

THE MARTHA BROWER.¹

District Court, D. Massachusetts. May 4, 1886.

1. COLLISION—CHANGE OF COURSE—DEFECTIVE
LOOKOUT—CONFLICTING
TESTIMONY—PRESUMPTIONS ARISING FROM
COMPARISON OF VESSELS.

The schooner C. collided with the schooner M. The former was a small fishing vessel; the latter, a large coaster. At the time of the collision the weather was clear, the wind light, and blowing steadily from the southward. At the time of sighting each other the vessels were sailing on nearly parallelines; the course of the C. being S. E. that of the M., N. W. by W. The speed of the C. was six knots; that of the M., three knots. The former was close-hauled on the starboard tack, while the latter was on the port tack, with the wind free. The testimony on the part of the C. was that when they first sighted the green light of the M. it bore from two to three points on their port bow, and was distant about three-quarters of a mile; that shortly afterwards both lights became visible, and that the M. continued to come directly on to the C., and struck the latter on her port side. It is further asserted on the part of the C that during all of this time her course remained unchanged: The testimony on the part of the M. is that when they first sighted the red light of the C. it bore two points on their starboard bow, and was distant 514 about three-quarters of a mile; that the helm of the M. was ordered hard a-port, but that instead of a red a green light appeared on their port bow, whereupon the helm of the M. was starboarded; that shortly afterwards the red light again appeared crossing their bow, and rendering a collision inevitable. Held, that the case having been presented on both sides upon the theory that one or the other of these maneuvers actually happened, the probabilities point to the conclusion that the C. was the guilty vessel.

2. SAME—PRESUMPTIONS ARISING FROM A
COMPARISON OF THE CHARACTER AND
MANAGEMENT OF THE TWO VESSELS.

The circumstance that the master of the M., an experienced mariner, was in charge of the deck; that he had under him a sufficient watch, a competent lookout, and a capable helmsman; and that the approach of the C. was plainly

seen, renders it improbable that under such circumstances the M. would have first kept off two points and then luffed eight points. The circumstance that the master of the C. was below, and did not come on deck until just before the collision; that the lookout, a lad of 18, and the wheelsman, were the only people on duty; and that neither of them had been placed in charge of the vessel, or had orders how to act in case of emergency, cannot be disregarded. A comparison of the character, speed, and management of the two vessels renders it much more likely that the C. was guilty of the wrong maneuver than the M. This presumption is not rebutted by the testimony of the master of the C. with regard to the rudder of the M., as seen by him after the collision.

3. SAME—NEGLIGENT LOOKOUT—FRIGHT OF HELMSMAN.

The collision arose undoubtedly from the failure of the lookout on the C. to see the light of the M. until she was close aboard. The change of course followed as the result of the fright and confusion of the man at the wheel.

Libel by the owners of the schooner *Cyrena Ann* against the schooner *Martha Brower*, to recover the loss sustained by a collision between the two vessels.

W. W. Dodge, for libelants.

C. T. Russell, Jr., for claimants.

NELSON, J. The *Cyrena Ann*, a small fishing schooner of 57 tons, belonging to Portland, Maine, left Gloucester on the morning of August 5, 1885, for a mackerel trip in Barnstable bay. At 8 P. M. of the same day she was 12 miles S. E., by E. from Minot's light, close hauled on the starboard tack, steering S. E., the wind being southerly, light, and steady; the evening clear and fine; her speed six knots. The *Martha Brower*, a three-masted schooner of 612 tons register, belonging to Somers' Point, New Jersey, was on a voyage from Philadelphia to Boston, with a full cargo of 914 tons of coal, and drawing 15 feet of water. She was sailing on the port tack, with the wind free, her course N. W. by W., and her speed three knots. In the collision the *Martha Brower* struck the *Cyrena Ann* head on, a little forward of the port beam,

