

THE BULGARIA.

UNION TRANSIT CO. v. THE BULGARIA.

(District Court, N. D. New York. June 12, 1896.)

COLLISION—STEAMER WITH MOORED VESSEL.

A steamer which, in attempting to reach her berth at the south pier at the westerly end of St. Mary's Falls Canal, ran into a moored vessel in plain sight, in ordinary weather, and without the intervention of any interfering current, held solely in fault.

This was a libel in rem by the Union Transit Company against the steamer Bulgaria, to recover damages sustained by the steamer W. H. Stevens in collision with the Bulgaria.

Norris Morey, for libellant.

Harvey D. Goulder, for claimant.

COXE, District Judge. Between 2 and 3 o'clock on the morning of June 16, 1895, the steamer W. H. Stevens was in the act of being moored to the south pier at the westerly end of the St. Mary's Falls Canal. Her bow was fast. Her stern was about 10 feet from the pier and was being drawn in by means of a line from the pier to her capstan. She was helpless, and, in contemplation of law, was a moored vessel. It was not dark. There were electric lights all along the pier and dawn was commencing. There was no wind and nothing abnormal in the elements.

It is usual for vessels awaiting their turn at the lock to tie up at the south pier. To do this requires ordinary care and prudence and nothing more. It is a very simple maneuver. The Stevens had accomplished it without the slightest difficulty. The Bulgaria followed the Stevens into the canal, passing the end of the pier only a short time afterwards. She had the Stevens in sight for some time and knew of her location at the pier. The proper place for the Bulgaria was the berth just west of the Stevens. Instead of taking it she ran into the Stevens almost end on, the bluff of her port bow struck the Stevens' stern and she proceeded on with such force that her stem started the heavy timbers of the pier.

The rule is conceded that in such circumstances the presumption is that the moving vessel is negligent, the burden being upon her to show that she is free from fault or that the accident was inevitable. The Bulgaria has done neither. A mere statement of the facts is a demonstration that the accident could have been avoided. The task of the Bulgaria was one which a mere tyro in navigation should have accomplished successfully. To assert that it was absolutely impossible for her to reach her dock without crashing into another vessel lying at a different berth is an amazing proposition and one wholly new to admiralty jurisprudence.

The theory upon which it is sought to exculpate the Bulgaria from a liability, which, at the time, was frankly admitted, is that she was caught in a mysterious and warlock current which drove her into the Stevens in spite of every effort of her navigators to prevent it. The difficulty with this theory is that it is based

upon the imagination of counsel rather than upon the proof. The weight of testimony is to the effect that there is never any dangerous current at this point, and, except when the lock is being filled or a high wind is blowing there is no current which should interfere in the slightest degree with the mooring of a vessel at the south pier.

It was not proven that the lock was being filled at the time of the collision, and, as before stated, there was no wind. How it would be possible for any current which might exist at that point to force a vessel to take the erratic course pursued by the Bulgaria it is not easy to perceive. But it is enough to say that if dangerous currents existed it was the duty of the master of the Bulgaria to know of them and guard against their effects. The Bulgaria has not overcome the presumption arising from her collision with a stationary vessel which was absolutely free from fault. Were it necessary for the court to go further and designate the precise fault of the Bulgaria there would be little hesitation in finding that the collision was due, primarily, to her undue rate of speed. She was carried past her true mooring place and instead of going down the canal she endeavored to rectify her mistake by porting and backing. It was too late. The momentum could not be overcome in the narrow space she had thus left for maneuvering.

Further discussion is unnecessary. Suffice it to say that upon the entire record the court is convinced beyond a doubt that the collision was due solely to the negligence of the Bulgaria. The libellant is entitled to the usual decree.

THE CHATTAHOOCHEE.

HENDRY et al. v. OCEAN STEAMSHIP CO.

(Circuit Court of Appeals, First Circuit. June 12, 1896.)

No. 17L.

1. COLLISION—STEAMER AND SAIL—EXCESSIVE SPEED.

A schooner navigating coast waters, resorted to by the coastwise traffic, and at the same time just on the edge of the route of the Atlantic liners, held in fault for going between five and six knots, being substantially her full speed running free, in a fog of such a character that it led to a misunderstanding of signals and courses.

2. SAME—PRESUMPTION—CLEAR FAULT OF ONE VESSEL.

The rule as to the presumption when one vessel is found in fault by uncontradicted testimony, or is otherwise clearly in fault (*The City of New York*, 13 Sup. Ct. 211, 147 U. S. 72, and *The Oregon*, 15 Sup. Ct. 804, 158 U. S. 186), has no application in a case in which the question of fault on each side is for the determination of the court from facts easily ascertainable.

3. SAME—MUTUAL FAULT—APPORTIONMENT OF DAMAGES.

If, in cases of mutual fault, the damages can ever be apportioned to the different degrees of fault (*The Victory*, 15 C. C. A. 490, 68 Fed. 395), instead of being equally divided, such rule of apportionment is inapplicable where the fault of each vessel is of precisely the same character, namely, maintaining full speed in a fog, according to the capacity of each for speed.