

Case No. 4,452.

THE EMILY.

[1. Blatchf. 236;<sup>1</sup> 6 N. Y. Leg. Obs. 340.]

District Court, S. D. New York.

April Term, 1847.<sup>3</sup>

COLLISION BETWEEN SAILING VESSELS—FAULTS.

Two vessels came into collision under these circumstances: The v. was to the windward, and the E. to the leeward, the v. heading along the shore N. or N. by W., and the E. heading S. by E. or S. S. E., the vessels being half a mile or a mile distant from each other when the E. was first seen by the V.; the wind was W. N. W., and the V., on discovering danger of collision, bore up into the wind, but the E., instead of falling off before the wind, changed her course towards the V., and the collision ensued; it also appeared that the E. had no proper look-out: *Held*, that the E. was in fault.

[Cited in *The Bay State*, Case No. 1,148; *The Catharine and Martha*, Id. 2,512; *The Northern Indiana*, Id. 10,320.]

[Appeal from the district court of the United States for the southern district of New York.]

Benjamin W. Bedell and others, owners of the schooner *Virginian* filed a libel in rem against the brig *Emily*, in the district court, to recover damages for a total loss of the schooner, caused by a collision with the brig. The collision took place near Sandy Hook, both vessels being bound into the port of New-York. After a decree in favor of the libellants [Case No. 4,453] the claimant appealed to this court.

Washington Q. Morton and Alexander Hamilton, Jr., for libellants.

Francis B. Cutting, for claimant.

NELSON, Circuit Justice. I have studied the facts in this case, which are voluminous, with a great deal of attention, and though the case is not without difficulty, owing to the serious conflict of the evidence in respect to almost all the material facts upon which the decision must depend, I am bound to say, that my examination has led me to the conclusion that, according to the weight of the evidence, the *Emily* was in fault.

1. The *Virginian* was to the windward, and the *Emily* to the leeward, the former heading along the shore, north or north by west, and the latter, south by east or south-south-east; and the two vessels were half a mile or a mile distant from each other, when the *Emily* was first seen by the hands on board the *Virginian*.

2. The *Virginian* at no time changed her course more to the east, or in the direction of the *Emily*; on the contrary, immediately on discovering danger of collision, she bore farther up into the wind, which was west-north-west. She was not only not in fault at any time, but appears to have received and obeyed

### The EMILY.

the only order that could have availed her in the emergency.

3. If the Emily had followed her course, much more, if she had fallen off before the wind, which she might readily have done, the collision could not have occurred. It is, I think, reasonably certain, that the mistaken order of the mate to the man at the wheel, in connection with the derangement of the running rigging of the vessel, and the confusion on board among the hands, on account of the vessel's having misstayed a few minutes before, led to a change of course, and the consequent collision.

It is apparent, also, that the hands on board the Emily failed to keep a proper lookout: for, if they had done so, the Virginian might, according to the weight of the evidence, have been seen before the accident at the distance of some half a mile; and, from the relative position of the vessels, a proper precaution on the part of the Emily at that distance, or even at a less distance, would have prevented the disaster.

The facts, beyond all doubt, bring the case down to the simple question, whether the collision occurred by accident or by the fault of the Emily. It is a most unfortunate case for the parties concerned, in any aspect in which it can be viewed, or upon any conclusion that may be arrived at; but I feel bound to say that, according to the weight of the evidence, the Emily was in fault. She might have avoided the collision by the use of proper caution, skill, and vigilance. Decree affirmed.

<sup>1</sup> [Reported by Samuel Blatchford, Esq., and here reprinted by permission.]

<sup>2</sup> [Affirming Case No. 4,452.]