

9FED.CAS.—68

Case No. 5,184.

THE GALATEA.

10 Ben. 211;<sup>1</sup> 14 Int. Rev. Rec. 20.]

District Court, S. D. New York.

June, 1871.

COLLISION IN HELL GATE—STEAMBOATS MEETING.

1. A steam-tug, with three barges loaded with coal fastened alongside, was going through Hell Gate eastward, on a flood tide, about half-past five o'clock on the morning of the 18th of December, 1869. She saw the lights of the G., a large propeller, coming westward, meeting her before she arrived at Negro Point, where the channel turns to the northward. She blew one whistle and was answered with one whistle. Both vessels had the proper lights, and the engines of both were stopped and reversed before the collision, which took place near Pot Rock, in the narrowest part of the channel, the vessels coming together nearly at right angles. The three barges were sunk by the collision: *Held*, that the steam-tug did not have too heavy a tow, and had a right to go through Hell Gate as she did, and went as far to the southerly side of the true tide as she could go, and was not in fault.

{See note at end of case.}

2. This being so, the G. was in fault, either in not stopping sooner than she did, or in not keeping to the northerly edge of the true tide.

{This was a libel by Frederick Robert and others against the steam propeller Galatea (the Providence & New York Steamship Company, claimants) for damages by collision.}

E. H. Owen and T. C. T. Buckley, for libellants.

J. H. Choate, for claimants.

BLATCHFORD, District Judge. As the steam-tug Vim, a propeller, with three barges, loaded with coal, in tow of her, was proceeding from New York, through Hell Gate, on a voyage to New Haven, Connecticut, at about 5½ o'clock A. M., on the morning of the 18th of December, 1869, she encountered the steam propeller Galatea, then on a voyage from Providence to New York, directly off Negro Point, and between that and Pot Rock. The barges were lashed side by side with the Vim. The barge on the port side of the Vim was the Pottsville. On the port side of the Pottsville was the barge C. J. Hoffman. On the starboard side of the Vim was the barge Reading. The Vim, the Reading and the Pottsville belonged to the libellants Robert and Gladwish. The C. J. Hoffman belonged to the libellant McWilliams. The coal on board of the Reading and the Pottsville belonged to the libellants Benedict, Pardee and Benedict. A collision ensued, which resulted in the loss of the three barges and their cargoes, and this suit is brought to recover for such loss.

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except as to the cargo of the C. J. Hoffman. The tide was at the middle of the flood, running with the Vim. It was not yet daylight, the night was clear and there was some moonlight. The Vim was 70 feet long and 17 feet wide. The barges were from 100 to 115 feet long, and carried an average of 300 tons of coal each. The Galatea was 245 feet long and 54 feet wide, and of 1,566 tons burthen. The starboard bow of the Galatea, a few feet abaft her stem, came in contact with the stem of the C. J. Hoffman, and the stem of the Galatea came in contact with the port bow of the Pottsville a few feet abaft the stem of the Pottsville. The Vim was not hit by the Galatea. Whether the Reading was hit by the Galatea is not clear. The barges projected ahead of the Vim. The Pottsville projected ahead of the C. J. Hoffman. As the result of the collision, the C. J. Hoffman and the Pottsville sank immediately, their bows being opened and their cargoes of coal being spilled out, as the water rushed in and their bows sank. The Reading got adrift, and was soon picked up by the Vim, and towed a short distance, but she was so injured, as the result of the collision, that she shortly sank.

The libel avers, that the Galatea saw the lights of the Vim when the Vim was opposite Astoria, and when the Galatea was on the east side of Ward's Island, and had not yet arrived at Negro Point; that, while the vessels were in these positions, the Vim blew one long whistle, for each Vessel to keep to the right; that such signal was answered by one long whistle from the Galatea; that, when the Vim had got just above Hallett's Point, the Galatea blew one long whistle, which was answered from the Vim; that the Vim continued her course with her helm as far to port as was safe; that the rudder of the Galatea worked imperfectly, through an accident to her steering apparatus, and her propeller and keel had sustained injuries, and she was unable to be properly navigated in that part of the river, in view of the tide and other dangers of that navigation; that, owing to such defects and the want of proper care and skill on the part of those engaged in navigating the Galatea, the collision occurred; and that it was caused by fault and negligence, or the want of ordinary care and skill, on the part of those engaged in navigating the Galatea, and not by the fault, negligence or want of care of those in charge of the tug or of the tow. The libel avers, that the collision took place at or about Pot Rock, and while the tug and her tow were heading about east by south.

