of an act by Congress establishing a unifrom rule in such cases, and also in the absence of any conflict between them and the laws of Admiralty, they will be upheld as against vessels engaged in foreign and interstate commerce, owned in other states as well as against ships owned within the State.(a) It was the Constitutional intent to have a harmonious system of rules for all Admiralty cases, collisions and otherwise, so in order to be consistent with that intent, the above application of State laws must be adhered to.

A lien by State Statute is lost by the departure of the vessel from port, the same as at Common Law. At Common law a lien for damages by collision has long existed.

(a) The Del Notre, 90 F. Rep. 506.

TUG AND TOW.

Many collision cases arise where a tug and tow are either parties libellant or respondent. The collision may occur between the tug and tow themselves, or between one of them and some third vessel or object. One, both or neither may be liable as in any case of collision. The tow may be under full or partial control of the tug. Where it is under the full control of the tug and a collision occurs, the presumption is in favor of the tow against the tig. The tug having control of the tow's movements it is only reasonable to presume that a collision occurred through its fault. However, this presumption is rebutable, as by showing that the fault was some act of the tow or some outside force over which the tug could not reasonably be expected to have control. A tug in control of the tow is in duty bound to anticipate the time and place and perils of the ordinary action of the tide or well known river currents. The tug also will be liable for so passing another vessel that the tow becomes disturbed by the suction of the wheel of the ship

passed and collision occurs, or in any other way causes a dangerous situation to arise from which damage to the tow or to the tow and a third vessel accrue. (a) Where the control of the tug and tow is divided equally or practically so, it would seem that between themselves no fault would arise against either.

Full Control.

The tow may be in full control, using the tug merely as its motive power, as an agent for that purpose. In such a case if tug and tow collide, certainly no presumption of fault can arise against the tug, but rather against the tow, which was in control of the movements of both ships. These general principles laid down as applying when the tug and tow collide with each other also apply in any case of collision where a tug and tow is concerned and an attempt is being made to fix the liability upon one or the other. Both being in fault, liability falls upon both.

Are One Vessel.

In Admiralty law, tug and tow are looked upon as one vessel, when a third ship is injured and their fault not being explained, both are liable in damages which will be divided between them.

(a) The Mariel, 32 F. Rep.103.

The showing that one or the other was in full control, seems to shift the burden of proof. Not only are the tug and tow to be looked upon as one ship in law, but it seems that they are to be considered as a steam-ship. The propelling power is steam, so the ship must come within the general definition of a steam vessel. A tug and tow must keep out of the way of a sailing vessel as would a steam ship, but the same strict account of liability is not required. An adherence to the rules for steam vessels is demanded with a reasonable amount of consideration given for the necessary difficulties attendant upon such navigation. Where a tug and tow meet a schooner, the schooner is not freed from all care. She too, must look out for herself, and take such precautions as the circumstances require. The tug is not in all cases held to the strict responsibility of a vessel under steam with movements unimpeded. Where the sailing vessel comes needlessly near or tries to cut across the tow, the tug can not be held to blame, being unable to escape. (a)

Tug Unnecessarily Encumbered.

If the tug itself unnecessarily increases the inconvenience

(a) The Page, 36 F Rep. 329.

under which it is placed by the presence of a tow, it must use a commensurate degree of care according to the risk assumed. An example of this would be where a tow was very long and in consequence it was impossible to as readily avoid a collision. In such a case, the tug often wishes to raise the increased inconvenience as a defense, but it is not allowed to do so, having itself needlessly created the extra impediment to its navigation. (a) When a third vessel has been to blame the tug will only be required to show that it has done its duty and fulfilled its contract of towage toward the tow. This, however, in no way excuses the tug and tow from using every precaution under the circumstances. This is true even though the fault of the offending vessel is flagrant. (b)

In order to hold a tug liable for damages done to or by its tow, it must actually or impliedly have assumed the control of towage. So in a case when a tug had two boats in line, and without its knowledge a third boat attaches itself to the tow so unskilfully as to soon break away and collide with the

(a) The H.W. Whitney, 86 F. Rep. 697.

(b) The Maria Martin, 12 Wall. 31.

libellant's vessel, no liability can rest upon the tug. A contract to tow had not been assumed even implied by such a case, is alone to blame. (a).

Part Control.

