

## THE HERCULES.

## CROSSLEY v. THE HERCULES.

(District Court, E. D. Virginia. November 6, 1895.)

## COLLISION—STEAMER AND SAIL—MUTUAL FAULT.

Where a tug with tow collided with a schooner in a fog on the open sea, *held*, that both were in fault; the schooner for not using a proper mechanical fog horn, and the tug for not standing by after the collision, notwithstanding that the schooner was in a sinking condition.

This was a libel by W. W. Crossley, master of the schooner Morgan, against the steam tug Hercules, to recover damages resulting from a collision.

Whitehurst & Hughes, for Crossley.  
Sharp & Hughes, for The Hercules.

HUGHES, District Judge. The Morgan is a three-masted schooner of 553 tons; W. W. Crossley, the libelant, master. She set sail from Hampton Roads, with a cargo of 1,038 tons of coal, about noon of the 24th of March, 1893, bound for New Haven, Conn. It grew foggy about 3 o'clock, but the fog partially lifted about 4 o'clock, when the schooner passed Cape Charles light. She was then sailing under her three lower sails, two topsails, and four jibs. After passing the Cape Charles lightship she took in the two topsails. The wind and fog afterwards increased until 7 o'clock, when the spanker and one of the jibs were taken in; and she then sailed with her foresail, mainsail, and three jibs up. After 7 o'clock p. m. there was a strong wind from S. S. W., and a heavy sea from S. E. and E. The fog was thick, and the vessel on a N. E. course, under sail, until nearly 9 o'clock p. m., when the wind became moderate and was so until 10:30, up to which time she had her lights up and burning, with a lookout stationed forward, sounding a fog horn, a seaman at the wheel, the mate on deck amidships (it being his watch), and also the captain. She had no mechanical fog horn. Before sails were taken in,—about 7,—the schooner had been making seven knots an hour. Afterwards, until 9, she made six knots. After 9 the wind moderated, and she made five knots. The proofs of the libelant show that at about 10:30 p. m. the captain, having previously gone down into the cabin to check off his course, was coming up on deck, when a steamer's whistle was reported to him. This steamer proved to be the steam tug Hercules, Taylor, master, coming south on a course S. S. W., bound for Norfolk, having in tow the barge Charter Oak on a 200-fathom hawser, the barge being without load, and moving light on the water. The tug's lights were in place and burning. Her master was in the pilot house, in charge of her navigation, and at the same time blowing her fog whistle, and acting as lookout on the starboard side of the tug. A foreign-born young man was at the wheel, obeying the directions of the master. The foreman and engineer were on duty. These were the only persons on duty at the time on the tug. On the barge the master and a seaman were on

duty. It is in proof that three of the four men on duty on the tug heard the fog horn of the schooner, and saw her lights. The whistles of the tug were not heard on the Morgan, and the lights of the tug were not seen approaching on the port bow of the Morgan, until the tug was close aboard, and a collision became imminent. At that moment, for the purpose of easing the blow of the impending collision, the schooner's helm was thrown hard a-port, causing her to go off rapidly, and to head nearly east at the moment of collision. The tug had been moving at full speed up to the time of hearing the schooner's fog horn, making, however, only about four miles an hour, in consequence of the wind and tide being against her. When she heard the schooner's fog horn, she reversed her engines, but continued to move ahead, and struck the schooner forward of the break of her poops, cutting her down through four planks into her timbers, opening a large aperture, through which a man could thrust his arm to the shoulder. The schooner was promptly hauled up in the wind and hove to. She proved to be in a sinking condition, and called upon the tug for assistance by signals and shouts, and firing shot cartridges from a Winchester rifle three times. This proved of no avail and the tug disappeared and was not heard of again. The schooner wore to, leaking badly, and in spite of vigorous efforts of master and crew to stanch the leak, the water gained rapidly in the hold. She tried to make port, but was unable to do so, and at 5 o'clock a. m. the water had so increased in the hold that the crew were obliged to take to the small boat, and leave the schooner to her fate. She sank about 6 a. m. on the morning of the 25th of March, 7 miles N. E. of Winter Quarter lightship. Her crew were picked up that morning by a passing tug, and brought in to New York, which they reached on the 27th of March. The tug Hercules proceeded on her way to Norfolk, where she arrived in the same afternoon (of the 25th of March). The tug did not stand by the schooner, and made no effort to give help to her. The men on the barge Charter Oak, in tow of the Hercules, did not know, until after reaching Norfolk, that a collision had occurred. The tug remained but a day or two in Norfolk, and then, after the libel in this case had been issued, went out on a cruise of some sort, and so remained, until an officer of this court, having got on a revenue cutter for the purpose, found her, three days afterwards, near Thimble light, in Chesapeake bay, and arrested her.

In the foregoing statement I have not gone with any detail into the incidental facts shown by the evidence. The tug was in fault in failing to stand by the schooner after the collision, as well as in other particulars not material to the decision of this case. The schooner was in fault in not having had on board and in not using a proper mechanical fog horn. By mechanical fog horn is meant one sounded by mechanical means, as distinguished from horns sounded from the human lungs. Both of these colliding vessels having been at fault, the damages resulting from the collision and the sinking of the schooner must be divided equally; the costs of suit to be paid by the respondent.

## THE COQUITLAM.

EARLE et al. v. UNITED STATES.

(Circuit Court of Appeals, Ninth Circuit. November 4, 1895.)

No. 200.

Appeal from the District Court of the United States for the District of Alaska.

Before McKENNA and GILBERT, Circuit Judges.

Questions of law certified to the supreme court of the United States. For prior report, see 57 Fed. 706.

## THE ELIZABETH.

NILSSON v. SWINDELL et al.

(Circuit Court of Appeals, Fifth Circuit. November 2, 1895.)

No. 440.

Appeal from the District Court of the United States for the Northern District of Florida.

John A. Henderson and Geo. P. Raney, for appellees.

Docketed and dismissed, pursuant to the sixteenth rule.

## NOYES v. SILVER QUEEN MIN. CO.

(Circuit Court of Appeals, Ninth Circuit. November 4, 1895.)

No. 228.

In Error to the District Court of the United States for the District of Alaska.

Before McKENNA and GILBERT, Circuit Judges.

Questions of law certified to the supreme court of the United States.

## STATE OF FLORIDA v. CHARLOTTE HARBOR PHOSPHATE CO.

(Circuit Court of Appeals, Fifth Circuit. October 3, 1895.)

No. 437.

Appeal from the Circuit Court of the United States for the Southern District of Florida.

H. Bisbee and C. D. Rinehart, for appellee.

Docketed and dismissed, pursuant to the sixteenth rule.