

Case No. 6,317.

THE HECTOR.
THE WISCONSIN.

{4 Blatchf. 199.}¹

Circuit Court, S. D. New York.

Sept. 10, 1858.²

COLLISION—TOW.

Where a tow is under the exclusive command and direction of the master of a steam-tug which is towing her, her owners are not liable for damages caused by a collision occurring through mismanagement in the navigation of the tug.

{Cited in *The Atlas*, Case No. 633; *The Belknap*, Id. 1,244.}

{See note at end of case.}

{Appeal from the district court of the United States for the Southern district of New York.}

This was a libel in rem, filed in the district court, by the owners of the lighter *Republic*, against the steam-tug *Hector* and the ship *Wisconsin*, to recover damages for a collision that occurred in the East river, in October, 1855, near the foot of Dover street. The district court decreed for the libellants, against both the steam-tug and the ship {Case No. 1,756}, and the claimants of both vessels appealed to this court.

NELSON, Circuit Justice. I agree with the court below, that the tug was in fault, and liable for the damage done to the lighter and her cargo. But I cannot agree that the ship in tow is also responsible. She was lashed firmly to the tug on the larboard side, and was under the exclusive command and direction of the master of that vessel; and I do not see, upon principle, that her owners should be made liable for the mismanagement in the navigation of the tug, any more than the owners of cargo on board of the colliding vessel. The case is different where the tug is under the command of the master of the tow. In that case, it is but the substitution of steam power for sails, in the navigation of the vessel by the master. I had occasion to examine this question in the case of *The Express* {Case No. 4,596}, though the point was not directly involved in the decision. The decree below must be reversed as to the ship, and affirmed as to the tug.

{NOTE. From this decree the claimants of the tug appealed to the supreme court, and the libellants also appealed from so much of the decree as pronounced the ship not liable. The

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opinion of the court was delivered by Mr. Justice Clifford (24 How. [65 U. S.] 110), in which he held that whenever the tug, under the charge of her own master and crew, and in the usual and ordinary course of such an employment, undertakes to transport another vessel, which, for the time being, has neither her master nor crew on board, from one point to another, over waters where such accessory motive power is necessarily or usually employed, she must be held responsible for the proper navigation of both vessels. By their employment the master and crew of the tug do not necessarily become the agents of the owners of the tow; they are still responsible to the owners of the tug. The decree of the circuit court was affirmed.]

¹ [Reported by Hon. Samuel Blatchford, District Judge, and here reprinted by permission.]

² [Affirming Case No. 1,756 as to The Hector, and reversing it as to The Wisconsin. Decree of circuit court affirmed by supreme court in 24 How. (65 U. S.) 110.]