When both tug and tow are in partial control of their movements, and a collision with some third ship occurs, both may be held liable. If both tug and tow had clear opportunity to avoid a steamship or other vessel and the tug did nothing to prevent the collision and the tow in no way objected to the course taken or in any other manner took any precautions, both will be looked upon as liable unless the apparent fault can be explained.(b) As a general rule it may be said that if the tow sees or ought to have seen and objected to the course of the tug and did not, it will be looked upon as having acquiesced in the negligent acts of the tug, whenever another vessel has been damaged.thereby. Where the crews of both tug and tow participate in the navigation of the two ships, both may be sued and, if found in fault, held liable the same as though they were ships navigating separately. The damages are divided

(a) Steamboat Co., v. Steamboat Co., 32 F. Rep. 798.

(b) A. Chase, 31 F. Rep. 91.

between them, with the understanding that if one is not able to pay its share of the damages the other must. (a) Tug and tow may however, always be sued as one vessel, and, if either is innocent, that one may be freed from responsibility. (b). When the crews act jointly in navigating the tug and tow, it is sufficient to show that the collision occurred by their negligence while so acting, in order to hold both liable. Agents of each vessel are implicated in the negligence complained of, thereby rendering their ship responsible.

Tow in Control.

The only cases where a tow can be held in fault having been properly accepted by the tug are when some control of the navigation remains in its hands. This is the case when a master or pilot is left on board or the crew as mentioned above, or where the tow herself attended to the fastening of the tow line, or the shifting of the sails, or when she is proceeding partly under her own steam. The tow's liability may be complete or only partial as above indicated. Examples of where it is complete are such as the Carfloat, No. 4, 89 F. Rep. 877. In

(a) The Virginia, 97 U.S. 309.

(b) The Restless, 103 U.S. 699.

this case, a steam ship came up to a wharf under her own steam and in charge of her own pilot, assisted by tugs. Because of her recklessness the steamship collided with a carfloat and sunk it. There was sufficient freedom to permit such independent action as was necessary to create a collision by her own act, and no fault was shown on the part of the tugs. In the Law 26 F. Rep. 164, the master of the libellant tow handled her sails improperly which caused the ship to go wrong. The tug was in no way liable. The tow having seen fit to so set her own sails must stand the results of her fault.

Suit by Tow.

When the tow is attempting to recover for its damages, it may sue the tug alone or the tug and any third ship in fault. The tow in such a case is not bound by the tug's acts as those of an agent. If it happens that the tow of one tug collides with the tow of another, both tugs may be libelled in the same proceeding, but the burden is upon the libellant to establish negligence against both. As against the tug not its own the tow thus suing, can be in no better position than its own tug would be , if bringing the action. This is not on the grounds of agency, but because of the fact that in law, tug and tow are

looked upon as one vessel. So to the extent her tug is in fault, the tow cannot recover against the other vessel.(a).

Breaking of Tug and Tow.

In cases of sudden peril, when anything about the tug and tow breaks in attempting to avoid collision, no presumption is raised against the tug and tow from that fact. A tug is towing by a "bridle" which breakes under a sudden strain caused by the tug's starboarding to avoid an approaching vessel. The tug is not looked upon as acting in a way of itself dangerous in using a "bridle", so proof will be required to show that it was insufficient. The "bridle" snapping only in an emergency, it will be presumed to have been strong enough for general use.(b). The fact that the lashings between tug and tow along side gave way when a tug stopped suddenly to avoid the libellant ship which had placed itself in the same manner. The fault is that of the ship in placing the tug and tow in such a position as to demand unusual action, causing extra strain on the lashings. (c) On the Great Lakes and the Mississippi River,

(a) The L.P. Dayton, 120 U.S. 337.

(b) The Zouave, 90 F. Rep. 440.

(c) The Sammie, 29 F. Rep. 923.

towage is more important than elsewhere, and in consequence, special attention is paid to it in the rules of navigation for that portion of American waters.

With the understanding that tug and tow are in law, one vessel, and that a steam vessel, not held with the full rigor of a steam vessel unimpeded, and that a collision occuring with the tow, the tug rather than the tow will be presumed to be in fault. The rest of the law governing tug and tow in collision, may be found by the following principles laid down for other collision cases.

STATUTE OF LIMITATIONS.

