

Newton Vs. Stebbins

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SooperKanoon Citation : sooperkanoon.com/80205

Court : US Supreme Court

Decided On : 1850

Appeal No. : 51 U.S. 586

Appellant : Newton

Respondent : Stebbins

Judgement :

Newton v. Stebbins - 51 U.S. 586 (1850)

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Newton v. Stebbins

51 U.S. (10 How.) 586

APPEAL FROM THE CIRCUIT COURT OF THE UNITED

STATES FOR THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

Where a sailing vessel was descending the Hudson River with but a trifling wind and chiefly by the force of the current, and came into collision with a steamer ascending the river, the question in the case was whether or not the accident

happened, notwithstanding every proper precautionary measure had been taken on the part of the steamboat to pass the sloop in safety, in consequence of an improper movement of that vessel by the mismanagement and unskillfulness of the persons in charge of her. If the sailing vessel kept her course, it was the duty of the steamboat to avoid her. The evidence showing that the steamer did not take

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proper precautionary measures to avoid the sloop while endeavoring to pass her, the responsibility of the collision must rest upon the steamer.

The steamer was in fault for not slackening her speed on meeting a fleet of sailing vessels in a narrow channel of the river, she then going at the rate of from eight to ten knots the hour. She was also in fault in not having a proper lookout at the forward part of the vessel, there being no one but the man at the wheel on deck.

Like the preceding case, this action arose from a collision which took place between a steamboat and a sailing vessel.

The circumstances under which the collision took place, as claimed to exist by the respective parties, are thus set forth in the libel and answer. The libel was filed in November, 1845.

"To the Honorable Samuel R. Betts, Judge of the District Court of the United States for the Southern District of New York."

"The libel and complaint of John H. Stebbins, of Coeymans, mariner, owner of the sloop *Hamlet*, whereof the libellant was master, her tackle, apparel, and furniture, against the steamboat *New Jersey*, whereof one Beebe now is or late was master, her engine, boiler, tackle, apparel, and furniture, now within this district, and also against all persons lawfully intervening for their interest therein, in a cause of collision, civil and maritime, and thereupon the said John H. Stebbins alleges and articulately propounds as follows:"

"1st. That some time in the month of October last the said sloop *Hamlet*, whereof the said libellant was master, was at the port of Bristol on the Hudson River, and

destined on a voyage thence to the port of New York, with a cargo of flagging and other stone on board, and was at the time a tight, staunch, and well built vessel of the burden of ninety tons or thereabouts, and was then completely rigged and sufficiently provided, and then had on board and in her service a full and competent crew for the navigation of said sloop on the voyage above mentioned."

"2d. That in the said month of October the said sloop, provided and manned as aforesaid, sailed from the port of Bristol on her aforesaid voyage to the port of New York, and in the prosecution of the said voyage, as he is informed and believes, the said sloop proceeded at the rate of about four or five miles per hour until she arrived at a point on the Hudson River called Blue Point; that at that point the wind failed, and the said sloop then proceeded with the force of the current and very little wind about one or two miles an hour; that on her arrival at said point, and while the said vessel was within the jurisdiction

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of this court, the person in charge of the said sloop observed the said steamboat coming up the river at the rate of about twelve or fifteen miles per hour, and nearer to the east shore of said river than the said sloop, and directed the man at the helm to head the said sloop more to the west shore of said river, which was done; that when said steamboat *New Jersey* arrived within a short distance of the said sloop, she altered her course to the westward and negligently and carelessly headed across the bows of said vessel and attempted to pass to the westward of said sloop, in consequence of which negligent conduct of those in charge of said steamboat the said steamboat struck the end of the said sloop's bowsprit, carrying away about ten or twelve feet of the said bowsprit and the stays attached thereto, forcing the bows of the said sloop round so that she struck the sloop on the larboard bow, doing such injury to the said sloop by said collision, that the sloop immediately sunk, with her said cargo."

"3d. That at the time the damage mentioned in the preceding article happened, it was impossible for the said sloop *Hamlet* to get out of the way of the said steamboat *New Jersey*, the said sloop having little comparative way on and being

at the time to the westward, and out of the course of the said steamboat, and there being room enough for the said steamboat to have passed to the eastward of said sloop, as she might and ought to have done. That if the persons having charge of the said steamboat *New Jersey* had taken proper precaution to keep clear of the said sloop, which it was their duty to have done, the damage in the next preceding article set forth would not have happened."

