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Case No. 10,121. FEDERAL CASES
BOOK 18.

A COMPREHENSIVE COLLECTION OF
DECISIONS OF THE CIRCUIT AND DISTRICT
COURTS OF THE UNITED STATES FROM
THE EARLIEST TIMES TO THE BEGINNING
OF THE FEDERAL REPORTER. (1880.)
ARRANGED ALPHABETICALLY BY THE
TITLES OF THE CASES.

N. B. Cases reported in this series are always cited herein by their numbers. The original citations can be found when desired through the table of cases.

18FED.CAS.—1

THE NEREUS.

{3 Ben. 238.}¹.

District Court, S. D. New York.

May, 1869.

COLLISION IN EAST RIVER—STEAMER AND
SCHOONER—RUNNING OUT TACK.

1. Where a schooner was beating through the East river, and went about without observing the approach of a large propeller, and she might have gone farther on before going about, and, after running about four lengths on such new tack, she struck the side of the propeller, 32 feet from the stern, with her bowstrip, head on, her master having done nothing, after she went about, to avoid the blow, and the propeller, which was going 8 or 9 knots an hour, having neither slowed nor stopped nor sheered: *Held*, that the schooner was in fault in coming about without heeding the propeller, and when she could have kept on some distance farther.
2. She might have slacked up in the wind till the propeller got by, or have fallen off when on her new tack.
3. If the propeller had slowed or stopped, she would probably have struck the schooner, and that she had not time to sheer, and was not in fault.

{Cited in *The Iron Chief*, 53 Fed. 511.]

In admiralty.

Piper & Foster, for libellants.

R. D. Benedict, for claimants.

BLATCHFORD, District Judge. This is a libel for a collision which occurred about 11 o'clock, A. M., on the 24th of November, 1865, between the schooner Connecticut and the steam propeller Nereus, in the East river, off Twentieth street in the city of New York. The schooner was bound from Elizabethport, New Jersey, to Bridgeport, Connecticut, and was beating up the East river, against a strong breeze from the north northeast, the tide being strong flood. The Nereus was a large steam propeller, bound in the same direction with the schooner. The schooner, while on her starboard tack, approached near the New York shore, and came about to her port tack, and her sails filled, and she gathered way on her port tack, and had proceeded a distance of from two to four of her lengths on that tack, when her bowsprit struck the port side of the Nereus at a point 32 feet forward of the stern-post of the latter. The effect of the collision was to break the bowsprit of the schooner, and start her foremast and bring down her mainmast, and do other damage. The Nereus had not, before the collision, slackened her speed, or stopped, or changed her course. The defence on the part of the Nereus is, that the schooner came about to her port tack prematurely and negligently, and before she had run out her starboard tack as far as, in view of the approach of the Nereus, she should have done, and that, if she had held her starboard tack but a very short time longer, or, even if, after getting under way on her port tack, she had, on the approach of the Nereus, luffed up into the wind and held her jib away, the Nereus would have passed without colliding; and the fact that the Nereus was going at a speed of from 8 to 9 knots an hour, and would have passed over the 32 feet necessary to clear the schooner in less than 2 seconds, is urged to show that, under the

circumstances, the schooner is wholly responsible for the collision. I think this defence is made out Hays, the master of the schooner, who was at her wheel, testifies, that he did not see the Nereus until after he had got about upon his port tack, and that then he saw her under his boom, ahead of him. He had his foresail, mainsail and jib set. He says that he had gone not more than four lengths of his vessel on that tack before the collision took place. Turney, the mate of the schooner, who was forward on her deck, says that he did ² not see the Nereus until she was from 20 to 25 rods off, but that he saw her before the schooner's helm was put up to go about, and before he let go the jib to go about, and that he saw her over the port side of the schooner. The schooner kept her course, on her new tack, without changing, up to the moment of collision, and made no attempt to luff or to pass under the steamer's stern. The master of the schooner attempts to excuse his not luffing, by saying that he had not way enough on his vessel. But, in any aspect, the schooner was in fault. It is clear that she went about without paying any heed to the Nereus, and, on the evidence, I am satisfied that she could have gone a sufficient distance further on her starboard tack to have enabled the Nereus to pass through the 32 feet in question, and that it was negligence in her not to do so. If she had sufficient steerage way on, upon her port tack, to either luff into the wind, or let her sheets go and fall off, it was her duty to have attempted to do so. If she had not sufficient steerage way to do so, as is claimed by her master, it was because she came about negligently, without paying any attention to the Nereus. On the testimony of Turney, her mate, there was no difficulty, after he discovered the Nereus, in letting the schooner shake in the wind, until the Nereus should have time to pass. I see no fault in the Nereus. If she had slackened her speed, or stopped her engine and reversed, when the schooner came about, she would

undoubtedly have struck the schooner square on her starboard side, and probably have sunk her; and there was no time for her to sheer in either direction with any chance of advantage, with the strong flood tide that was running.

There must be a decree dismissing the libel, with costs.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]

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