The answer alleges, that the Vim and the barges drifted down upon the Galatea, and struck her when she was not moving towards them, but had stopped and was backing her engine, after perceiving the danger of collision; that the collision occurred not at Pot Rock but about abreast of Negro Point, very near the shore; that the barges struck the Galatea on her starboard side a little abaft her stem, and thereby turned her around with her stern towards the shore, and the full force of the tide bearing upon her starboard side, so that her headway was lost, and she was drifted backward by the tide; that the Galatea and the Vim saw each other while the Galatea was abreast of Ward's Island,

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before arriving at Negro Point, and while the Vim with her tow were abreast of Hallett's Point or nearly so; that, while the vessels were in these positions, the Galatea blew one long whistle, for each vessel to keep to the right; that the Vim answered by one long whistle; that the claimants have no knowledge of any signal, prior to the one first given by the Galatea and answered by the Vim when she was about abreast of Hallett's Point; that, after such answer by the Vim, the Galatea put and kept her helm to port and kept to the right, very close to the shore on the right or north, or northeast side, and as close to the shore as it was at all safe or practicable for her to keep, and was in such position until and at the time of the collision; that the Vim did not, after her answering signal, continue or keep her course to the right, with her helm as far to port as was safe, or in anywise; that there was ample room for her with her tow, had she continued her course to the right as she ought to have done, to pass the Galatea far to the southward of her, and without coming near her, but, instead of keeping to the right or the southward, the Vim, with her tow, came across very near to the north or northeast shore, on her left; and that, when the collision occurred, the Galatea was so close to the shore on the north or northeast, which was her right side, that, on the sheer or turn which was caused to her on her bow being struck by the barges, her stern actually touched the rocks on the shore. The answer also alleges, that the collision was wholly attributable to the Vim with her tow having gone to the left instead of the right; that her doing so was either wilful or gross mismanagement, or was owing to her having a tow heavier than she had strength or capacity to manage, and consequently, becoming unmanageable, and being drifted out of her course by the force of the tide; that, as soon as the fact that the Vim and her tow were drifting or coming out of their proper course, and towards their left, and that there was danger of a collision, was discovered or discoverable on board of the Galatea, she keeping as close as possible to the north or northeast shore, her engine was slowed and stopped, the proper movements for backing were made, and all possible steps and precautions were taken to avoid a collision; that it occurred owing to the Vim and her tow coming and being carried so far out of their proper course, and so close to the north or northeast shore which the Galatea was hugging, and could not be avoided by any action on the part of the Galatea; that

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the steering apparatus of the Galatea was not disabled, and her rudder did not work imperfectly, and she had not sustained injuries to her propeller or her keel so that she could not be properly navigated; and that the collision was not due to any fault, misconduct or negligence on the part of the Galatea.

A great portion of the testimony taken on the trial was devoted to two points—the question whether the Vim could, without great peril, have gone to the southward of Pot Rock and to the right of the true tide; and the question whether there was any difficulty in steering the Galatea, arising from injuries to her propeller, her keel and the support of her rudder, which she had sustained two days previously by striking a reef of rocks off Tenth street, New York, in the East river. The evidence satisfactorily establishes, that the Vim, with her tows, could not, at half flood, have properly, or without peril, gone to the southward of Pot Rock, or to the right of the true tide. It also establishes, that there was no injury to the steering apparatus, or rudder, or propeller, or keel of the Galatea, which impaired or affected the facility of steering her. The case is, therefore, on the libel, left to the general allegation therein of fault and negligence, and the want of proper care and skill, on the part of those engaged in navigating the Galatea.

