

Case No. 4,337.
[1 Ben. 282.]¹

THE ELECTRA.

District Court, S. D. New York.

July, 1867.

COLLISION BETWEEN STEAMER AND FERRYBOAT IN THE EAST RIVER—SPEED—BOTH VESSELS IN FAULT—FAILURE TO CARRY A WHISTLE.

1. Where a large steamer, having come through the main ship channel of Hell Gate, bound to New York, at the rate of twelve miles an hour, as she approached the slip of the Astoria ferry, saw a ferryboat in and just leaving the slip on the New York side, and blew two whistles, but the ferryboat came out of her slip so far that the steamer, not being able to pass ahead of her, blew one whistle and tried to go astern, but the ferryboat then stopped and backed and was struck amidships on the port side and sunk, the evidence being very conflicting and unsatisfactory: *Held*, that the ferryboat was in fault in not holding back for the steamer to pass ahead of her.
2. The steamer was in fault in not slackening her speed as she rounded a point just above the ferry. [Cited in *The Free State*, Case No. 5,090.]
3. The ferryboat was guilty of gross negligence in omitting to carry a whistle, though that circumstance seems to have had no influence on the movements of either vessel.

This was a libel filed by Anthony W. Winans, owner of the steam ferryboat Astoria, to recover the damages caused by her being sunk by a collision with the Electra, the ferryboat being on her trip from her slip at Eighty-Sixth street, New York, to Astoria, and the Electra being bound to New York. The collision took place about nine o'clock in the morning. The tide was flood, running to the eastward, and there was a good deal of floating ice in the river. It was claimed on behalf of the Astoria that she was some way out in the river when she saw the Electra coming around Horn's Hook, a point on the New York shore at the foot of Eighty-Ninth street; that the Electra blew two whistles indicating that she was going ahead of the Astoria, which thereupon backed, when the Electra blew one whistle and undertook to go under her stern, and though her engine was at once started ahead the Electra struck her amidships, sinking her in a few moments. On the part of the Electra it was claimed that as she came round Horn's Hook the ferryboat was seen in her slip, whereupon two whistles were blown to tell her to stay there till the steamer had got by; that instead of so doing she came out and kept on until it

The ELECTRA.

was clear that the steamer could not get by ahead; that the steamer then blew one whistle, to tell her to keep on and tried to go under her stern, but the ferryboat stopped and backed right in the track of the steamer. There was great conflict in the testimony as to the position and movements of the vessels. The ferryboat had no whistle. The speed of the steamer was about twelve miles an hour as she came by Horn's Hook.

Beebe, Dean & Donohue, for libelant.

Benedict, Tracy & Benedict, for claimants.

SHIPMAN, District Judge. This suit is instituted to recover damages for a collision which occurred in the East river, near the west shore, and just below Horn's Hook, on the morning of the 16th of February, 1865, between the Electra and the steam ferryboat Astoria, owned by the libelant. The ferryboat was on her regular route from near the foot of Eighty-Sixth street, New York, to Astoria, Long Island. The Electra was bound from Providence, R. I., to New York.

The Electra came down in the west or main ship channel, and as she came out past Horn's Hook she sounded two whistles, which indicated that she intended to cross the Astoria's bow. There is a conflict of evidence as to where the Astoria was when these two whistles were sounded, her witnesses insisting that she was three hundred feet out in the stream and above her slip; those of the Electra that she was in or very near her slip.

It is difficult to determine which is right on this point. The pilot of the Astoria says that he was three hundred feet out when the two whistles sounded, and that he commenced to back, and that after he had commenced backing he got another signal from the Electra that the latter intended to go astern of him; that he rung to go ahead, and that the collision immediately took place.

On the other hand, Captain Nye, who had charge of the Electra, and who was in her pilot-house, says that he sounded his two whistles before the Astoria left her slip, but that the latter came out and got nearly ahead of the Electra, when one whistle was sounded by him to indicate to the Astoria that he was going to the right, and that at the same time he put his wheel hard aport. He says at that moment the Astoria commenced backing, which brought her in the track of the Electra. He says that he could not then change so as to cross her bow, and that if the Astoria had not backed contrary to his last signal, he should have passed her stern in safety.

No signal was given by the Astoria, as she had no whistle. There was considerable running ice and a strong flood tide in the river at the time. I have compared the evidence very carefully, and on the whole am inclined to the opinion that the Astoria was in and just leaving her dock when the two whistles were blown. The evidence on both sides is extremely inconclusive and unsatisfactory. The pilot is the only person on the Astoria who heard the two whistles. There was evidently some alarm on her, as well there might

be, for the Electra was not far off as she came in sight round the point of Horn's Hook, and was coming at a pretty rapid rate, as her captain states, at a speed of twelve miles an hour. This was too great a speed for such a steamer in the vicinity of ferries near a large city, with the river full of running ice which would render the movements of small craft slow and uncertain. The Electra was a large boat while the Astoria was a very small one, and I am inclined to the opinion that the latter did not get much backward way on her, after she reversed her wheels, with the ice as it then was.

On the whole, as the best result I have been able to reach in this doubtful case, I decide First, that the Astoria was in fault in not holding back for the Electra to cross her bow; second, that the Electra was in fault in not slackening her speed as soon as she rounded the point of the Hook. If she had done so she would probably have been able to have backed soon enough to have avoided the collision.

The omission of the Astoria to carry a whistle, was gross negligence, though it is not easy to see that this circumstance had any influence on the movements of either boat at this time. I note this fault of the Astoria therefore, not because it is important in this case, but to avoid any inference in future that it is sanctioned by the court.

Let a decree be entered in conformity with this opinion, with an order to a commissioner to compute the damages.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]