

THE ELBERON.

NEW YORK & L. B. S. CO. v. RIKER.

(Circuit Court of Appeals, Second Circuit. November 7, 1895.)

COLLISION BETWEEN STEAMER AND SAIL—YACHT MOORED IN RIVER.

A yacht moored in shallow water at a dock on the extreme edge of the channel of a narrow river, in a place where she might lawfully have anchored if no dock had been there, was struck by a steamer, which was navigating the channel under the ordinary conditions of wind and tide. *Held*, that the steamer alone was liable, even if the dock was built without compliance with the regulations in regard to obtaining permission to build docks.

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

This was a libel by William J. Riker against the steamboat Elberon, the New York & Long Branch Steamboat Company, claimant, to recover damages occasioned to libellant's yacht by a collision of the steamboat with her. The district court entered a decree for the libellant, and the claimant appealed. The following opinion was filed by BROWN, District Judge, in the court below:

"About 7:15 a. m., on the 31st of July, 1893, as the libellant's yacht Charlotte was lying in the easterly edge of the channelway in the South Shrewsbury river, alongside of the western face of the dock, she was damaged by a collision with the starboard quarter of the steamboat Elberon, which was on one of her regular trips from Branchport to New York. The above libel was filed to recover the damages.

"The defendant claims that the collision happened because the yacht was improperly moored at a dangerous point a little below the bend in the river, and because of the narrowness of the channel and of a strong west wind which set the Elberon unavoidably against the yacht before she could recover from the turn around the point below; and that the owner of the yacht had been repeatedly requested to remove her from that position. The preponderance of evidence, however, shows that the wind was light, and not above six or seven knots; and that no unusual conditions of wind and tide existed; and from the navigation of other boats of the line shortly before, as well as by the Elberon herself, before and after, I am quite satisfied that this collision arose from lack of suitable caution at the time of turning the point, and afterwards, and not from the causes alleged by the Elberon.

"It is immaterial, upon the above view, whether all the regulations in regard to permission to build the dock in question were complied with or not. The navigation and use of the Shrewsbury river was as lawful for yachts as for the line of boats to which the Elberon belonged. The channelway was, indeed, narrow; but the yacht was upon the extreme edge of it, in shallow water, where, so far as I can see, she might have been lawfully anchored, even had there been no dock there. She was at a considerable distance below the bend in the river; and in anchoring there all that was required of her was that she should leave a sufficient and reasonable share of the water for the navigation of the Elberon and other boats of her line; and this, as I find, was done.

"The libellant is entitled to a decree, with costs."

Geo. A. Black, for appellant.

Anson B. Stewart, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. Decree affirmed, on opinion of the district judge.

RHODES & JACOBS MANUF'G CO. v. STATE OF NEW HAMPSHIRE
et al.

(Circuit Court, D. New Hampshire. October 26, 1895.)

FEDERAL COURTS—JURISDICTION—ENJOINING CRIMINAL PROCEEDINGS.

A federal court has no jurisdiction in equity to enjoin state police and judicial officials from commencing or prosecuting criminal proceedings in the courts of the state, under the laws thereof, though such laws are alleged to be in violation of the constitution of the United States.

Geo. H. Warren and Thomas C. Welch, for complainant.

Edwin F. Jones and E. G. Eastman, for defendants.

Before PUTNAM, Circuit Judge, and ALDRICH, District Judge.

PUTNAM, Circuit Judge. The complainant is a corporation created under the laws of the state of Illinois, and having its principal office, place of business, and manufactory at Chicago, in that state. The defendants named in the bill are the state of New Hampshire, the mayor of the city of Manchester, in that state, the city's solicitor, its chief of police, and the justice of its police court. The complainant has discontinued as against the state. The complainant alleges that it has been and is engaged in the manufacture of pictures and picture frames at Chicago, and in the exportation of them from Illinois to New Hampshire, and the sale of them from house to house in the city of Manchester, through its agents, Katz, Miller, and Wolf.

The complainant alleges that these agents were arrested by a police officer of the city of Manchester, brought before the police justice, who is made a defendant, and were bound over by him to appear before the supreme court of the state, under color of a criminal prosecution commenced against such agents for making sales from house to house of the complainant's merchandise, in alleged violation of the statute of New Hampshire relating to hawkers and pedlers, approved April 1, 1893, and that this statute, so far as it, by its terms, interferes with the complainant's business in the manner stated, violates various provisions of the constitution of the United States. The bill clearly states on its face a matter in dispute arising under that constitution. The bill also contains the following allegation:

"The said Rhodes & Jacobs Manufacturing Company further avers that it will suffer irreparable damage and injury, as it verily believes, to the extent of twenty thousand dollars, if prevented from selling or offering for sale its merchandise aforesaid, in the manner aforesaid, within said state of New Hampshire and said city of Manchester."

This allegation is denied in the answer.

The bill also alleges that the city and its police are threatening to continue to enforce the statute against the complainant's agents, and that, unless restrained, the defendants will prevent the complainant from selling its merchandise in that city; and the com-