

infringement of letters patent, by reason of the use of the property. *Wanzer v. Truly*, 17 How. 584, 585; *Krumbhaar v. Birch*, 83 Pa. St. 426; *Geist v. Stier*, 134 Pa. St. 216, 19 Atl. Rep. 505.

Finally, the general allegations, without further specification, that the plaintiff "has not complied with its contract," and that the defendant "has already been put to great delay and exposure and damages to the amount of ten thousand dollars," are altogether too vague, indefinite, and uncertain, as the authorities cited at the opening of this opinion demonstrate. The court below was entirely right in holding that the affidavit of defense was insufficient, and in entering judgment for the plaintiff.

Judgment affirmed.

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THE ROBERT B. KING.

THE MARY LYMBURNER.

(District Court, D. Massachusetts. May 31, 1892.)

**COLLISION—SAIL VESSELS BEATING—DUTY TO RUN OUT TACK.**

Two schooners were sailing in the same general direction, closehauled on the port tack. The swifter vessel, the K., passed the other, the L., to leeward, and then came about on the starboard tack, and was struck before she had fairly gathered headway. There was sea room enough for the K. to have continued further on her port tack. *Held*, that the L. had the right to assume that the other vessel would beat out her tack, and that for her failure to do so the K. was liable.

In Admiralty. Cross libels for collision.

*Frederic Dodge and Edward S. Dodge*, for the Mary Lyburner.

*Thomas J. Morrison*, for the Robert B. King.

NELSON, District Judge. These cases are cross libels for collision between the schooner Robert B. King and the schooner Mary Lyburner. The collision occurred on the afternoon of December 12, 1891, near Bishop and Clerks light, on Nantucket shoals. The weather was fine. They were both small coasting schooners, laden with lumber, with high deck loads, and were bound to the westward. They were running in the same general direction, with all lower sails set, closehauled on the port tack, and were beating into Hyannis harbor against a head wind for shelter, the King being to the leeward. The Lyburner was going about five knots. The King was sailing faster than the Lyburner, and having passed her to leeward, came in stays to go about on the opposite tack, thereby ranging across the bows of the Lyburner and getting directly in her course. After she began to fill away and before she had fairly gathered headway, she was struck by the Lyburner with a square blow at the main rigging on the port side. Upon these facts the conclusion is inevitable that the collision was caused by the King's luffing across the bows of the Lyburner in such close proximity as to render it impossible for the Lyburner to avoid the collision by any change of course.

The claim of the King is that she had passed the Lymburner from a quarter to half a mile before she began to make her tack. But all the circumstances of the case point the other way. The evidence on the part of the Lymburner is that the coming in stays by the King was immediately seen by those in charge of the Lymburner, and her helm was instantly put hard up, and her mainsheet let go, in the hope of causing her to fall off and go under the stern of the King, which was the only possible way of avoiding or lessening the force of the impending blow, and though the Lymburner fell off somewhat, yet there was not time or room to go clear. I am satisfied that this is a correct statement of what occurred, and that the claim of the King that there was sufficient room is wrong. The King further claims that she was then getting into shoal water, and was obliged to go about for her own safety. This belief of her master was undoubtedly the reason of his going about when he did, but he was mistaken. There was ample room for her to proceed much further towards the shore without danger. Her master lacked in experience and was unacquainted with the navigation at this point, and this accounts for the disaster. The men on the Lymburner were familiar with the locality, and had the right to assume that the King would run out her course. The change by the latter was sudden and unexpected, and was without excuse. The libel against the Lymburner is dismissed with costs, and in the libel against the King there is to be a decree for the libelants. Ordered accordingly.

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THE GENERAL G. MOTT.

THE LAURA B.

THE LENA.

THE HOWARD SMITH.

DEMARIS *v.* THE GENERAL G. MOTT *et al.*

(Circuit Court of Appeals, Third Circuit. May 24, 1892.)

**COLLISION—RIVER NAVIGATION—PROPER SIDE OF CHANNEL.**

Two steam tugs, the L. and the M., each with a tow, approached each other nearly head on, by night, in the Delaware river, and each discovered the approach of the other when about a mile apart. Signals of one whistle were exchanged when the vessels were about one-half a mile apart, and both ported their helms. The court found, on conflicting evidence, that the M. was on the proper side of the channel, and could not have gone further inshore, owing to the presence of anchored vessels; that the L. either had gone too far towards the wrong shore before porting her helm, or that she did not port it sufficiently,—and hence held that for the collision between the two tows the L. was solely in fault.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

In Admiralty. Libel by Charles Demaris, master of the tug Laura B., and bailee of the barge Lena and her cargo, against the tug General G.