

THE ANNEX NO. 3.  
HOGG *v.* THE PENNSYLVANIA ANNEX NO. 3.

*Circuit Court, E. D. New York.*

July 5, 1888.

COLLISION—FOG—IDENTITY OF VESSEL.

“On the evening of February 6, 1884, a vessel collided with the steamer *Western Texas*, which was lying at pier 9, East river; but, owing to the darkness and a thick fog which prevailed at the time, it was impossible to distinguish clearly the boat which did the damage. At about that time, on the same evening, the *Pennsylvania Annex No. 3*, on her way from Brooklyn to Jersey City, was in collision with some object in the vicinity of piers 2 or 3. Suit was brought against *Annex No. 3* for the damage sustained by the *Western Texas*. The claimants denied the identity of the colliding vessel with the *Annex* boat. *Held*, on the evidence, that the libelant had not proved that the damage in question was done by *Annex No. 3*, and that the libel should be dismissed.

In Admiralty. On appeal from district court. 27 Fed., Rep. 516.

*Evarts, Choate & Beaman*, (*Treadwell Cleveland*, of counsel,) for appellant.

*Goodrich, Dedy & Goodrich*, and *R. D. Benedict*, for appellee.

BLATCHFORD, Justice. In this case I find, as a fact, that the libelant has not established by sufficient proof the allegation of the libel that the steam-boat or ferry-boat known as the “*Pennsylvania Annex Boat No. 3*,” on the occasion mentioned in the libel, ran into and upon the steam-ship mentioned in the libel, and then called the “*Western Texas*,” and caused damage and injury to her. On the foregoing fact I find, as a conclusion of law, that a decree must be entered dismissing the libel, with costs to the claimant in the district court, taxed at \$401.82, and with costs to it in this court, to be taxed.

The objections of the libelant to the attempt to show by the witness *Rose*, on his cross-examination, statements alleged to have been made by *Rivers* to *Rose*, and to the attempt to show by the witness *Rose*, on his cross-examination, that *Rivers* was untruthful, are sustained. All the objections of the claimant to the admission of evidence, set forth in the paper submitted on his behalf to the court; are overruled.