

Case No. 7,248. THE J. C. GIBBES AND THE CAPRICCIO.  
THE E. W. GORGAS.

[4 Ben. 109.]<sup>1</sup>

District Court, S. D. New York.

April, 1870.

COLLISION AT THE ATLANTIC BASIN—TUG-BOAT AND TOW—SPEED—PART  
OWNER.

1. The tug Gibbes was towing the schooner Capriccio by a hawser out of the Atlantic Basin. The tug Gorgas was towing the canal boat Webster, lashed alongside, into the Basin. A collision occurred in the cut leading into the Basin, between the canal boat and the schooner. H., the owner of the Webster, filed a libel against the Gibbes and the schooner, to recover damages for the injury received by the Webster. S., the charterer of the Webster and carrier of her cargo, who was a part owner of the Gorgas, filed a libel against the Gibbes and the schooner, to recover damages for injury to the cargo. Z., the owner of the schooner, filed a libel against the Gorgas, to recover damages for the injury received by the schooner. *Held*, that the collision was caused by fault of the Gorgas in coming into the cut with too great speed, and in turning into it at so short a distance from the pier that she was prevented from seeing into the cut, and that the sound of her whistle was intercepted by the warehouses on the pier, and so was not heard on board of the Gibbes. The first two libels, therefore, must be dismissed, and the libellant in the third action must have a decree.
2. Whether S. could have recovered against the Gorgas, of which he was part owner, if he had libelled her, quere.

In admiralty.

T. C. T. Buckley, for Hurlbert and St. John and the Gorgas.

W. R. Beebe and C. Donohue, for Zadro and the Capriccio.

W. J. Haskett, for the Gibbes.

BLATCHFORD, District Judge. These three libels grow out of a collision which occurred in the cut leading from the Atlantic

Basin, at Brooklyn, into the East river, on the 6th of March, 1868, in broad daylight between nine and ten o'clock in the morning, on a clear day. The steam-tug J. C. Gibbes was towing the schooner Capriccio, by a hawser, out of the Atlantic Basin, through the cut, and the steam-tug E. W. Gorgas was towing the canal boat H. C. Webster into the basin through the cut, the Webster being lashed to the port side of the Gorgas. The Webster had on board over 7,900 bushels of corn. The Gorgas and the Webster were on their way from the iron elevator at the foot of Degraw street, Brooklyn, just above the Hamilton Avenue ferry slip, to a vessel lying at Laimbeer's store in the Atlantic dock. The Webster came into collision with the schooner, the former being struck at a point about sixteen inches abaft her stem, on her starboard bow, by the cutwater of the schooner. The effect of the blow was to crush in the Webster and open her, so that it was necessary, in order to save her from sinking in deep water, to beach her on Governor's Island, which was done. Hurlbert, as owner of the Webster, sues the Gibbes and the schooner for

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\$1,500 damages to the Webster. St. John, as charterer of the Webster at the time, and the carrier of the corn with which she was laden, valued at \$11,000, sues the Gibbes and the schooner for \$3,500 damages to the corn. Zadro, as owner of the schooner, sues the Gorgas for \$500 damages to the schooner. It is to be noted that neither Hurlbert nor St. John sues the Gorgas, nor does Zadro sue the Gibbes. St. John was part owner of the Gorgas. After a careful examination of the evidence, which is very voluminous, I have come to the conclusion that neither the Webster, nor the Gibbes, nor the Capriccio, was at all in fault in this collision, but that it was caused wholly by the fault of the Gorgas. She went down, on a strong ebb tide, at too great a rate of speed, considering the closeness of her proximity to the western pier of the basin and the short turn she would have to make to enter the cut. The warehouses erected on the pier not only prevented her whistles from being heard by the Gibbes, but also prevented her from seeing the Gibbes and the schooner, until it was too late for her to control her course and speed so as to avoid the collision. The same cause that prevented the whistles of the Gorgas from being heard by the Gibbes would doubtless have prevented any whistle from the Gibbes from being heard by the Gorgas. At all events, on all the evidence, I am unable to hold that the failure on the part of the Gibbes to whistle was a fault that contributed to the collision. The Gibbes was going at a very slow speed, and her tow had barely entered the cut, when the Gorgas came around the upper outer corner of the cut from the East river, at great speed, swept along by a strong ebb tide, and was carried by her impetus so far over, that, in spite of all her

efforts by backing her engine, she barely grazed the Gibbes and dashed the starboard bow of the Webster against the stem of the schooner. As the Webster was on the port side of the Gorgas, and the Gorgas herself was not struck by the schooner, she must have carried herself and the Webster in between the Gibbes and the schooner. There is no evidence of any sheering on the part of the schooner. It was very reckless navigation to go down, in such a tide, at such speed, so close to the pier, with the view into the cut and basin obstructed. Prudence, and a due regard to her own safety and that of vessels coming out of the basin, required the Gorgas, with the tide and her speed such as they were, to go out further into the East river and head into the cut from a point where she could have some view into the cut, and could be certain that the sound of her whistles would not be intercepted by the warehouses. As Hurlbert has not sued the Gorgas, and as the Gibbes and the schooner were not in fault, his libel must be dismissed, with costs. St. John has not sued the Gorgas, even if he could have recovered against her, inasmuch as the evidence shows that he was part owner of her and was on board of her at the time. His libel must be dismissed, with costs. There must be a decree in favor of Zadro, with costs, with a reference to compute the damages sustained by him.

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