

Supreme Court of Civil Justice.

[BEFORE CHIEF JUSTICE NEEDHAM.]

PIDWELL v. THE HUDSON BAY CO.

TUESDAY, June 11, 1867.

Pidwell v. Hudson Bay Company—This was a suit brought to recover the sum of \$727, value of wearing apparel, &c., belonging to plaintiff's wife, who was a passenger on the steamship Labouchere from San Francisco for Victoria, in April, 1866, which vessel was wrecked and the wearing apparel lost.

The Solicitor General and Mr. McCraith, instructed by Mr. Peakes, for the plaintiff; Mr. Ring and Mr. Walker, instructed by Drake & Jackson for the defendants.

Mr. Ring, before the case was opened, would call His Lordship's attention to a recent case that had occurred in London. Recorder Russell Gurney had declined to sit as Magistrate and hear a complaint against ex-Governor Eyre, of Jamaica, because he (the Recorder) had sat on the Royal Commission, appointed to inquire into the cause of the Jamaican outbreak.

His Lordship—It is true that I sat upon a Royal Commission appointed to inquire into the causes that led to the loss of the Labouchere, and if the learned counsel on either side believe that in consequence of having done so, I am incompetent to sit as judge of this case, I regret that that belief was not made known before any expense had been incurred.

Mr. Ring said that he was instructed to apply for a postponement, so that the case might be tried before His Lordship's colleague. The Solicitor General replied that this objection, coming at the last moment from counsel for defendants, could not be regarded as anything else than a pretext for delay.

Mr. McCraith—If such a principle as this were to obtain, that a judge having once expressed an opinion on a point of law in one case should be forever debarred from again trying a similar case, there would be an end to justice.

Mr. Ring maintained that Judge Begbie could be easily telegraphed for to try this case; when the Royal Commission sat, the Chief Justice (Needham) acted as both judge and jury.

Mr. McCraith replied that two Naval gentlemen occupied the bench with the Chief Justice at the time of the Commission and the verdict was, in a great measure, attributable to them.

Mr. Walker said that if His Lordship would refer to the Union Proclamation he would find that the form of Government in force on the mainland at the time of Union was extended to the Islands, and that therefore the judge on the mainland had power to sit here.

Mr. McCraith—Mr. Begbie will have to be sworn in as his Lordship's successor first. His Lordship—The question as to my competency to try this case is divided into two points—first, is the court, as at present constituted, in point of law, incompetent?

Second—If not competent in point of law, is it incompetent to try the case as a matter of delicacy? Now, as to competency, it was decided after a long argument before the House of Lords that if a judge had any interest, direct or indirect, immediate or remote, in any case, then, as a point of law, his decision was invalid.

Mr. McCraith—You will have to get a Commission from the Governor for Mr. Begbie. After a short consultation with his clients, Mr. Ring asked if the plaintiffs were willing to accept the Chief Justice's proposition?

The case was then proceeded with and the following jurors sworn to try the case: J. C. Nicholson (Foreman), Henry Nathan, Henry Russell, G. E. Fardon, T. L. Stahlehdmit, A. F. Main, Richard Carr, & J. Stuart.

Mr. McCraith proceeded to open the case for the plaintiff by briefly reciting the points of the complaint and the answer of defendants. The learned Solicitor General followed with an address to the jury, in the course of which he stated the various points he expected to prove and the law bearing upon the case.