In Admiralty as in Equity, the Statute of limitations is governed by what a reasonable man ought or would have done in a given case rather than by any fixed limit. In most cases the limit will be looked upon as passed much sooner than the time fixed by special statutes of law. The Statutes of limitations of the states, have no application in cases where a maritime lien has arisen the action being one in rem. Actions arising from collisions have in this respect nothing peculiar about them apart from other actions in Admiralty, so it will be sufficient to treat them generally. While the period of limitations is usually much shorter than at common law, it may under special circumstances be equal to it in length or even longer. However, this period of limitation of action should not be extended beyond the common law limit, except for some partial or complete inability to sue, or for some peculiarity of a maritime nature, that demands recognition by an admiralty court and makes it plainly a matter of justice that this discretion be applied. A case where such an extention of time

might be granted would be when the vessel in fault for a collision has escaped and it has not been possible to get it within the courts jurisdiction for a time longer than the period of common law limitations. It seems that the time is not to be extended beyond the common law period of limitations in the discretion of the court, except in the above cases.(a) So where the owners of a vessel lost by collision delayed needlessly over six years his claim must be held as barred. The question as to what length of delay in proceedings to enforce a maritime lien will bar an action, is always one fact to be determined in view of the particular circumstances of each case. In The Tiger 90 F. Rpt. 826. a period of seventeen months, ten of which the boat was out of commission and then sold to a bona fide purchaser, was considered too long, and the libellant was barred from recovering from such a purchaser. Had a bona fide purchaser not entered into the question, the delay would very likely have been looked upon as insufficient to bar a recovery. The party possessed of the lien, having a right to

(a) The Ambay. 36 F. 925.

follow the ship even in innocent hands, it is only just that he should enforce his rights with reasonable promptness, in order that innocent purchasers may not be needlessly deceived by delay on his part. The libellant may and may not have an action in personam against the owner of the ship after the lien has been lost, such a right not being dependent upon the lien.

So as to Statutes of limitation, they are followed by analogy in Admiralty and Equity. If no special equitable reason exists against the application of a statutory limitation, it may be employed. As a rule there is no equitable reason for going beyond the statutory limit.

COSTS.

The matter of Costs in admiralty is wholly under the control of the Court giving them. They are sometimes from equitable considerations denied to the party who recovers his demand and sometimes given to the one who fails to recover anything as is the case when he has been mislead in commencing the suit by fault of the other party. Undoubtedly costs generally follow the decree of the court. However circumstances of equity, of hardship, of oppression or of negligence often induce the court not to follow the general rules..(a) As to costs in a collision suit there are no peculiarities apart from the rest of admiralty law. He who fails in a suit must usually pay the costs. If both are in fault each pays his own costs or they are devided. No council fees can be allowed as costs beyond those given by statute.(b) The other conditions which may arise may be as follows. If the libel is dismissed or the action is looked upon as being brought without cause, costs

(a) Sapphire 18 Wall. 51.

(b) The Baltimore 8 Wall.377.

will be given against the person so bringing. If both are not equally in fault, costs will be borne by the vessel most to blame.If neither is to blame,each should bear his own . Costs may also be given in punishment, as where a vessel not in fault for a collision fails to render proper aid as in standing by to save life and property. In a case where proceedings are had for a vessel or cargo lost or damaged, if there are several libles which might legally be joined in one, there should not be allowed upon them all more costs than upon the one, unless there exists some good reason for so doing which is satisfactorily shown. But allowence may be made on one libel for costs incidental to several claims.(b)

As to security for libellants costs, the Supreme Court Rules do not seem to have expressly required any to be given. However, in many districts by special rules process will not be issued until the libellant has filed a stipulation for costs thereby agreeing to pay all costs and expenses awarded against him by the court. The amount required varies in different districts. In some it is more than double the amount for a

(b) Sec. 978 Rev.-Stat.

suit in rem that it is for one in personam. By the district rules in New York one security must be furnished if the libellant is a resident, otherwise two. The amounts secured generally run from one hundred to two hundred and fifty dollars. If the United States was the libellant, as would almost never be the case in collisions, no security need be furnished, the National government not being liable for costs in any court. There being nothing peculiar about this subject as connected with collisions, only the general principles which courts of Admiralty Jurisdiction follow have been pointed out.

CONSTRUCTION OF THE UNITED STATES RULES OF NAVIGATION.

