

Case No. 4,475.
THE EMPIRE STATE.
[12 N. Y. Leg. Obs. 259; 33 Hunt, Mer. Mag. 330.]

District Court, S. D. New York.

July 18, 1854.

COLLISION IN HELL GATE—DUTY OF ONE VESSEL IN PASSING ANOTHER.

1. A steamboat having a vessel under canvas in full view is *held* prima facie responsible for steering clear of her.
2. Under the circumstances, *held* that a steamboat was wrong in persisting in her course, under the expectation that the sailing vessel would change hers; the latter not having given any indication of her intending to do so, up to the last moment.

In admiralty.

W. Q. Morton and W. J. Hasket, for libellants.

D. Lord, for claimants.

INGERSOLL, District Judge. This libel is filed by the owners of the sloop New York against the steamboat Empire State, to recover damages which they have sustained by a collision between their sloop and the Empire State, which took place in the month of July, 1853. The collision occurred at a little before six o'clock in the afternoon, at a point in the East river a little to the east of Pot rock, in Hell Gate, at about the middle of the river, between Negro point on Ward's Island, and Woolsey's dock, near the bath house on Long Island shore. The sloop was loaded with a cargo of coal on freight, and the collision, soon after it took place, caused her to sink with the coal on board. She was bound from New York up the Sound to New Haven. The steamer was also bound from New York up the Sound to Fall River. The guards of the steamboat came in contact with the shrouds of the sloop as she was passing her on the starboard side, which forced out her bolts, thereby causing an opening in the side of the sloop, by which she soon filled with water. The wind at the time was high and baffling, and was from the eastward of south, and was at the rate of from one to two knots. The tide was flood, at the rate of from four to seven knots. At the time the sloop was heading with the tide from a place nearly opposite Negro point, to a point near Woolsey's dock, on the Long Island shore. From the time the boat was opposite Hallet's point the sloop had not altered her course. From Negro point the tide sets over to Woolsey's dock. Often there will be two contrary whirls of the tide near the place where the collision happened. When the two vessels came together, the sloop was not far from the middle of the true tide. The sloop, when she was approaching near to Negro point, was seen by the captain and pilot of the boat, before the boat passed Hallet's point. The sloop had a little steerage way on her. From the time the sloop was first seen by the boat, she continued to keep her course. When the sloop was first seen by those having charge of the management of the boat, they assumed that she could bear away after passing Negro point, and hug the shore of Ward's Island. Whether

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she could, or not, in season to have got out of the way of the steamboat, with the wind high and baffling as it was, and the tide strong as it was, does not satisfactorily appear. She did not, however, hug the shore of Ward's Island, but kept on without altering her course in the true tide. When the pilot of the boat first saw the sloop, before the boat passed Hallet's point, he made up his mind to pass the sloop on her starboard side, and directed the movements of the boat with that view. In passing Hallet's point, the boat was slowed, and approached the sloop nearly in her wake, towards her starboard side. As the boat came near the sloop, the engine of the boat was stopped. The headway which she had on brought her up broadside to the sloop. The bells of the boat were then rung to go

ahead, and in passing the sloop the boat crowded the sloop; her guards pressed against the standing rigging of the sloop with such force that the injury was occasioned which caused her to sink. The captain of the boat thought he could pass the sloop without touching her, and supposed at the time that he had done so. At the time the bells of the boat were rung to go ahead the boat was drifting with the tide towards the shore, and there was danger that she would have gone on shore if she had continued to drift with the tide. The boat could have passed the sloop in safety on her larboard side, if the captain of the boat, when he passed Hallet's point, had directed the movements of the boat with that view. He did not, however, so direct her movements, supposing that the sloop would hug the shore of Ward's Island, though the captain of the sloop gave no indications that he would do so. The ordinary course of navigation for sailing vessels in going up the Sound, with the wind from a point east of south, was, after passing Negro point, to bear away some if they could. The captain of the sloop did not see the boat until the boat had passed Hallet's point and was approaching the sloop. The sloop was in no fault, unless keeping her course in the true tide is to be considered as a fault.

In the case of *The Jamaica*, a steam ferry boat [Case No. 7,173], the district judge, in giving his opinion, says: "A steamboat having had a sailing vessel in full view, time enough to have avoided her, is to be held responsible prima facie for steering clear, without requiring the latter to do anything." In the case under consideration, the steamboat had the sloop in full view before the boat, came up to Hallet's point, and in time to have avoided her, by pursuing a different course, and the sloop did nothing but keep her course. In the case of *Naugatuck Transp. Co. v. The Rhode Island* [Id. 11,743], tried before Judge Nelson, which was a case of collision happening near the place where this collision occurred, the judge, in giving his opinion, remarks as follows: "Upon the evidence I should feel bound to hold any vessel responsible for a collision that occurred in attempting to pass another while struggling in this dangerous strait, there being no fault on the part of the leading vessel." It is claimed on the part of the *Empire State*, that after she came near the sloop she could not with safety back, or remain with her engine motionless, and that the only course she could pursue with safety to herself was to go ahead. The remarks of Judge Nelson in the case of *The Rhode Island* are a sufficient answer to his claim. He says, "The pretext set up for exposing the *Naugatuck* to the hazard is, that the slowing or stopping the *Rhode Island* after she had passed Flood rock would greatly endanger her own safety and the safety of the lives of the passengers. The answer is, if this be admitted, it was her own fault that she was brought into the dilemma. The *Naugatuck* was seen in time to have avoided it. Neglecting to avoid it, subjects the *Rhode Island* to all the consequences that followed." And as there was no fault on the part of the sloop in this case—her keeping her course while close-hauled not being considered a fault—the *Empire State* must be holden responsible for all the consequences which followed the collision.

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The order of the court, therefore, is, that the libellants recover the damage which they have sustained by the collision, and that it be referred to a commissioner to ascertain and report what that damage is.