Mrs. Pidwell, sworn—Am the wife of plaintiff; went to San Francisco on the 3rd of March, 1866, on the Labouchere; started to return in the Labouchere on the 14th of April following; had a large leather trunk and two smaller ones; made a list of the articles in the trunk and returned to Victoria [that produced]. Counsel for defendants objected to list being read and objection was sustained; I had dresses, shawls, underclothes and such things as a lady usually travels with, in the trunk; I lost something over \$500 worth of goods; I paid \$30 for my passage on my return on the Labouchere to a young man, who, I think was named Warren and who acted as purser, he gave me a receipt (something like the one produced in Court); my luggage was taken into the saloon of the ship and when I last saw them the saloon table at my request, as he could not get them into the stateroom; the steward said he would attend to the trunk; I went to bed about 10 o'clock and had just dozed off when I felt a shock, the vessel seemed to strike and tremble and strike again; there was a general bustle and excitement among the passengers—a great deal of fear manifested; I sat down by my trunk and after a time went back and lay down in my room until the steward came and told me I had better get up as we might have to go ashore; I got into my dress and reached the land; I never saw my trunk after that, nor my box of plants; the other box, valued at \$13, was returned to me; I did not see the Labouchere sink; I returned to San Francisco and remained there from Monday till Saturday, when I left for Victoria again; I paid \$41 to get back; I recollect one silk dress, hanging up in my stateroom, which was ruined by the wreck.

Cross-examined by Mr. Walker—Saw no trunk landed on the shore, but a dress of mine was handed me by the captain; Capt. Mount asked me if my trunk was in the saloon? I replied that it was; he said, "You will probably get it for I gathered up all I could and placed them on a fishing smack"; did not see the smack come on shore; made no particular inquiry as to my trunk, felt so thankful at having escaped with my life that I did not inquire particularly about my luggage; never told Mrs. Thain or any one else that my trunk came on shore and was broken open and robbed; have travelled to and from San Francisco; have always had my baggage checked on the other side steamships, but never on this side boats.

Re-examined by the Solicitor General—Heard nothing said about checks for baggage; a coachman brought my baggage on board; everything was in great confusion, and nobody asked me any questions; I was bringing up a few presents for my daughters, in addition to my wardrobe.

Wm. Fraser Tolmie, sworn—Am Chief Factor of the Hudson Bay Company, and Member of the Board of Management, of the same company—an senior member; I knew the Labouchere, she came out here in 1859; remember tenders being sent in by the Company for the mail service by the Labouchere; a contract was made by the Company with the Government for the mail carriage; I believe I have a copy of the contract at the office; I went down to San Francisco by the Labouchere on the 3d of March, 1866; she was ordered by the Board of Management to go to San Francisco; I ordered certain alterations to be made upon her for the Hudson Bay Company; the steamer was steered by the ordinary steering wheel near the rudder; I ordered the steering apparatus to be altered from the stern to the forepart of the vessel; the Hudson Bay Company paid for that; I gave orders to run her from San Francisco to Victoria at certain stated times, to carry freight and passengers; both ways; she made one round trip before the 3d of March, one round trip and a half carrying freight and passengers; Capt. Mount had sole charge of the ship at San Francisco when I left there at the latter end of March.

Cross-examined—Capt. Mount was in the service of the Company for many years; he was about 16 years master. Re-examined—He had gone to California and the North West Coast several times; with these exceptions he had been continuously employed in coasting and in land navigation.

J. T. Pidwell, examined—Am the plaintiff in the action; I don't know the goods which were put aboard at San Francisco; I can tell what was taken from here and returned; my wife showed me a list of certain articles; what she stated in Court as to value was incorrect, arising from excitement on appearing in Court the first time in her life; on her return from San Francisco I went over the list; I bought everything except a few articles of trinkets; I came to a reasonable estimate of the value of the goods; total for wearing apparel \$590; for some jewelry about \$25 or \$100; the whole, with other things, \$727, giving credit for return of fare, etc.; there was no compromise made with the Company; I never authorized anybody to receive any sum of money for me.

Cross-examined—Many of the things I purchased and know the value of, the purchases extended perhaps over ten years; I generally keep my head clear; I suggested an arrangement and got a promissory denial for claim from Dr. Tolmie about 12 months ago; I do not know that the tendency would be to ruin Capt. Mount; the claim was against the H. B. Co.; I mentioned in round numbers the value of the goods to Dr. Tolmie—\$700 to \$1000; I am not backed up by anybody in the suit; persons came to me and talked of the suit; I do not know the Company are threatened with several actions; Mr. Adams and Mr. Anthony had freight on board; so had Reid the boatman and others; we got the opinion of able legal gentlemen on the law of the case; subscribed in the first instance to get legal opinion.