Rules of Navigation have been defined as a system of rules and regulations to be followed in the navigation of ships or vessels when approaching each other under such circumstances that a collision may possibly ensue. In their very definition, it is to be noticed that they are rules formulated and enforced for the purpose of preventing collisions between ships. They have practically no other purpose than that of preventing loss of life and property in this manner. Rules of navigation have been in use as long as navigation has had any prominence in aiding the world's commerce. The principles of the rules now employed in American waters and among maritime nations, may be found in the laws of Oleron , Wisby and Rhodes.

The Rules of Navigation may be divided into four classes, three of which are formulated by Congress and the fourth by local authority through the permission of Congress. They are,

First: The International Rules.

Second: Those applying to the Great Lakes and connecting waters.

Third: Those applying to certain harbors, rivers and inland waters.

Fourth: Local rules by local harbor and river authorities.

The first class the International Rules, apply to all public and private vessels of the United States upon the High Seas and in all waters connected therewith navigable by sea-going vessels. These rules were to take effect as a set of international regulations, March 1st. 1895, but by a request of Great Britain, they did not formally go into effect until July 1st. 1897. They may be found together with their amendments in 29 Statutes at Large P. 885.

The second class of rules, applies to all public and private vessels of the United States upon the Great Lakes, their connecting and tributary waters, "as far East as Montreal and the Red River of the North", and rivers emptying into the Gulf of Mexico and their tributaries. These rules took effect as they now exist, March 1st., 1895.

The third class applies as a set of special rules duly made by local authority "to all vessels navigating all harbors, rivers and inland waters not included in the second class.

These took effect Oct., 7th., 1897.

The fourth class are in the nature of local police regulations of harbors, harbor lights and rivers, pilot laws, etc., which Congress has seen fit to leave to local authorities to regulate. The first three classes do not differ widely. In fact, in a great part the second and third are copies of portions of the first. Such differences as exist and are important will be pointed out.

International Rules.

The International Rules are not new, but consist principally of the rules long in use, somewhat changed and amended to fit the needs of a world wide international commerce. The construction placed upon these regulations will generally apply equally well to those of the Great Lakes, rivers and harbors. Many phases that might create difficulty are given a definite construction by the Statute itself, for the meaning of some, however, it will be necessary to go to the cases. This Statute, except the amendments may be found in 26 Statutes at Large P. 320., and with amendments in 29 Statutes at Large, P. 885. It considers lights, signals, speed, steering and sailing

rules etc. Only portions aiding in or demanding construction will be quoted.

The statute says, it is to be understood that where inland waters are mentioned that they are not to be taken as including the Great Lakes and their connecting and tributary waters, as far East as Montreal.

In following these sailing rules every steam vessel which is under sail and not under steam is to be considered a sailing vessel, and every vessel under steam is to be considered a steam vessel, whether under steam or not. The term steam vessel is to include any vessel propelled by machinery. This would include a naptha launch. But the fact that a sloop has a small naptha engine as an auxiliary power does not allow a steamer to treat her as a steamship and thereby be relieved from the duty of keeping out of the way. (a)

A vessel is under way when she is not at anchor or made fast to the shore or aground. A vessel slowly driving over a sandbar would not be looked upon as under way, but as aground.

The word "visible" when applied to lights means visible on a dark night in a clear atmosphere. This gives the most

(a) Donnell v. Boston Tow Boat Co., 89 F. Rep. 757.

favorable definition that could well be allowed.

A short blast on a horn or whistle equals a blast of about one second. A prolonged blast, one from four to six seconds. A long blast, one much longer than either, no specified time being given.

"Efficient" as applied to fog horns, etc., would seem to mean simply what it implies, "suitable for the purpose" of giving a proper warning or fulfilling its intended purpose. Whether such a fog horn or other appliance had been furnished would have to be determined in each case from the existing facts.

Article 16, reads, "Every vessel shall in fog, mist falling snow or heavy rain-storm, go at a moderate speed having careful regard to the existing circumstances and conditions."

"A steam vessel hearing apparently forward of her beam the fog signals of a vessel, the position of which is not ascertained, shall so far as the circumstances of the case admit, stop her engines and then navigate with caution until danger of collision is over."

Moderate Speed.

Over the words "Moderate speed" in the first part of this

article there has been considerable discussion. Moderate speed is not defined in the statute, so it has thereby been left open for the courts to construe. Many constructions of a more or less conclusive character have been given. Here it will be profitable only to examine those which are best considered.

