

Case No. 7,092.

[12 N. Y. Leg. Obs. 299.]

THE ISAAC NEWTON.

Circuit Court, S. D. New York.

Sept, 1854.¹

COLLISION—STEAMER AND SAILING VESSEL.

Held, that where a steamboat exculpated herself from all fault in a collision with a vessel under canvass, and it appeared that the collision had been caused entirely by a want of prudence and good seamanship on the part of the sailing vessel, the latter had no right to claim damages.

[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 by Jonathan Crockett, Archibald C. Spaulding, John Gregory, Christopher Dyer, and Nathaniel Dyer, owners of the schooner Hero, against the steamboat Isaac Newton (Isaac Newton, claimant), for damages caused by collision.]

E. C. Benedict and C. Van Santvoord, for libellant.

H. Cowles, for the steamboat.

NELSON, Circuit Justice. This libel was filed to recover the value of a cargo of flour and corn on board the schooner Hero, which was sunk by a collision with the Isaac Newton on the morning of July 17, 1850. The schooner had put out from her wharf early in the morning, but, there being very little wind, had made but very little progress, and was about three-quarters of a mile from the wharf, when the steamer, coming into her berth, struck the schooner, and sunk her. Judge Judson, in the district court, held that the steamer was not in fault, but that the collision was caused by the carelessness of those on board the Hero, in placing the schooner in the way of the steamer, and from that decree [case unreported] the libellants appealed.

1. I am unable to discover from the proofs any want of skill or diligence in the management of the steamboat, nor any ground for imputing fault to her in coming into her berth. I think it would be unjust to charge her with the consequences of the collision.

2. On the other hand, it seems to me there was a want of prudence and good seamanship on the part of the master of the Hero at that hour in the morning, and with the wind as it was, in not looking out sharper for the steamboat knowing, as he must, that she was expected every moment to arrive

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from Albany. It seems to me, with proper caution, the schooner need not have been in a position where a collision was unavoidable. I do not think, under the circumstances, the steamboat was bound to see the Hero, before the former came around the stern of a brig, and was entering between this and other vessels. Decision affirmed.

{NOTE. From this decision the libellants appealed to the supreme court, where the decree of the circuit court was reversed. 18 How. (59 U. S.) 581, opinion by Mr. Justice Curtis. The ground of reversal was that the general rule is for a sailing vessel, meeting a steamer, to keep her course, while the steamer takes the necessary measures to avoid a collision, and that it must be a strong case which puts the sailing vessel in the wrong for obeying the rule. It was held that the facts did not make this such a case. The attempt of the steamer in coming to her berth between certain vessels at anchor, without first ascertaining that the track was clear, was held to be culpable. Mr. Justice Daniel dissented.

{See Case No. 7,091.}

¹ {Reversed in 18 How. (59 U. S.) 581.}