Edward Dickinson, sworn—Was a passenger on the Labouchere when she was wrecked; there were about 90 or 100 passengers on board of her; the boat was in an unfinished state when we went aboard; unfinished carpenter work lay about the deck, and they were at work on the vessel; she started about two hours after her advertised time; it was dark when we got outside, rough when crossing the bar; do not know whether there was a fog or not after crossing the bar; put on my boots and saw high rocks looming up over the side of the vessel, and white foam all around us; it was a dark night, no fog, saw the rock; the steward was ripping up the saloon table to get at the pump in the center of the cabin; that pump did not "fetch" for two hours; the chief engineer, assisted by Frank Sylvester, one of the passengers, fixed the pump; I worked on a small pump at the stern; during the night I asked Captain Mount what he intended to do; he said he intended to get up in the morning; to let the water run from the cabin decks overboard, holes were bored in the staterooms; water ran from 1, and was roused at between 4 and 5 o'clock; went on deck and saw land ahead; don't know what the captain did; heard the vessel was sinking; saw great confusion on board, and passengers trying to launch a boat; only saw two life-preservers, there were none in my state-room; the boat had no oars; saw no pilot boat in sight; I left the ship on a raft, and was picked up by a fishing boat.

Cross-examined by Mr. Walker—A few articles were thrown off the vessel into the smock; saw the trunks placed in her; I worked until the captain told me there was no danger, when I went to bed; the reason that the pump in the cabin threw no water was not because there was no water to throw, because the pump at the stern threw water freely; the pump was not in order; the stern of the vessel settles more at the stern and that a pump may draw water there and not further forward; know nothing of the engine pump; the captain said there was no immediate danger, and I went to bed; I don't know what rock it was I saw, it might have been one of the Farallones; the captain seemed to be cool and collected.

Re-examined by the Solicitor General—I saw the vessel lying at the wharf at two or three o'clock in the afternoon; everything seemed to be in the greatest confusion. Court here took a recess for ten minutes. E. H. Adams, sworn—I was a passenger on board the Labouchere on the 14th April, went to bed about 8:30 p. m.; did not go to deck until she struck; there was great confusion; when I went down to the cabin I observed the steward tearing away the tables to get at the pump; the pump would not work; there was a small one in the stern which worked; I had goods and baggage on board; there were trunks and luggage of other persons; there did not appear to be any checks used for the baggage; I saw no such system; there were more goods on board than my own; saw no life-preservers on board; I escaped in an Italian fishing boat; I saw no pilot boat; am a little short-sighted.

Cross-examined—In other ships there are checks given for baggage; on the Labouchere there did not appear to be anyone to attend to such; I had merchandise on board, which I got a bill of lading; I was one who consulted about getting reclamation shortly after the accident; I am certainly interested in the result; I have not contributed to do I mean to do so—to the costs of the suit. Re-examined—It is usual, on San Francisco steamers, to get checks for luggage; there was no such system on the Labouchere that I could see or hear of; I have no direct interest in this suit; have not contributed in any way to the costs of this suit.

James Allan, sworn—Was cook on board the Labouchere; before the ship struck I went down forward to change my shoes and saw Jack, an Indian, standing on the lookout; he was one of the crew; he had been on board the Enterprise no one was with him on the lookout at the time, which was about a quarter of an hour before she struck. Cross-examined—The night was dark; could see breakers ahead quite close; could see no great distance; there was no one else on the forecastle on the look out; there was no one that I could see overhead on the look out; after she struck I got on deck; saw the land about half an hour afterwards. The written evidence—taken before a Commission of W. A. Elliott, engineer of the Labouchere at the time of the wreck—was read to the jury by the counsel for plaintiff.