In the City of New York, 15 F. Rep. 624., it was said that a moderate speed is at least, whatever it may be under given circumstances, something materially less than that of the full speed which is customary and allowable when there are no obstructions in the way of safe navigation. In Clare, v. Providence etc., 20 F. Rep.535., it was attempted to show that full speed was more safe in a fog than any slower rate of navigation. Much good and expert opinion was shown to that effect, but the Judge held that the law required a moderate speed which "at least means moderate speed; reduced speed, less than usual speed", and that one wilfully violating the law by maintaining full speed in a fog must do so at his peril. In the case of the Nacoochee,137 U. S. 330., the construction of the words "moderate speed" was brought to practically its present interpretation. In that case a steamer was going at

half speed in a heavy fog, when it collided with a schooner and sunk her. It was possible to see ahead about five hundred feet. The steamer going at the rate of half her speed would forge ahead six or eight hundred feet after her engines were reversed at full speed. During the time required for reversing the vessel would proceed about two hundred feet. It was held that under the circumstances the stemaer was bound to observe unusual caution and to maintain only such a rate of speed as would enable her to come to a stand-still by reversing her engines at full speed before she would collide with a vessel which she should see through the fog. In considering the speed to be maintained at such a time, the distance a ship coming out of the fog would traverse if properly navigated should be taken into account. The construction given in the Nacoochee was adopted in The Umbria, 166 U.S. 404. It was there considered that the "general consensus of opinion" in this country was that in a fog a steamer is bound to use only such precautions as will enable her to stop in time to avoid a collision after the approaching vessel comes in sight, provided that the approaching vessel is herself going at the moderate speed required by

law. The fact that the Umbria was a passenger and mail steamer made no difference, even though such ships were in the habit of so navigating in order to more quickly get out of the fog. It has been said that a vessel should slow down if need be, to the lowest rate of speed consistent with a proper control of the ship. Again it has been stated that, if need be, in order to insure safety a vessel should stop and anchor.

It has been suggested in connection with the rule set forth in the Umbra above that in order to insure absolute safety when vessels are otherwise navigating properly, that a moderate speed for any vessel should only be such a speed as would permit a vessel to stop within one half the distance that it is possible under the circumstances to see a vessel ahead in the fog. If the time is night instead of day, the whistle, bell or horn of the other vessel will give warning of its presence and its lights more definitely locate its whereabouts. For purposes of avoiding collisions a ship becomes visible with the appearance of its lights. So the meaning given by the court to the words moderate speed seem to be, that at any and all times, when required it means at least, less than full

speed, and according to the late decisions of the Supreme Court may be still further defined as meaning the speed demanded by such precautions as will enable a vessel to stop in time to avoid a collision, after an approaching vessel comes in sight, the oncoming ship being properly navigated.

As to the second part of Article 16,not much need be said. " A steam vessel hearing apparently forward of her beam the fog signals of a vessel, the position of which is not ascertained shall so far as the circumstances of the case admit, stop her engines and then navigate with caution until danger of collision is over."

What constitutes navigating with caution is more clearly suggested than what constitutes moderate speed. The City of New York, 147 U.S. 72., navigating with caution, when a foghorn was heard a point off her starboard bow was looked upon as consisting merely of stopping her engines and then navigating with care, by means of the impetus gained; but if the vessel seemed close at hand should reverse until the bark or whatever the ship may be came in sight. If any uncertainty, the ship should stop at once. However, this is not to be taken

to mean that when a steamer running in the fog, hears a signal it must stop at the first sound. Such precaution is not necessary, unless the proximity of the signal be such as to indicate immediate danger. Nor does the fact that a steamer was a short time before the collision running at full speed render it liable, if at the time of the collision it was running "dead slow", fully under control. In respect to the circumstances of the collision in such a case due caution has been exercised no other negligence being imputed.(a)

Application of Rules.

If any doubt arises in respect to these rules, as to the need of applying them in a particular case, they should have the benefit of a doubt, and be applied. A clear example of this is found in the explicit orders given in Act 24, that "if a vessel is in doubt as to whether she is overtaking another or it should be assumed that such is the case, and keep out of the way accordingly." As to what constitutes an overtaking vessel, the article is explicit, obviating any chance for such uncertainty arising as in the case of "moderate speed". In defining an overtaking vessel the Statute says that:

(a) Ludwig Halberg, 157 U.S. 60.

Overtaking Vessel.

