

Case No. 4,605. FAGAN ET AL V. THE PLUTO.
[N. Y. Times, April 24, 1857.]

Circuit Court, S. D. New York.

April 23, 1857.

COLLISION BETWEEN SAIL AND TOW—INCOMPETENT
NAVIGATOR—LOOKOUT—FAULT—TUG AND TOW NOT IN MIDDLE OF
STREAM.

- [1. A schooner in charge of an incompetent navigator, in coming about in the East river, sagged down upon a tow, and sustained the injuries complained of. It appeared that the schooner had no proper lookout at the time, and might have avoided the disaster by continuing her course before tacking. *Held*, that she could not recover.]
- [2. The mere fact that the tow did not keep as near the middle of the river as might be, as required by state law, did not render the tug liable, it not appearing that the failure to comply with the requirement caused or contributed to the disaster.]

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

[This was a libel by Denis Pagan and others, owners of the schooner Charles Hopkins, against the steamtug Pluto, for injuries sustained by collision. From a decree of the district court dismissing the libel, libelants appeal.]

Mr. Benedict and Mr. Malcolm, for appellants.

Mr. Bryan, for appellee.

NELSON, Circuit Justice. This libel was filed by the owners of the schooner Charles Hopkins against the Pluto, to recover damages for a collision in the East river. The wind was southwest and the tide ebb; the schooner was beating down the river on her larboard tack, and was crossing from the Brooklyn to the New York side, towards the foot of Jackson street; the Pluto was coming up the river on the New York side, with a heavy tow on her larboard quarter; she was ascending against the tide at a rate of speed not to exceed a quarter or a half mile an hour. The schooner came about nearly ahead of the tug, and sagged down upon her, causing the damage that occurred. The person in charge of her did not see the Pluto until he had come about, or was in the act of coming about. He might have run nearer the New York shore with safety before he tacked, and thus have avoided the collision. The tug stopped immediately, and seems to have done everything, under the circumstances, in her power to prevent the injury. It is apparent that the cause of it is attributed to the want of a proper lookout on the schooner. If the hands had seen the tug in time, the collision could have been easily avoided.

It is said that the Pluto was in fault in not being in the middle of the river, or as near as might be, regard being had to other vessels navigating it, as directed by the state law. But it does not appear that this omission led to the collision, or in any way contributed to it. It furnished no reason for the schooner's unnecessarily tacking about ahead of the

FAGAN et al v. The PLUTO.

steamer. This was gross inattention to duty on the part of the person in charge of the vessel. The schooner at the time was not in command of its ordinary master, but in charge of one temporarily engaged, and who was manifestly incompetent to navigate her at a place where skill and attention were indispensable.

The decree of the court below, dismissing the libel, we think is right, and should be affirmed.