Counsel for the plaintiff proposed to produce the Commission issued by Governor Kennedy for the enquiry into the loss of the steamer, but it was objected to. Evidence was tendered to show that a copy was made by some one who saw the report, and which was published in the Government Gazette; also, evidence of Mr. Fowler, to show that all the public documents were sent up to British Columbia; also, of Mr. Griffith, to prove that the report printed was a copy of the report made after the enquiry. This evidence was objected to by the opposing counsel, who maintained that Governor Kennedy had no power, as Vice-Admiral, to order a Commission of Enquiry into the loss of the vessel, and he proposed to call Mr. Drake to show that the proceedings were illegal. His Lordship overruled the objection and disallowed the evidence of Mr. Drake on the ground that a witness cannot be called to prove a matter of law. Objection was made to any hearsay evidence of a report made. Mr. Walker claimed that the party in whose possession the report was should have been subpoenaed to produce it. He had not been so subpoenaed and none of the evidence taken before the Commission could be produced here. The decision of the Commission was not a judgment in rem. Mr. Walker also claimed that the Commission had not been legally constituted and proceeded to quote from the Merchant's Shipping Act in support of his position, when His Lordship interrupted him by saying, that a part of that Act applied to the Colonies and a part did not. Besides, the power was vested in the Crown to order a Commission to inquire into any matter. The Solicitor General replied that the Court had no power to compel the production of the public documents. The Chief Justice—I have seen the highest functionaries in England, from the Lord Chancellor down, obey a subpoena of a Court

of Queen's Bench. I have seen Her Majesty's Principal Secretary of State attend in obedience to a summons of a Court, and I have seen the highest functionaries of the land send down their secretaries with important public documents. The Solicitor General alluded to the failure of the Legislature to procure the presence of the Chief Justice—Ah, that's a different matter. The other is for political purposes, the other for the purposes of law. Mr. McCraith followed the Solicitor General in support of the admission of evidence taken before the Commission, and quoted authority to show that the decision was clearly a judgment in rem, which was defined to be an adjudication upon the status of some particular subject-matter, for instance—the loss of the Labouchere. The learned counsel pressed the admissibility of the evidence.

Mr. Ring replied at considerable length in opposition to the admission of the evidence taken before the Commission, and that it must be introduced. The document is not produced, and the plaintiffs propose to give secondary evidence, to the effect that the Colonial Secretary had refused to give plaintiff the document; but that is not enough. They might have given the public officer notice to produce the document, or a subpoena might have been served upon him. Had he been properly applied to, his Lordship said, that there was no doubt he would have complied with the request; if he had not complied, there was the subpoena to fall back upon, and the court was of opinion that the mainland was under its jurisdiction. The secondary evidence was ruled out.

Mr. Ring rose to ask for a non-suit, it having been shown that the trunks were under the control of Mrs. Pidwell as well as the time. The Court said that it was no answer to the complaint to say that the goods were under the control of the plaintiff, because it was alleged that they were lost through the negligence of the defendants, and therefore the question of the control or custody of the goods was immaterial. The evidence for the plaintiff here closed.

Mr. Walker addressed the jury for the defence. The case was one that if it were decided against the defendants would pour them in the jury box for the remainder of their natural lives [His Lordship—Don't frighten the juries; laughter.] He asked the jury to dismiss everything they had heard or read on the subject of the loss of the ship and to try the case on its merits. The question was one that sought to relieve parties shipping goods from insuring them and to throw the onus of their loss on the owners. Why did shippers insure goods? Because the ship was not responsible for the loss of the goods. The learned counsel quoted copiously from Addison, to show that the defendants were not liable for goods lost. The Chief Justice here said he would tell the jury that, as a matter of contract, the defendants were liable, unless by the terms of their contract they limited the liability.