"Every vessel coming up with another vessel from any direction more than two points abaft the beam, that is in such a position with reference to the other vessel which she is overtaking that at night she would be unable to see either of the other vessels' side-lights, shall be deemed an overtaking vessel, and no subsequent alteration of the bearing between the two vessels shall make the overtaking vessel a crossing vessel within the meaning of these rules, or release her of the duty of keeping clear of the overtaking vessel until she is finally past and clear."

This rule concerning overtaking vessels is expressly stated not to be varied by any other rules of the navigation laws. Having once become an overtaking vessel a ship must consider herself as meaning so until all possibility of collision is over. That possibility the Statute considers removed, only when the overtaking vessel is "past and clear". The reason for requiring the overtaken vessel to exercise special care, is that such a vessel can more easily watch the others movements, while attending to her own.

How Construed.

Article 27,29 and 30, point out certain matters to be

observed in constructing these rules and obeying them. Article 27, says,"that due regard must be had to all dangers of navigation and collision, and to any special circumstances which may render a departure from them necessary in order to avoid immediate danger". Such a case would be when by no fault of her own a ship finds that to follow the rules of navigation would cause her to run aground or collide with still another vessel than the one that forced her into her difficult position. In all such cases a ship will have given the rules proper attention, if she tries to do the best possible under the circumstances. If in fault, for getting in such a position, efforts made too late to avoid a collision, will not excuse her previous disobedience.

By Article 29, "Nothing in these rules shall exhonorate any vessel or the owner, or master or crew thereof from the consequences of any neglect to carry lights or signals or of any neglect to keep a proper lookout or of the neglect of any precaution which may be required by the ordianry practice of seamen , or by the special circumstances of the case."

This is important in that it leaves in force customary

rules of action well known among seamen, that may not have been enacted in statutory form. The cases recognize the force of such customs and permit a proper adherence to them . It also renders more imperative that a vessel in a hard place should do its best under the circumstances, to avoid a collision. But for such requirements a vessel might say it was not in fault for the danger, and could not get away without violating the rules,so made no effort.

By Article 30, these rules are not to interfere with the special rules for harbors, rivers and inland waters.

Concerning the force of the Rules of Navigation, the courts have reached one general decision to the effect that these rules and regulations prescribed by law furnish paramout rules of decision in all cases where they are applied. Outside of these general rules and the decisions of the court, customs and general usage may govern. These rules bind American vessels on the High Seas as strictly as when in American waters, and American vessels may be sued in the United States courts for violating them even when the vessel sueing is governed by an entirely different system of maritime laws. A

vessel of any other nation on the High Seas is bound by its own laws and is liable only for such violation.(a) However among maritime nations there is now but small chance for such a case to arise.

As to what are proper lights, sound and fog signals, signals of distress, the rights of sailing vessels over vessels propelled by steam modes of navigation in a fog, heavy rain or falling snow, or at any other time, the rules set forth,too clearly to need any further discussion here. It is enough to repeat the general principle which has been pointed out and illustrated in another connection that a violation of these rules being shown, negligence is presumed and the burden of proof is on the one so violating to show that the act complained of in no way contributed to the disaster.(b) The only exception being when by no possibility the violation could have contributed to the collision .

Rules for Great Lakes.

The rules and regulations for the Great Lakes differ from the International rules more widely than those for harbors,

(a) The Belgenland,114, U.S. 355.

(b) The Zouave, 90 Fed. Rep. 440.

rivers and inland waters. Special attention is given to towage, rafts, canal boats, small craft and the lights and signals in respect to the same. Regulations are also prescribed differing from the International rules, in regard to navigating in narrow channels, rivers and currents where extra care is required by vessels meeting and passing. In general the regulations are such as the peculiar physical conditions existing on the Great Lakes and the rivers flowing into the Gulf of Mexico and the lake and river craft there employed, would demand. With such rivers as the Detroit and St. Clair, the Mississippi and other streams flowing into the Gulf to navigate, and different kinds of vessels navigating there, such as are above mentioned, a somewhat different set of rules is necessary. No special peculiarity of construction however, is found in these rules which the rules themselves, or the constructions given to the doubtful points in the International regulations would not make clear. They are found in 28 Statutes at Large, P.645.

Harbor and River Rules.

