

Case No. 657a. AUMACH V. THE QUEEN OF THE SOUTH.  
[N. Y. Times, March 30, 1804.]

District Court, S. D. New York.

1864.

PLEADING—WAIVER OF OBJECTIONS—COLLISION—BETWEEN SAILING  
VESSELS.

- [1, Exceptions in the answer to a libel will be deemed to have been waived if not determined before proof is taken at the trial of the cause.]
- [2. A sailing vessel which mistakes the position and course of another sailing vessel, and luffs, thereby causing a collision, is liable for damages when, by keeping her course, she would have cleared such other vessel in safety.]

[In admiralty. Libel by John Aumach and others against the schooner Queen of the South for damages caused by collision. Decree for libelants.]

The libelants were the owners of the schooner J. E. Clayton, which was injured by a collision with the Queen of the South in the night of Nov. 26, 1856, off the lower end of the Cedars, on the New Jersey coast. The libel was filed March 5, 1857, and the answer Nov. 30, 1860. Two exceptions were taken in the answer, one alleging a nonjoinder of one part owner of the Clayton, and the other that the circumstances of the collision and the manoeuvres and faults which caused it were not set out with sufficient detail. The exceptions were not brought to argument until the trial of the cause.

Beebe, Dean & Donohue, for libelants.

Benedict, Burr & Benedict, for claimants.

SHIPMAN, District Judge. At this late stage of the case the court will deem all questions arising on the exceptions to have been waived. They should have been determined before the proofs were taken. On the proofs, although the evidence is very conflicting, the weight of it establishes the fact that the Clayton was coming up the coast close hauled; that the Queen of the South was going down the coast with a free wind; that at the time when those in charge of the Queen of the South ought to have discovered the Clayton—the former was to leeward of the latter; that had she kept her course she would have passed the Clayton to leeward and cleared her with safety; and that those in charge of the Queen of the South mistook the position or course of the Clayton, or both, and luffed, striking the latter on the starboard side, and causing the damage complained of. This luffing was a mistake for which the Queen of the South should be held responsible. Degree for libelants, with a reference.