

THE CELLA.

Case No. 2,542.  
[3 Ben. 168.]<sup>1</sup>

District Court, S. D. New York.

March, 1869.

COLLISION OFF LONG ISLAND—STEAMEK AND SCHOONER—PORTING  
HELM—DAMAGES BY STRANDING AFTER COLLISION.

1. A schooner, heading about east southeast, on her starboard tack, with the wind from the south, on a bright starlight night, discovered a steamer's lights about two points on her port bow, and kept her course till a collision between the vessels was inevitable, when her helm was put to port. The steamer discovered the two colored lights of the schooner at from one and a half to two miles' distance, half a point on her starboard bow, and her helm was at once ported. The port bow of the steamer struck the port bow of the schooner, and carried away all the rigging on that side, so that she could not be brought up into the wind, for fear of losing her masts, and she was anchored, and the next morning went ashore on Long Island: *Held*, that, as the schooner did not change her course till the collision was inevitable, she was free from fault, and, no excuse having been shown by the steamer for not having avoided the schooner, the steamer must be held liable;
2. The manoeuvre of the steamer, in porting her helm, was faulty. Under the circumstances, she should have starboarded.;
3. The steamer was liable for the damages, including those consequent upon the stranding of the schooner.

In admiralty.

Scudder & Carter, for libellants.

Beebe, Dean & Donohue, for claimants.

BLATCHFORD, District Judge. This is a libel filed by the owners of the schooner Nellie Bowen, to recover for the damages caused to that vessel, and her cargo, by a collision between her and the steamship Cella, which occurred about midnight, on the 3d of December, 1866, some seven miles or more to the southward of Fire Island light, on the coast of Long Island. The schooner was on a voyage from Boston, Massachusetts, to Richmond, Virginia, with a cargo of ice, fish, furniture, &c. She had her proper lights set, and a proper lookout. The wind was fresh from the south, and she was beating against the wind, and was on her starboard tack, heading about east southeast, thus lying within about six points of the wind. She discovered the lights of the Cella, about two points on her port bow, a long distance off. The Cella was on a voyage from London to New York. The steamer came on, and, when she had approached so near to the schooner that, to the view of those on board of the schooner, a collision was inevitable, the helm of the schooner was put to port, for the purpose of luffing, but it does not appear that her sails shook at all. The port bow of the steamer struck the port bow of the schooner, about at the cathead, and the steamer, raking aft, carried away all the fore rigging and main rigging of the schooner on her port side, and did other damage, and thus rendered her perfectly

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helpless, with great danger that her masts, thus left without support on one side, would snap. The crew of the schooner made all proper effort to secure her masts, and to put up temporary rigging. To do this, it was necessary to keep the vessel before the wind till she could anchor with safety, for the wind kept increasing so much that it was deemed imprudent, for the safety of her masts, to bring her to anchor, which would require, in the operation, the bringing her head to the sea and the wind. Efforts were made to bring her head to the wind, but, having fallen off, at the time of the collision, she could not, in her shattered condition, be brought around, through the trough of the sea, to the wind, without danger of her masts going overboard, and they were heard to crack, in the attempts that were made. She drifted on, until, by steadying her masts, and getting down her sails, She was anchored and brought up. But she struck adrift as the wind increased, and was brought up by a second anchor. Then temporary rigging was set up, and, after sunrise the next morning, an effort was made to get her under way, but her anchors could not be got up, and she dragged them, and struck the bottom, and was then headed on shore, and went on the beach, opposite Hempstead.

