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Case No. 2,333.

The CAMBRIDGE.

[2 Hask. 109.]¹

District Court, D. Maine.

Dec. Term, 1876.

**COLLISION—STEAM AND SAIL—SPEED OF
STEAMER—LOOKOUT—KEEPING COURSE.**

A steamer, descending a river at so great speed as not to be able after rounding a headland to avoid other vessels suddenly revealed to view, or in not keeping a sharp lookout to observe them at the earliest moment possible, or in not shaping her course promptly when they are first seen, so as to avoid them, is at fault, and liable for damage by collision with any such vessel while holding her course.

In admiralty. Libel in rem by the owners of the schooner Phenix against the steamer Cambridge for damage to the schooner caused by the fault of the steamer in running her down and sinking her when beating up the Penobscot river. The claim and answer averred that the damages suffered by the schooner resulted from accident, and not from the fault of the steamer, or of her officers and crew.

George F. Holmes and Almon A. Strout, for libellants.

Ira T. Drew, for claimants.

FOX, District Judge. The schooner Phenix was sunk in the Penobscot river in August by a collision with the steamer Cambridge. It occurred at mid-day, in open sunlight, about two miles below Hampden. The Cambridge was proceeding down river at a rate of twelve miles per hour. After leaving Hampden, she crossed the river diagonally to the eastward, to avoid a couple of schooners which were tacking from side to side with the wind nearly ahead. When the steamer had passed the schooners, she held her course until she was by the head just above Bartlett's cove; as she passed by, the pilot of the steamer noticed the Phenix in the cove, having just tacked, and as he says, her sails were full, and he supposed she was surging ahead. He put his helm more to starboard, but finding the schooner made little or no headway, and that the steamer could not go into the eastward of the schooner, he slowed the boat and brought her to steady, and then reversed the engine to make the acute bend, but she run into the Phenix, striking her by the forechains and damaging

her so that she immediately sunk. It is admitted the steamer had no lookout, other than the pilot, who was in the wheel house with the man at the wheel assisting him in steering. The answer of the Cambridge concedes the schooner as without fault; but insists that the collision was caused by inevitable accident.

Such is not the opinion of the court. The master and mate of the Phenix testify that they saw, first the smoke of the steamer, and then her hull about a mile above the schooner, as she was crossing the river from the western bank. The testimony of the master is unreliable. He is, in other portions of his testimony, most clearly shown to have made so many untrue statements, whether through design or stupidity is of but little importance, that a court would not be justified in giving credence to his statements; especially, when the libel asserts that the steamer was first discovered by the Phenix when she was on her tack from the eastern shore. The mate appears to be a more intelligent and careful witness than the master, and he says that he also saw the steamer's smoke and her hull as they were running across to the east bank; but his statement is in conflict with the allegations in the libel in this respect. But it is unimportant whether the Phenix, on her easterly tack, saw the steamer or not. The material point is, whether those on board the steamer saw or could have seen the Phenix, as she was then crossing. The pilot says he did not see the Phenix, as he was busy assisting the wheelsman, but he admits, if he had not been thus occupied and had been wholly on the lookout, that he could have seen the Phenix for a short time as she was running to the eastward; if, therefore, the steamer had had in the proper position a competent lookout, he would have discovered the Phenix running easterly, and it would have been his duty to have informed the pilot; and under such circumstances, when the schooner disappeared in the cove, the pilot, as a competent seaman, must have understood that she was then under the bluff for the purpose of coming about, and it was the duty of those on board the steamer to take proper measures to avoid her, and not to continue on into this small cove, about 150 feet deep, at the great rate of speed that she was then under. The steamer did not use due precaution in other respects. A speed of twelve miles an hour in that portion of the Penobscot river, so frequented by vessels who were on that day obliged to work their way up river against a strong wind, is greater than is reasonable. In case of danger the steamer can not be controlled as she should be to avoid accident.

The libellant's testimony is to the effect that, when the Phenix's sails were first discovered from the steamer as she rounded the bend above the cove, the Phenix was one-fourth of a mile distant, while the pilot and others on the Cambridge say, she was not more than one-half that distance. Opinions as to matter of distance are quite uncertain; but I am inclined to accept the statement of Holden, the clerk of the steamer, who says that the Cambridge passed the head about twice her length off, which would be nearly five hundred feet; that at the time the first bell was sounded by the pilot, he was on the after-deck; that he then went forward, saw the schooner, apprehended trouble, went up a ladder by the wheel house to the pilot house, and then the steamer was three or four lengths from the schooner. This testimony would tend to support the statement of those on board the

Phenix, and if correct, then those on the steamer had reasonable notice of the schooner's presence, and should have avoided her. If the pilot had held his course, he could probably have gone astern of her. If he had stopped his boat and reversed his engine when he first saw the schooner, instead of keeping on at the rate of twelve miles, he could have saved the collision; or, if he had adopted the other course, of passing to the westward of the schooner, he could probably have accomplished it, as by steadying his vessel, which he did not do until the schooner had been seen by him for at least two minutes, he was carried so far to the westward as to strike the schooner on her forward chains.

The collision was owing to the neglect of those in charge of the Cambridge, and she is held chargeable for the damages. Cause sent to an assessor.

¹ [Reported by Thomas Hawes Haskell, Esq., and here reprinted by permission.]

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