Mr. Walker—Have the defendants no common law exemption, as according to Addison? The Chief Justice—I shall so tell the jury; and with reference to the negligence, I shall tell the jury that if the ship was lost through the negligence of the captain or any of the Company's servants, then the defendants are liable. His Lordship added, that he thought it best to tell Mr. Walker of his intention at first. Mr. Walker then announced his intention to confine himself to the facts of the case, and rapidly sketched the course of the Labouchere from the harbor of San Francisco to the time of the accident, and the incidents which transpired thereafter. At the conclusion of Mr. Walker's address, the Court rose until ten o'clock, a. m., Wednesday.

nothing to North, and about a 1/4 or 1/2 past 10, the Indian boy reported land; I ran into the pilot house to strike the bell; I was on deck at the time, and the Indian boy, the officer of the watch, and the Indian boy were also there; not more than a quarter of a minute after the bell was struck to stop and as I had rung to back, the ship struck the rock; I saw a lumen as I went to the pilot house and struck the bell, the breakers were close alongside; we backed to get her turned round and headed her for clear water; went ahead at full speed with the lead going; and I think there was to be set on; the rapid motion of the ship more water was raised by the pumps; we got ahead of the water and made the pumps suck; I felt, then, that the ship was safe, and made short stretches to and fro waiting for daylight or for the fog to clear up; as soon as I saw the Farallones light I pushed for it as hard as I could; the water suddenly commenced to gain on us, and I think there may have been a stone in the broken plank and that the ship ran for half an hour, getting slower and she stopped; the water reached the furnaces, when she stopped; we could not use our sails because she would not have sailed, being half full of water; the saloon table was made to ship and unship; had there been no fog the accident would not have happened; soon after the vessel struck I went into the pilot house and found a variation of a point and a-half in one compass, and one point with another compass; the atmosphere may affect a compass; I was afraid to run because of the fog and the variation in the compasses; I had no opportunity of taking an observation; I was anxious to get off from San Francisco, I had a number of men aboard for the Princess Royal who wanted to run away; I had a large number of passengers who were anxious to start; the men for the Princess Royal all began knocking me about before I left the wharf; I saw Mrs. Pidwell go aboard a boat to leave the ship; I went back to the ship and filled one boat and part of another with luggage.

To a juror—The ship was about three miles from shore when she struck. Direct examination resumed—I told Mrs. Pidwell that I brought one large trunk ashore, and she said she thought it might be here; I gave her one package that was done up in canvas, and a dress; I told the passengers in general that I had brought some trunks aboard; I afterwards saw the package that I gave her on board the steamer. [Counsel for plaintiff here admitted that the package was returned, and stated that it was not one of those in dispute.] I had a freight clerk on board who would have looked after the luggage had he been asked; did not see Mrs. Pidwell coming on board; heard nothing about any trunks coming on board; the Company had agents at San Francisco. The following copy of the ticket issued by "Hudson Bay Company's steamer Labouchere"—This ticket will be forfeited if transferred.—Passage from San Francisco to Victoria.—No. 10.—San Francisco, 1866.

This ticket entitles Mrs. Pidwell to a Cabin Passage from San Francisco to Victoria.—The Company will not be responsible for the maintenance of passengers after arrival at Victoria.—Agent, Capt. WARRAN, Purser. Received \$30. Mr. Ring—There is a custom adopted by shipowners at San Francisco as to the carriage of passengers' baggage? Mr. Wood objected to the question. His Lordship thought the question was immaterial.