The answer admits, that the night was a clear, bright starlight one, and that the Cella saw the two colored lights of the schooner at from one and a half to two miles' distance. The only defence set up in the answer is the stereotyped one, that the schooner changed her course. There is not a particle of proof to sustain this defence. On the contrary, the testimony of the witnesses for the claimants, as well as of those for the libellants, shows that the schooner kept her course, as it was her duty to do, until just at the moment of the collision, when, to ease the impending blow, she ported her helm. This movement of the schooner, in the moment of danger, is not imputable as a fault. The pilot of the Cella (for she had a Sandy Hook pilot on board) says, that he first saw a light on the schooner half a point on the starboard bow of the Cella, and judged it to be a mile and a half or two miles off; that he then ported his wheel, and kept the light in sight till it got to bear two or three points on his port bow; that he had scarcely altered the position of the Cella, before he saw the two lights of the schooner; and that they remained in view until a second before the collision, when the green light was hid, and the red light alone remained in view. This testimony corroborates the evidence of those on board of the schooner, that she kept her course until almost the moment of collision, and then ported to luff, which would have thrown her green light out of view. So, also, the master

of the Cella says, that he first saw the lights of the schooner ten minutes before the collision, when they were half a mile off, and at that time saw her green light and her red light from one and a half to two points on the port bow of the Cella, the wheel of the Cella being then hard a-port; that the green light of the schooner was hid a moment before the two vessels struck each other; that up to that time both of the lights of the schooner were in sight from the Cella; and that he saw no luffing on the part of the schooner from the time her lights were made until the collision. It appears, by the testimony of the witnesses from the Cella, that the red light alone of the schooner was first made on the Cella, a point on the starboard bow of the Cella by the compass, and that the helm of the Cella was at once put hard a-port, but that, notwithstanding that, the bearing of the lights of the schooner kept closing in on the Cella all the time till the collision, an interval of nearly ten minutes. Perry, a seaman on the Cella, who assisted in putting her wheel to port, and who saw the two lights of the schooner just as the steamer's wheel was put to port, says that he kept his eyes on the two lights of the schooner up to the time the vessel struck, and that a very short time, not many seconds, before the contact, the schooner hid her green light. The protest of the Cella, made on the 6th of December, 1866, and signed and sworn to by the master, the first mate, the carpenter and two of the seamen of the Cella, and by her pilot, states that the schooner was steering, according to their best observation, east by south, or east southeast, and that, from the appearance of her lights, from the time she was first seen from the Cella, until the collision, she had not changed her helm.

There having been no fault on the part of the schooner, and it having been the duty of the Cella to avoid her, it follows that, as no excuse is established by the Cella, she must be held liable. Under these circumstances, it is of no consequence to account for the collision, or to speculate as to how it could have happened. And yet, on the evidence, it is quite manifest where the particular fault of the Cella was. She made two colored lights on her starboard bow, which, with the wind south, and the Cella beading west half north, clearly indicated that the lights belonged to a sailing vessel which was sailing on the wind. The Cella at once ported her helm. This seems to be the universal practice of a steamer, in meeting a sailing vessel, whether it be the proper manoeuvre or not to enable the steamer to fulfil the duty, imposed upon her by law, of keeping out of the way of the sailing vessel. In this case, the manoeuvre was faulty. The Cella ought to have starboarded her helm, and there would have been no collision. In the first place, she made no allowance for the leeway which the schooner would make in sailing on the wind, with the wind as it was. In the second place, the testimony of the master of the Cella shows, that, with the wind fresh from the south, as it was, and the Cella down by the head, as she was, the wind catches her stern and keeps her head to the wind, that is to port, as she was then heading, and tends to counteract the usual effect of porting the wheel, and that,

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if her engines had been stopped, she would, even with a port helm, have come around with her head to the wind, that is, to port. This manifestly shows that her mistake was in porting, instead of starboarding. That, with the leeway of the schooner, brought the vessels together. If the Cella had starboarded, her helm, with the effect of the wind on her stern, would have brought her head around rapidly to port, even though her machinery had not been stopped, and, with the leeway of the schooner, each vessel would have passed a wide distance on the starboard side of the other.

The steamer is responsible for all the damages which ensued, from the collision, to the schooner and her cargo, including those consequent upon the running in shore and the stranding of the schooner. There must be a decree for the libellants, for such damages, with the costs of the suit, the damages to be ascertained by a reference.

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]