

THE WESTERLAND.  
THE C. H. VALENTINE.

*District Court, S. D. New York.* July 3, 1885.

COLLISION—HARBOR REGULATIONS—IMPROPER  
ANCHORAGE—RUNNING INTO OBVIOUS  
DANGER.

Where the schooner C. H. V. anchored nearer the Jersey City shore than the harbor regulations permitted, and in a situation that involved clear and obvious danger of collision upon the backing out of the steamer W. in the strong ebb-tide, and the schooner, being notified in time and requested to drop astern, neglected to do so, though she might have done so without difficulty, and the steamer thereupon backed out, and a collision ensued, *held*, that both were in fault, and the damage and costs were divided; the schooner, for not dropping astern after seasonable notice; the steamer, for running out into an obvious danger, instead of first procuring the harbor master to enforce the regulations, or offering to assist the schooner astern.

In Admiralty.

*Jas. K. Hill, Wing & Shoudy*, for libellant Curtis and the schooner C. H. Valentine.

*Biddle do Ward*, for Randle and the steam-ship Westernland.

BROWN, J. The above are cross-libels brought in behalf of the respective owners of the schooner Valentine, and of the Belgian steamship Westernland, to recover the damages sustained by each, arising from a collision which occurred in the North river in the afternoon of December 13, 1884, about opposite Morris street, Jersey City, some 200 yards from the shore. The schooner was at anchor, and the steamship, in backing out with the aid of tugs in the ebb-tide, was carried down against the schooner, so that the bows of the latter struck the port quarter of the steamer, doing some injury to both. My conclusions of fact are as follows:

1. The schooner was at anchor at considerably less than the required distance of 300 yards from the Jersey shore; probably less than 200 yards.

2. The tide was strong ebb; there had been a freshet in the river, and the current ran down all day.

3. The mate of the schooner, who was on board, received several timely warnings of the necessity of dropping down the stream, in order to make room for the steamer to come out at her appointed time. There was no difficulty in the schooner's dropping far enough astern to be out of danger, had the mate been disposed to do so. Measures for this purpose were not taken until some time after the steamer had started, and the collision was seen to be impending. The schooner had plenty of spare cable; and had attention been given to the steamer, even when she started, there was still time to have dropped astern, out of the way of danger. The schooner must therefore be held liable for anchoring inside of the prohibited limits, and in a place of danger; 704 and after repeated notice of the necessity of moving, for having neglected the means of doing so that were at her command, and persistently remaining in the way of the *Westernland*.

4. It was not customary for the steamer to come out upon the ebb-tide. The difficulty of holding her up against the strong ebb was well known, and the danger of collision with the schooner was perceived and understood by all who were engaged in taking the steamer out. In this situation it was not enough for the steamer merely to give notice to the schooner, as she certainly did, in ample time. Although the schooner was negligent, and in an improper place, the steamer had no right either to run her down recklessly, or to move out in a way that, as was perceived beforehand, was almost certain to result in collision. I do not doubt that in the act of backing out, and in the working of the tugs, all was done by the steamer that was practicable to be done to keep her up; but she was not justified in

starting until her way was free from obvious probable danger. She should first have proffered aid to move the schooner, and if that were not accepted, she should have applied to the harbor master to enforce the regulations. The paramount duty of vessels to avoid collisions by all reasonable and practicable means must be inflexibly enforced.

I must therefore hold the steamer also in fault. The result is that the damages must be divided, and a reference ordered to compute the amounts if the same are not agreed upon. There being cross-libels, and both held in fault, the costs will be also divided.

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