Witness—If I give a receipt for it I'm liable; if I do not give a receipt I am not liable; such is the custom at San Francisco. Cross-examined—I was a master mariner previous to 1850; am 46 years of age, and have been a seafaring man since 1835. [Witness proceeded to detail his career at sea during a series of years.] C. M. on here as second mate of the bark Vancouver in 1844; in April of the same year was made first mate; in 1849 was master of an American vessel at California—the Mary Adair was the first ship of which I was master in the Company's service; was master of the steamer Enterprise for three seasons; I have read the Merchant's Shipping Act through; am aware that there is a section of the Act which says that a ship's compass must be adjusted at stated periods; if they are sent to an optician the requirement of the law is complied with; a wooden ship may possibly disturb its compasses quite as much as an iron steamship; the mass of machinery in a steamship will not necessarily influence a compass; a great many alterations were made in the Labouchere at San Francisco; the steering apparatus was removed 120 feet nearer the bows and forward of the machinery; the steering apparatus was in the pilot-house. [Witness here described the position of certain iron work near the wheel, and the accommodation provided for passengers; before starting I thought it was necessary to see that if my compasses were right, but I can't say that I thought so, because of the alteration; I did not take any such precaution before I started from the wharf; I had not all my sails bent before I sailed, only the foremast and trysail; the square sails were not bent, because the yards were on deck; the mainmast was not set from fear of fire; on each paddle-box; the deep sea-lead I saw nothing of; I saw the hand leads hanging up in the rooms before we started; I took my bearings when I was just inside of Point Bonita. [The exact position of the ship when the bearings were taken was pointed out on the chart by the witness.] I judged of my position simply by my eye; this was the only precaution I took to see if my compasses were correct; I found they were correct by adopting this course; the telltale compass was the best instrument of the three; they were all good alike, only mine was the best [laughter.] After passing the Golden Gate I steered S W by W for half-an-hour, then W, nothing to N, to clear Point Reyes; the pilots tell sailing vessels to steer W 1/2 E; I don't know what the course is the steady steamer; I don't know that there is any extraordinary danger in going into San Francisco which you might not avoid if you had a chance; had the compasses been correct, I could not by any possibility have struck on Point Reyes if the weather had been clear; the fog was the sole cause of my going on shore; don't know that I went ashore on Point Reyes; I have an idea that I went ashore west

of Drake Bay; I have doubt Point Reyes; I believe I did not know. The Court—It has been struck on Point Reyes, I did not. Examination resumed—In found myself opposite Point opposite the Farallones; the passes being out 3/4 points west of my going ashore. To the Court—The two steering by I think were not three compasses was wrong; went ashore because the one His Lordship—Now, Mr. S you are at liberty to ask the Court you may think fit, on previous examination before me. There is a direct have my notes before me. The Court here suggested minutes to enable Capt. Mount.

Upon the reassembling of Solicitor General proceeded Capt. Mount had not sworn May, 1866, differently from my to-day. Mr. Ring objected, but the question to be relevant. The examination of the Solicitor General was then resumed. The Solicitor General, after the vessel to the variation caused by the magnetic field. Witness—Yes; but from of that have come to my knowledge changed my mind. To the Court—I also saw my vessel I should variation, and that I attributed to the variation; I compasses must have been points, but I don't know the time, and have now it is a current setting on the north, with a southwest that I believed it was on got ashore, supposing my correct; it is as likely to Farallones as on Point but the Judge's note and I saved a great deal of time would be able to correct of at that time given. The read over by His Lordship loss of the vessel at that attributed to the deviation arising from the quantity during the alterations. After the reading of the e time of the enquiry, into agent last year, Mr. McGraith from the Royal Navy, d chart of San Francisco I ship, certain points con sider.

By the Solicitor Genera port steering compass wit I found a point and a hal struck; there was half between port and starboard after I found a point and had no reason to think th passes were incorrect; my compass; I could not tel believe; I expressed to at the time of the accident such a ship as the Labou difference in the compass what could have done any fault to find with not occur to me to shift old place in order to see the cause of the deviation in the compasses. At this stage His Lor the sailing master showed a point and a half west of Point Reyes.