The testimony on the trial altogether negatives the statements in the answer, that it was the striking of the barges against the starboard side of the Galatea that turned her around with her stern to the shore; and that her headway was lost because she was turned around with her stern to the shore, and because the full force of the tide then bore upon her starboard side; and that, on a sheer or turn caused to the Galatea by the striking of her bow by the barges, her stern actually touched the rocks on the shore. The evidence shows, that, when the Galatea had just passed Negro Bluff, she saw the lights of the Vim, across the land at Negro Point, the Vim being then about abreast of Flood Rock; that the Galatea then gave one whistle; that the Vim replied by one whistle; that the Galatea shortly afterwards rang one bell and slowed; that, her helm being amidships, she kept it so till she reached Negro Point, when she hove it hard aport; that the vessels continued to approach each other until they had arrived within 500 or 600 feet of each other, when, the Galatea seeing the Vim and her tows coming rapidly with the tide, and presenting the port side of the port tow to view, the Galatea's engine was stopped; that, shortly afterwards, the engine of the Galatea was reversed; and that, as soon as the back motion of her engine commenced, her wheel still being kept hard aport, her head began to fall off to the south of west, and continued to fall off more and more rapidly as the tide began to take effect on her starboard bow, until, by the time of the collision, the head of the Galatea had fallen off four or five points. Her pilot says, that he hauled up around Negro Point, by porting, to a little north of west. A falling off of from four to five points from that, would bring her head, at the time of the collision, to southwest or southwest by south. The course of the tide was about east. The heads of the Vim and her tows,

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and of the Galatea were at about right angles to each other at the time of the collision. This would make the Vim and her tows head, then, southeast or southeast by east. The master of the Galatea says, that the Vim and her tows headed about east-southeast, a variation to the east of from one to two points; and the pilot of the Galatea says, that the Vim and her tows headed south-southeast, a variation to the south of from two to three points. The evidence also shows, that the Galatea continued backing for some time after the collision, and that, drifting with the tide on her starboard side, she touched bottom finally to the eastward of Negro Point, with her stern. It is fully established, that it was the backing of the Galatea before the collision, and not the blow of the collision, which turned the Galatea athwart the tide; that she, a vessel 245 feet long was, before the collision, turned across the tide, so that she was at an angle to it of about 45 degrees, in a channel-way where the width of the tide where vessels go, between Pot Rock and Negro Point, is about 300 feet; that her headway was lost by her stopping, and by the force of the opposing tide, and by her backing, and not by her being turned around as the result of the backing, or by the effect of the tide on her starboard side; and that she did not touch any rocks through any effect produced on her by the collision.

The contention on the part of the Galatea is, that the Galatea was on the northerly edge of the true tide off Negro Point, and at the place where she began to back, and as far to her right as she could safely go; that she had left nearly the whole width of the true tide to her left, for the passage of the Vim and her tows; that the Vim and her tows came drifting down with the tide, on the northerly edge of the true tide, and directly in the course of the Galatea, in violation of the agreement made by the signal whistles, heading, indeed, to the eastward and southward, but making no progress in that direction, because the Vim had not power enough to control the load she was towing; that, before the Galatea began to back, a collision was inevitable; that if she had not backed, she would have struck the C. J. Hoffman about amidships on the port side of the latter, and would probably have destroyed the Vim herself, as well as all the barges; that the backing of the Galatea was a proper movement, and mitigated the force of the collision; that she would have been in fault,

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under the statute, if she had not reversed; and that, even if her backing was an error of judgment, it was not a fault, because it was a movement made in the moment of peril, to avoid a collision brought about by the fault of the Vim in keeping to the north, after she had agreed to keep to the south.