The rules and regulations applying to harbors, rivers and inland waters were separated into two divisions comprising classes "three" and "four". Class three as indicated, consists

of such rules as have been passed by Congress applying to the above navigable waters. Class four consists of local regulations applying to the same. In the rules passed by Congress, "Inland waters" are not to be understood as including the Great Lakes and their connecting and tributary waters as far East as Montreal. It is to be noticed, that this definition does not comprise the navigable rivers flowing into the Gulf of Mexico which are included, so far as applicable, in the rules and regulations to prevent collisions on the Great Lakes. These special waters being excepted and as others from the general meaning of the words "inland waters", the regulations must be considered as applicable to all the rest therein included, namely to the Mississippi River and other rivers flowing into the Gulf of Mexico. These regulations are very much the same as the International Rules as far as they go. In fact when Congress first enacted a general system of regulations to avoid collisions in harbors, rivers and inland waters, special portions of the previous maritime regulations were selected and designated as having full force upon those waters. The present rules are to be found in 26 Statutes at Large, P. 96., certain

portions of the International Rules that apply only to ocean navigation are omitted, and such changes and additions have been made as the more crowded condition of harbors, rivers and inland waters with their different kinds of craft demand. Greater frequency of signals is required, special regulations are given as to lights, pilot boats, tugs, row-boats and other craft common to rivers and harbors, but not known on the High Seas. Lights are provided distinguishing seagoing ships from those of the harbor or river.

By the wording of the Statute, these rules "apply as special rules duly made by local authority, to all vessels navigating all harbors, rivers, etc." Whether they are to be regarded as applying to vessels of foreign nations does not seem clear. They are to apply "as special rules made by local authority" and "to all vessels". The trouble rests in the fact that the rules enacted by local harbor and river authorities are not looked upon as binding upon foreign vessels fully observing the International Rules. These rules, though largely a copy from those regulations are distinctly stated to apply as special rules duly made by local authority. Whether the fact that they

are primarily enacted by Congress would make any difference does not appear. If it does not, and they are to be classed as harbor regulations by local authorities, they apply only to United States vessels public and private. It would seem from the care taken to expressly state that they are to be looked upon as regulations by local authority, that they were intended to have only the force of such regulations.

Local Regulations.

What has been said concerning the construction placed upon special words and phrases in the International Rules, applies here where the same are used. These regulations may be found in 30 Statutes at Large, P. 96.

The second division of harbor and river rules, or "Class four" as the rules pertaining to navigation were divided, consist only of such regulations as Congress has seen fit to leave in control of local authorities. They are local and harbor regulations and pilot rules to be observed in the special harbor or rivers to which they relate. If violated by public or private vessels of the United States, such violation will be deemed negligence. They have force as mere police regulations; and as has been said, do not affect the vessels of foreign

nations.(a).

Briefly summed up, the rules and regulations for navigation are the best criterion for deciding whether a vessel has acted properly, and in so deciding, they are to be construed with reasonable strictness. They are to be looked upon as applicable in all cases until the contrary is shown. They have been formulated to prevent the loss of life and property by means of collisions, so if at any time, the exegencies of a situation plainly demanded a departure from them in order to insure safety, they are not then to be construed as requiring a strict adherence. Such a departure must, however, in order to receive the benefit of such a construction have been made through the demands of necessity or in the excitement of immediate collision for which the ship departing is not in fault. If a vessel doggedly adheres to these rules in the face of inevitable collision, the prescribed course being pursued, its act will be construed as a violation of the general intent of the statutes in not using due care under the circumstances.

Section 4412, of the Revised Statutes of the United States, provides for a board of Supervising Inspectors, who "shall

(a) The Oregon, 158 U.S. 186.

establish such regulations as may be necessary, to be observed by steam vessels in passing each other as they from time to time shall think necessary for safety." This board consists of one Supervising Inspector General and ten supervisory inspectors. The rules thus passed are to add to the rules of Congress. Two copies are to be furnished to vessels and conspicuously posted.

Further quotations from the various statutes regulating navigation in American waters does not seem necessary. Their wording is clear and any further comment upon them would amount to but little more than a repetition of the words of the different enactments.

CONCURRENT JURISDICTION OF STATE AND FEDERAL COURTS.