cutting into the main hatch, and the latter filled and sunk in half an hour. The Martha Brower suffered the loss of her jib-boom and some of her forward sails and rigging, but was otherwise uninjured. The account given of the collision by Capt. Thompson, of the Martha Brower, in which he is corroborated by all the men on deck, is as follows: At about 8 o'clock, the starboard watch, consisting of the master, the second mate, and two able seamen being on deck, the master in charge, the lookout reported the red light of the Cyrena Ann two points on the starboard bow, three-quarters 515 of a mile away. The master, after examining her with his glasses from the starboard quarter, and judging her by her sails to be heading S. E., ordered the helm to be put hard a-port. He then stepped over to the other side of the deck, expecting the light to appear over the port bow, as would have happened if the other vessel had kept her course; but not seeing it, he stepped back to leeward; and saw the approaching vessel's green light, and then ordered the helm to be steadied. The Cyrena Ann then suddenly sprung her luff, showed her red light, and crossed under the bows of the Martha Brower, thus causing the collision. On the side of the Cyrena Ann, the story of the collision, as told by her lookout and the man at the wheel, is this: The green light of the Martha Brower was first seen between two and three points on the port bow, three-quarters of a mile off, and then both her lights became visible in the same direction, indicating that she was keeping off. The next seen of her was that she was coming directly into the Cyrena Ann on the port side, the Cyrena Ann in the mean time having made no change of course whatever.

It is obvious, from the relative positions of the two vessels, that either the Martha Brower, after keeping off two points, as it is agreed she did, luffed; or that the Cyrena Ann, instead of keeping her course as she ought to have done, having the right of way,

first kept off, and then luffed across the bows of the Martha Brower; and the case was presented on both sides upon the theory that one or the other of these maneuvers actually happened. The question is, which side is to be believed? It seems to me that all the probabilities of the case point to the conclusion that the Cyrena Ann was the guilty vessel. The Martha Brower was a large, deeply-laden vessel, drawing 15 feet of water, with a valuable cargo on board, approaching Boston in the track of all southern and eastern commerce. She was in charge of her master, a seaman of long experience in coastwise navigation, with a watch of three men on deck, with one able seaman on the lookout and another at the wheel. She was proceeding at a low rate of speed, in a light wind, against a strong ebb-tide. The approach of the Cyrena Ann was plainly seen. That, under such circumstances, she either would or could have first kept off two points, and then luffed eight points, is extremely improbable. On the other hand, to the Cyrena Ann, a small fore and aft fishing schooner, without cargo, nearly or quite close-hauled, with all sails set and going with the tide, at twice the speed of the Martha Brower, such a change of course was not impossible. The only men on deck were the lookout, who was a lad 18 years old, and the man at the wheel. Neither of them had charge of the vessel, and they had received no orders how to act in case of an emergency. The skipper and the rest of the men were below. The lookout, some time before the collision, went below to call the skipper, who came on deck just as the collision happened.

Comparing the character and, management of the two vessels, it is 516 much more likely that the Cyrena Ann was guilty of the wrong movement than the Martha Brower. The depositions of the two men on deck on the Cyrena Ann are by no means satisfactory. They indicate great ignorance, or else want of

truthfulness, and are untrustworthy. The accident arose, undoubtedly, from the failure of the lookout of the Cyrena Ann to see the light of the Martha Brower until she was close aboard, and the change of course followed as the result of the fright and confusion of the man at the wheel.

The skipper of the Cyrena Ann testifies that after the accident he took a boat, and rowed under the stern of the Martha Brower, and found her rudder turned hard to port. Great reliance is placed on this fact by the libelants. But the collision itself would have the effect to throw the Martha Brower's stem to port, and the rudder would naturally follow the movement of the stem in the same direction. It might also have been changed in the efforts to back off. The fact is not sufficient to overcome the testimony from the Martha Brower that her helm was steadied, and the other strong presumptions in her favor.

Libel dismissed, with costs.

¹ Reported by Theodore M. Etting, Esq., of the Philadelphia bar.

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