

"the insurers." Both instruments are to be construed together. When thus read, they contain a promise by the insurers that they will cover loss when using and navigating the ports and waters enumerated in the original policy, and, when using the port and harbor of Charleston, as far as the Jetties, but will not cover loss on trips either way between Norfolk and Charleston. The district judge, in his opinion, points out a sufficient reason for thus excepting a trip between the two places named, although part of that trip might lie through waters otherwise covered:

"The conditions involved in the preparation and the equipment of the tug for the prosecution of a trip between Norfolk and Charleston would necessarily be quite different from her equipment for river or harbor or inland business. The liability of the tug to accidents while prosecuting such a trip might be greater, not merely when on the high seas, but at all stages of the voyage."

We concur with the district judge in the conclusion that the exception expressed in the rider is clear and unambiguous; and, as the loss happened on the excepted trip, the libel was properly dismissed. Decree of district court affirmed, with costs.

THE FAIR WIND.

REED v. NEW YORK, N. & H. STEAMSHIP CO., Limited.

(Circuit Court of Appeals, Second Circuit. December 3, 1894.)

No. 21.

ADMIRALTY—COLLISION—EVIDENCE.

Testimony of experts as to the angle at which a collision between two vessels must have occurred, based upon examinations of the vessels made after the accident, is not sufficient to warrant a reversal of a finding of the trial judge based upon testimony of eyewitnesses of the collision.

Appeal from the District Court of the United States for the Eastern District of New York.

This was a libel by the New York, Newfoundland & Halifax Steamship Company against the schooner Fair Wind (Edward P. Reed, claimant) for damages for collision between said schooner and libellant's steamer Portia. The district court rendered a decree for the libellant. Claimant appeals.

William W. Goodrich, for appellant.

Wilhelmus Mynderse, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

LACOMBE, Circuit Judge. The collision happened between 10 and 11 o'clock on the night of July 30, 1892, in Long Island Sound, near Eaton's Neck. The Portia, a steamer of 731 tons, and 220 feet long, was eastward bound, on a course E. by N. 1/2 N. The Fair

Wind, a schooner of about 90 tons, and 100 feet long, was sailing on a W. by S. course, with her booms to starboard. The wind was about E., or E. by N., and the night dark and overcast, with occasional rain squalls. The district judge has discussed the evidence at some length, and held the schooner responsible on the ground that she did not hold her course, and we see no reason to reverse his decision. The testimony is very conflicting, and no theory will reconcile the statements of the witnesses from both sides. The schooner's bowsprit brought up on the port bow of the steamer, and the angle at which the vessels came together is the material point in the case. If they came together at right angles, the conclusion reached by the district judge—namely, that, to get into such relative positions from their former headings, the schooner must have luffed—is fair and reasonable. His finding that they struck at right angles controlled his decision of the case, and the libellant has sought, by new proofs taken in this court, to secure a reversal of that finding. Such new proofs comprise a photograph and a drawing of the schooner's broken bowsprit, made long after the collision, and the opinion of a ship carpenter as to the indications which its appearance affords. The libellant has sought to meet this by calling a witness who surveyed the hole stove in the steamer's bow, to describe it and give his opinion as to the angle of the blow which made it. Such evidence, however, is hardly of a character to warrant a reversal of the findings of the district judge, when several of the eyewitnesses of the collision, including the mate of the schooner, testify that the vessels came together substantially at right angles, and no witness from either vessel testifies to the contrary. Although the night was dark and rainy, the atmospheric conditions were not such as to require the steamer, navigating in the wide water where she was, to reduce speed, under the rules as they then stood. She was running $8\frac{1}{2}$ knots an hour. Lights were not visible as far as they might be on a clear night, but still, so far as the proof shows, they could be seen at sufficient distance to avoid them when running at that rate of speed. The decree of the district court is affirmed, with interest and costs.

THE WALLEDA.

THE HELENA.

AYER v. THE WALLEDA.

ELDERKIN et al. v. THE HELENA.

(District Court, S. D. New York. December 18, 1894.)

COLLISION—SAIL VESSELS—NEGLIGENT LOOKOUT ON BOTH—WIND FREE—CONFLICT—WRONGFUL LUFF BY EACH.

The schooner W., sailing W., and the H., sailing E. by N. $\frac{1}{2}$ N., came in collision about 10 p. m. in Long Island Sound in a fresh breeze, the wind being not far from N., and the night clear. The evidence showed that the lookout on the W. was very inattentive, and that the H. was not seen until a few lengths away on the W.'s port bow, whereupon the