Subdivision three of Sec. 711, Rev. Stat., gives to the United States courts Admiralty Jurisdiction as follows: "exclusive jurisdiction of all civil cases of Admiralty and Maritime jurisdiction, saving to suitors in all cases the right of a Common law remedy where the Common law is competent to give it." This clause would indicate that in some cases the Federal jurisdiction would be exclusive and in other concurrent with jurisdiction possessed by the courts of the state. The question of there being such concurrent jurisdiction in admiralty collisions has been decided by a number of cases following shortly after the Genessee Chief, which assured to the Federal courts jurisdiction over the Great Lakes. In Hine,v. Trevor 4 Wall. 555, a collision occurred between the steamships Hine and Sunshine on the Mississippi River near St. Louis. The Sunshine was injured, later the Hine was seized in order to be sold in accordance with a proceeding under the laws of Iowa,

in satisfaction of damages sustained by the Sunshine. By the Iowa code, a lien was given against any boat found in the waters of the state, for injury sustained by persons or property. The proceeding was one strictly in rem and the owners of the Hine interposed a plea to the Jurisdiction of the State Courts. It was held, that all state statutes which attempted to confer upon State Courts a remedy for marine tacts and contracts by proceeding strictly in rem were void being in conflict with the act of Congress of 1789, except as to cases arising on the Lakes and connecting waters. Nor could such state statutes be looked upon as within the saving clause of the act in respect to Common law remedies. This rule however, does not prvent the seizure and sale by the State Courts of the interest of an owner or part owner in a vessel, either by attachment or by general execution, when the proceeding is a personal action against such an owner to recover a debt for which he is personally liable, nor does it prevent any action from being brought in the State Courts, which the Common law gives for obtaining a judgment in personam against a party liable in a marine contract or marine tact. The Moses Taylor 4 Wall. 441., is to

the same general effect as the previous case entirely denying jurisdiction in the state courts when it is there attempted to grant a remedy for a marine contract or marine tact by proceedings strictly in rem. All such claims when a remedy in rem is given, are looked upon as exclusively in the Jurisdiction of the Federal Courts.

In proceedings in personam concurrent jurisdiction may exist. The clause "saving the rights of common law remedy , where the Common Law is competent to give it", does not according to Hine,v. Trevor,authorize a proceeding in rem to enforce a maritime lien in a Common law court, whether that court is State or Federal. The Common Law remedies are not at all applicable to enforce such liens . They are as has been indicated, suits in personam, even though under special statute they may be commenced by attachment against the debtor. So in all cases when a maritime lien arises, whether from a tact or a contract the original jurisdiction to enforce it by a proceeding in rem must be exclusively in the District Courts of the United States.(a)

(a) The Belfast, 7 Wall. 624.

The granting of a right of action in personam for loss of life, is not in conflict with the Admiralty jurisdiction of the district courts of the United States even though no such remedy existed apart from the state statute. Where the state has given a remedy in personam not existing in admiralty, the Federal Courts will enforce it so long as not contrary to the rules and laws of Admiralty. The steamboat Co., v. Chase 10 Wall. 522.

Appeal.

Where an action has been brought in a state court in personam, and it is appealed to the Supreme Court of the United States, the party plaintiff having elected to pursue his Common law remedies in a State Court, the rules of the Common law will be applied on appeal and not the rules of Admiralty. This makes the jurisdiction of the Federal and state courts concurrent not only over the question in litigation, but also in the law applied. An example of this is where a plaintiff has brought his action in personam for the loss of his ship. Both ships were negligent and contributed to the collision. At Common law such being the case, no recovery can be had. The case being appealed to the Supreme Court, the Admiralty rule

will not be applied, but the rule at law. The jurisdiction is concurrent both as to the matter of the action, and as to remedies applied. The plaintiff has elected such a system of law to give him his remedy and the Federal Courts will not afterwards when he has discovered that his choice was a poor one, give him the benefit of a system of law more favorable to his cause. Having made an election, he must stand by it.(a)

The cases summed up, seem to amount to this: When the action arising because of a collision is to enforce a marine contract or to gain satisfaction for a marine tact, the state courts have a concurrent jurisdiction, if the proceeding is strictly in rem, but if in personam such concurrent jurisdiction exists. In all cases where a common law right of action remains and also it seems where a right of action has been given in personam by State Statutes, as in the Steamboat Co., v. Chase, and not contrary to Federal laws, the state has concurrent jurisdiction with the Federal Courts. In short concurrent jurisdiction extends only to actions in personam.

At Common law there has always been a right of action for

(a) Belden v. Chase, 150 U.S. 674.

damages arising from a collision at sea, so the provision that such rights are reserved, clearly gives concurrent jurisdiction to the Common law courts of the states.

I N D E X.