

TOTTEN V. THE PLUTO.

[N. Y. Times, May 25, 1852.]

District Court, S. D. New York.

1852.

COLLISION—EFFECT OF SWEARING TO
PLEADINGS—CONFLICTING
TESTIMONY—FAULT.

This was an action brought by [Richard Totten], the owner of the sloop Delaware, for damage occasioned by a collision with the steamboat Pluto, near the Battery. It appeared that the steamboat was bound from the North to the East river, with a raft in tow, and the sloop was bound from the East river to Jersey City; the wind blowing from the east, and the tide running ebb. The testimony offered by the respective parties failed to sustain the allegations of the libel and answer, but contradicted them in material points.

BY THE COURT (BETTS, District Judge). The libel and answer in admiralty being put in on the oath of each of the parties, his adversary is entitled to take the assertions or admissions pertinent to the issue as conclusive evidence against the party making them. Neither can contradict by proof the averments set forth in his pleading, and his only relief against misstatement of facts so made is to apply for leave to amend before going to trial. The answer in this case, containing the statement that the steamboat was in motion, precludes the claimants from denying that fact, and the libelant was not required by law to be prepared with testimony to rebut any evidence produced on the hearing by the claimant, to show a different state of facts. The statements of the witnesses for the libelant, as to the manner of the collision, are contradicted by witnesses for the claimant, preponderating both in number and intelligence, as well as opportunity to observe the accident, and show that the collision was occasioned

by no fault on the part of the steamboat, but by the negligence of those in charge of the sloop, in luffing up so as to bring their vessel in contact with the raft. Libel dismissed, with costs.

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