On the part of the libellants, it is contended, that the Galatea knew that the Vim could not pass to the southward of Pot Rock, and could not stop her headway when going with such a tide, and that the vessels would meet at about Pot Rock; that, therefore, the greatest caution was required on the part of the Galatea; that it ought to have been apparent to the Galatea, very soon after the Vim responded to her signal, that, if she kept on, merely slowing, she would meet the Vim at or near Pot Rock, in about the narrowest part of the tide-way; that, therefore, the Galatea, going against the tide, and so having control of herself, ought not merely to have slowed before reaching Negro Point, but ought to have stopped entirely before reaching there; that she could have safely done so; that, although her wheel was ported at Negro Point, it was so ported only to turn the Point; that such porting did not carry her to the northerly edge of the true tide; that she was not north of the middle of the true tide when she began to back; and that she was in fault in throwing herself across the tide by backing.

It is impossible to determine the question of the fault of the Galatea, without first considering the question of the fault of the Vim. The Vim had her proper lights set and burning. Her tow was properly made up and fastened to her, and it is shown to have been, in weight and burden, not equal to what she was in the habit of carrying safely through Hell Gate. She had a right to go through at half flood tide, and it was not unusual or improper to do so. If it required more care and caution than at any other stage of the flood tide, or than at slack water, that fact was or ought to have been known to the Galatea, and she knew, when she whistled, that the Vim was a tug with tows, coming with a flood tide that was running at the rate of seven knots an hour. When the Vim responded to the whistle of the Galatea, the engine of the Vim was slowed, and her helm and the helms of her barges were ported, and, soon afterwards, and when the position of the Galatea was seen, the engine of the Vim was stopped, and reversed. I think the weight of the evidence is, that the Vim and her tows were as far towards the southerly edge of the true tide as they could be required to go, in the dangerous and intricate navigation of the strait. If there was not room to the north for the Galatea to pass in safety, then it was the duty of the Galatea not to have allowed herself to meet the Vim where she did meet her. The Vim was going with a seven-knot tide and could not stop. The Galatea was a powerful steamer, going against the same tide, and could have stopped and remained in a line with the tide, at a point much further to the eastward, and where the channel was wider, and where she could have hauled to a further distance to the north, from the southerly edge of the true tide, and she could have refrained from presenting

her starboard side to the action of the tide. The fact that the Galatea was, at the time of the collision, heading about southwest, while the tide was running about east, and that the tide-way was about 300 feet wide, and that the Galatea was 245 feet long, and that the extreme port bow of the extreme port barge struck the starboard side of the Galatea as far forward on that side as about six feet abaft of the stem of the Galatea, is satisfactory evidence, to my mind, that the Vim and her tows were well over to the southerly edge of the true tide, and as far over as could be required of them. I can see no fault on the part of the Vim. This being so, the conclusion necessarily follows that the Galatea was in fault, either in not stopping sooner than she did, or in throwing herself athwart the tide to the southward or in not keeping to the northerly edge of the true tide, or in not keeping her stem to the north of west, or in all of these particulars.

There must be a decree in favor of the several libellants, with costs, with a reference to a commissioner to ascertain the damages sustained by them severally by means of the collision.

{NOTE. The cause was next heard on exceptions to the commissioner's report, which exceptions were overruled, and a decree entered for libellants for the sum of \$13,123.21 (Case No. 5185), and respondents thereupon appealed to the circuit court, where a decree was entered reversing the decree of the district court, and dismissing the libel (case not reported). On libellants' appeal, the supreme court reversed this decree, and remanded the cause, with directions to affirm the decree of the district court Mr. Justice Clifford, in delivering the opinion of the court, after remarking that the evidence was satisfactory that the two vessels came to a distinct and clear understanding, by their signals, that each should port its helm, held that the steam-tug took every necessary step to carry that understanding into effect, and that she was as near to Pot Rock as the character of the navigation would safely allow. Concluding, the learned justice remarked that, "in the light of the whole evidence, the court is clearly of the opinion that the propeller was wholly in fault, and that the collision was occasioned by the negligence and want of due care on the part of those in charge of her navigation." *Robert v. The Galatea*, 92 U. S. 439.]

<sup>1</sup> [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]