

The CLARA.

to determine what the truth is. I do not, however, pass upon this point, as I hold that the absence of an anchor watch on the Newell is fatal to her right of recovery. On this point there is no conflict of evidence. The mate of the Newell testifies, that, at the time of the collision, and for a considerable period before, no one was upon the deck of the Newell. It was his watch, and he kept it

by going on deck occasionally, but remaining the most of the time in the cabin. At the time of the shouts and clamor preceding the collision, he was in the cabin, reading an almanac, and no one was on the deck. When he reached the deck, it was too late to avoid the catastrophe.

The place of refuge sought by each of these vessels was an artificial harbor off the coast of Delaware, constructed by the United States in aid of the coastwise commerce of the country. Sixty or seventy vessels had, at this time, put in there, to avoid an impending storm. It was an inclement season of the year, the month of February. The night was dark and rough, and a severe snow storm soon came on. The *Newell* and the *Clara* had each a perfect right, as had all other vessels, to take advantage of this place of safety. It was, however, the duty of each to take the proper and customary measures for its own protection, and to avoid injury to others. As she came in, the *Clara* was bound to have a sufficient and careful lookout, in addition to the lights required by the statute. This, I think, she had. The *Newell* was bound to keep a head light, and was, also, bound to keep a watch upon her deck. The latter duty she entirely omitted. If her mate had been upon deck, keeping a careful lookout, he might have seen the *Clara* and her lights at such a distance, that, by hails and shouts, he could have warned her of the position of the *Newell*. If he could not have seen her lights, he might have heard the noise arising from lowering her sails and casting her anchors. It is testified, that the *Clara* could have heard a had from the *Newell* at a distance of one hundred yards, and thus the accident might have been avoided. The omission was a want of proper vigilance, and it is by no means certain, that, if well kept, the watch would not have preserved both vessels in safety. The *Sapphire*, 31 Wall. [78 U. S.] 170, 171; *The Indiana* [Case No. 7,020]; *Cohen v. The Wilder* [Id. 2,905]; *The Lydia* [Id. 8,614]. The lookout of the *Clara* failed to discover the light of the *Newell*, if she had one, but the *Newell* might have seen her lights, or heard her noise, and, by shouts and hails, have given that notice which was needed. For this negligence I think she loses her right of recovery, and that the decree must be reversed and the libel dismissed.

[NOTE. From this decree, libellants appeal] to the supreme court [102 U. S. 200], where the decree of the circuit was affirmed.

[The grounds of the affirmance are thus stated by Sir. Justice Swayne: "While undoubtedly it was the duty of the *Clara* to enter the breakwater and proceed to her anchorage with the greatest care and circumspection, the case discloses no fault whatever, of omission or commission, on her part. The findings, however, as to the *Newell*, put her deeply in the wrong, and there is nothing in the record which mitigates in any degree the severe condemnation which her recklessness invoked."}]

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]

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² [Affirmed in The Clara, 102 U. S. 200.]