THE HANSA.

Case No. 6,038.
{7 Blatchf. 288.}[1]

Circuit Court, S. D. New York. June 11, 1870.[2]

COLLISION—STEAMSHIPS—CROSSING UNDER RISK OF COLLISION.

1. The rule, that, where two ships under steam are crossing, so as to involve risk of collision, the ship which has the other on her starboard side, shall keep out of the way of the other, enforced and applied.

{Cited in Clare v. Providence & S. S. Co., 20 Fed. 536; Meyers Excursion & Nav. Co. v. The Emma Kate Ross, 41 Fed. 828.}

2. Embarrassment by proximity to vessels at anchor is not an excuse for not observing such rule, where there is no justification for being in such proximity.

3. The not slackening of speed by the vessel bound to observe such rule, condemned; and the keeping of her course by the other vessel, approved.

{Cited in The City of Panama, Case No. 2,764; The State of Alabama, 17 Fed. 853; The Lepanto, 21 Fed. 669.}

{See The Albemarle, Case No. 135.}

In admiralty.

William Jay Haskett, for libellants.

Washington Q. Morton, for claimants.

WOODRUFF, Circuit Judge. The counsel for the claimants has argued this case with very great ability and skill. The rules of maritime law, which he urges with great zeal, are, for the most part, unquestionable. My examination of the testimony has brought me, however, to the same conclusion upon the facts which is stated with great clearness and force in the opinion of the district judge before whom the cause was tried below. {Case No. 6,036.} No additional testimony was taken in this court, and I do not think I should state the grounds of decision more satisfactorily if I were to discuss the evidence in detail.

It is not questioned that the Hansa was navigated in entire disregard of the rule which, when two ships under steam are crossing, so as to involve risk of collision, requires that the ship which has the other on her starboard side shall keep out of the way of the other. The master of the Hansa, from the moment he saw the Transporter off his starboard bow, was apprehensive of collision, and yet did absolutely nothing with a view to avoid it until the collision was inevitable, but continued to advance with undiminished speed, from six to nine miles an hour, according to the varying estimates of the claimants' own witnesses, he, as is justly to be inferred from his own testimony, relying upon an expectation, or at least trusting to a hope, that the Transporter would change her course.

The effort is ingeniously and zealously made to excuse the non-observance of the rule by the Hansa, by denying its applicability to her when she was greatly embarrassed by the

vicinity of numerous vessels at anchor, which it was necessary that she should avoid. That embarrassment is entitled to consideration, and, if the Hansa had done what she could under the circumstances, would have great weight, notwithstanding the doubt created by the conflict of testimony, as to whether near the place of collision there were any vessels which were a hindrance to her appropriate effort to avoid the Transporter by passing to the eastward of her. But no sufficient excuse can be found for her advancing among those vessels lying at anchor, if they were even as numerous as her master states, and attempting to pass the bow of the Transporter at a speed which her own pilot estimates at nine miles an hour, or at the speed of six or seven miles an hour, as her other witnesses judge, when she had the Transporter in full view, according to her master's own statement, for half a mile.

The excuse for not moving more slowly, and by that means more carefully, which her master states, is, that it was necessary that she should have the speed she maintained in order to have steerage way. But the pilot testifies that she was manageable at a speed of three miles an hour, and, in an ebb tide running three miles an hour in the opposite direction, it would be very extraordinary if the statement of the pilot were not correct It gave her practically a motion relatively to the water of six miles an hour, and there must be some very extraordinary reason if she could not have been safely steered with less than that. I am compelled to reject the excuse and to say, that if, instead of hoping that the Transporter would change her course, the Hansa had slackened speed, she might safely have picked her way among the vessels at anchor and passed safely to the eastward of the Transporter, and that it was her duty to do so. In short, the proof fails to satisfy me that there was any sufficient embarrassment to justify her in disregarding the rule. Doubtless, it was more convenient for her to take her usual course up and along the west side of the river. That was the most direct route to her berth at Hoboken, but such convenience must yield to rules, devised for general observance and to secure safety to others.

The suggestion is plausible, that the Transporter was easily managed, and readily turned to starboard or port, and that in circumstances of danger, instant and active effort should have been made by her. The rule is very well, but here, if I am right in my previous conclusion, the master of the Transporter saw and could see no reason on his part for not observing the rule which, while it required the Hansa to avoid the Transporter, required the Transporter to keep her course. When the peril became imminent, she appears to have done all that was possible to avert the consequences.

I am constrained to regard the fault as wholly on the part of the Hansa. The decree must, therefore, be affirmed.

[1] {Reported by Hen. Samuel Blatchford, District Judge, and here reprinted by permission.}

[2] {Affirming Case No. 6,036.}