

## THE MISSISQUOI.

[8 Ben. 6.]<sup>1</sup>

District Court, E. D. New York.

Jan., 1875.

COLLISION—STEAMBOAT AND SMALL  
BOAT—RIGHT OF WAY—PLEADING.

1. A man in a small boat saw a steamboat approaching him, two or three hundred feet away. He alleged that the steamboat came on without slacking speed and struck his boat before he had time to get out of the way; and he filed a libel to recover for the damage to the boat. *Held*, that, on this libel, which conceded the obligation of the small boat to get out of the way of the steamboat, if she had time, the question was whether she did have time.
2. As the libel stated that the steamboat was two or three hundred feet away when she was seen, the small boat did have time to get out of the way, and the libel must be dismissed.

[Cited in *The Bay Queen*, 42 Fed. 272.]

In admiralty.

Beebe, Wilcox &amp; Hobbs, for libellant.

Charles E. Crowell, for claimant.

BENEDICT, District Judge. This action is brought to recover for the destruction of a small boat which was crushed between a canal-boat, lying alongside the Columbia dock, and the propeller *Missisquoi*. The statement of the libel is, that the propeller was seen approaching when 200 or 300 feet distant, and then was hailed, but that she came on without slacking her speed and struck the small boat before the man in the boat had time to get the boat out of the way.

Upon this libel, which concedes the obligation of the small boat to get out of the way of the approaching tug, if given time to do so, the question is whether the libellant did have time to pull Ms boat out of the way of the propeller, after the propeller was seen by him to be approaching. The weight of the evidence is that

ho had such time. Indeed, this may be said to appear on the face of the libel, as it is quite manifest that a small boat with a man in it could be pulled the few feet necessary to take her out of the danger of being crushed between the boats, sooner than the propeller would move the 200 or 300 feet she is stated in the libel to have been distant, when seen and bailed by the libellant. The libel is dismissed with costs.

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

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