To the Court—By tak observation as well as t the correctness of the ascertained; there are stance, comparing a num To Mr. Wood—I think the manner of swinging it done; don't know of such a ship as the Labou way of swinging a ship have an effect on compa alone varied my compa rock in Puget Sound; I makes a compass more otherwise be; I never have an effect on the b currents have an eff ashore; I never studie nothing to remark at Smith was a vigilant ma there from about 5 p. m. minute when Smith w safe thing to trust the ve he was trustworthy, had courage; I did not see possible way back to San the ship, because I dou did not occur to me my were going full speed fill the ship with wat afterwards; I had rea forty fathoms of water did not occur to me to pumps sucked I did danger; I did think about; I recollect hav a light at sea; I swer there was a light, add I saw a light about I saw the ship I had was; I did not go on the land, and was go said it was advisable the ship; I thought I and made for it, beca water water fast; I did cause I would not be I knew the difference and a pilot boat; I would have been, I cause I would have I helped to tie a boe pped was Mr. P. Point Reyes, which

nothing to North, and about a 1/4 or 1/2 past 10, the Indian boy reported land; I ran into the pilot house to strike the bell; I was on deck at the time, and the Indian boy, the officer of the watch, and the Indian boy were also there; not more than a quarter of a minute after the bell was struck to stop and as I had rung to back, the ship struck the rock; I saw a lumen as I went to the pilot house and struck the bell, the breakers were close alongside; we backed to get her turned round and headed her for clear water; went ahead at full speed with the lead going; and I think there was to be set on; the rapid motion of the ship more water was raised by the pumps; we got ahead of the water and made the pumps suck; I felt, then, that the ship was safe, and made short stretches to and fro waiting for daylight or for the fog to clear up; as soon as I saw the Farallones light I pushed for it as hard as I could; the water suddenly commenced to gain on us, and I think there may have been a stone in the broken plank and that the ship ran for half an hour, getting slower and she stopped; the water reached the furnaces, when she stopped; we could not use our sails because she would not have sailed, being half full of water; the saloon table was made to ship and unship; had there been no fog the accident would not have happened; soon after the vessel struck I went into the pilot house and found a variation of a point and a-half in one compass, and one point with another compass; the atmosphere may affect a compass; I was afraid to run because of the fog and the variation in the compasses; I had no opportunity of taking an observation; I was anxious to get off from San Francisco, I had a number of men aboard for the Princess Royal who wanted to run away; I had a large number of passengers who were anxious to start; the men for the Princess Royal all began knocking me about before I left the wharf; I saw Mrs. Pidwell go aboard a boat to leave the ship; I went back to the ship and filled one boat and part of another with luggage.

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nothing to North, and about a 1/4 or 1/2 past 10, the Indian boy reported land; I ran into the pilot house to strike the bell; I was on deck at the time, and the Indian boy, the officer of the watch, and the Indian boy were also there; not more than a quarter of a minute after the bell was struck to stop and as I had rung to back, the ship struck the rock; I saw a lumen as I went to the pilot house and struck the bell, the breakers were close alongside; we backed to get her turned round and headed her for clear water; went ahead at full speed with the lead going; and I think there was to be set on; the rapid motion of the ship more water was raised by the pumps; we got ahead of the water and made the pumps suck; I felt, then, that the ship was safe, and made short stretches to and fro waiting for daylight or for the fog to clear up; as soon as I saw the Farallones light I pushed for it as hard as I could; the water suddenly commenced to gain on us, and I think there may have been a stone in the broken plank and that the ship ran for half an hour, getting slower and she stopped; the water reached the furnaces, when she stopped; we could not use our sails because she would not have sailed, being half full of water; the saloon table was made to ship and unship; had there been no fog the accident would not have happened; soon after the vessel struck I went into the pilot house and found a variation of a point and a-half in one compass, and one point with another compass; the atmosphere may affect a compass; I was afraid to run because of the fog and the variation in the compasses; I had no opportunity of taking an observation; I was anxious to get off from San Francisco, I had a number of men aboard for the Princess Royal who wanted to run away; I had a large number of passengers who were anxious to start; the men for the Princess Royal all began knocking me about before I left the wharf; I saw Mrs. Pidwell go aboard a boat to leave the ship; I went back to the ship and filled one boat and part of another with luggage.

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