"4th. That the said sloop, at the time of the receiving of the damage above mentioned, was a tight, staunch, and strong vessel, and that the libellant then was, and now is, the true and lawful owner of said sloop, her tackle, apparel, and furniture."

"5th. That by the collision aforesaid, and the consequent sinking of said sloop with her cargo, the libellant has sustained damage to the amount of three thousand five hundred dollars."

"6th. That all and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court, in verification whereof, if denied, the libellant prays leave to refer to pleadings and other proofs to be by him exhibited in this cause."

"Wherefore the libellant prays that process in due form of law, according to the course of courts of admiralty and of this Honorable Court in cases of admiralty and maritime jurisdiction, may issue against the said steamboat *New Jersey*, her

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engine, boilers, tackle, apparel, and furniture, wheresoever the same may be found, and that all persons having, or pretending to have, any right, title, or interest therein may be cited to appear and answer all and singular the matters so articulately propounded, and that this Honorable Court would be pleased to pronounce for the damages aforesaid, or for such other and different relief to the libellant in the premises as shall to law and justice appertain, and also to condemn the said steamboat, her engine, tackle, apparel, and furniture, and the persons intervening for their interest therein, in costs."

"JOHN H. STEBBINS."

To this libel, Isaac Newton filed the following answer:

" *January Term 1846*"

"To the Honorable Samuel R. Betts, Judge of the District Court of the United States within and for the Southern District of New York: "

"And now Isaac Newton, intervening for his interest in the steamboat *New Jersey*, appears before this Honorable Court and for answer to the libel and complaint of John H. Stebbins against the said steamboat *New Jersey*, her engine, boilers, tackle, apparel, and furniture, and against all persons lawfully intervening for their interest therein, alleges and articulately propounds as follows:"

"1st. That this respondent was the owner of said steamboat, her boiler, engine &c.;, in October last, at the time of the alleged collision of said sloop *Hamlet*, in the libel mentioned, and the *New Jersey*, and before that time, and afterwards, until the sale of said steamboat to William B. Dodge and John S. Moore on or about 19 November last, and that since such sale by this respondent to said Dodge and Moore this respondent has been and still is bound to indemnify and save the said Dodge and Moore harmless against any claim or demand which the said libellant or any other person may have against said steamboat, her boiler, engine &c.;, by reason of any such collision, and has been ever since such sale and still is interested in said steamboat, her engine, tackle, apparel, and furniture as mortgagee for the purchase money."

"2d. This respondent also admits that the libellant was the master of the said sloop *Hamlet*, but he says on information and belief that said libellant was not in command on board said sloop at the time of the collision in question nor at any time during her said trip or voyage. This respondent also admits that said sloop was at Bristol, on the Hudson, as alleged in the first article of said libel, and destined on a trip or voyage

thence to New York with a cargo of some sort on board, but he is not informed, save from the libel, and therefore will leave the said libellant to prove, of what her cargo consisted, and this respondent denies on information and belief that said sloop was, as alleged in said libel, tight, staunch, and well built, and he also denies on information and belief that said sloop was completely rigged and sufficiently provided, and especially does he deny that she had on board and in her service, a full and complete crew for the navigation of said sloop on her destined voyage, and he avers, as he is informed and believes, that she was not sufficiently manned, that the master was not on board of her and no competent person in charge of said sloop on said voyage."

"3d. This respondent further says that as he is informed and believes, on the afternoon previous to the collision in question, the *New Jersey* started from New York at or about five o'clock, with a tow boat of about two hundred tons burden, bound for Hudson, and at the time of said collision, which arose from running the sloop into the said steamboat, as hereinafter mentioned, the said steamboat was within about half a mile from a point on the Hudson known as Blue Point, a distance of about eighty miles from New York; that the time of the collision in question was about two o'clock in the morning; that at the time of collision, and a short time previous to the collision, and for three or four miles before the sloop struck the steamboat, the steamboat was on the west side of the river, and westward of the course of the sloop, with her tow boat on her west side; that said steamboat had had a fair tide until a little before the collision happened, but at the time of the collision it was slack water; that a short time previous to the collision and at the time thereof, the wind was from the westward and blowing a stiff breeze; that the steamer, a short time previous to the collision, was slowed, and was stopped about the time of the collision; that the steamboat did not cross the bow of the sloop nor the course the sloop was running at the time the sloop came in sight, and that the collision arose from the short luffing of the sloop through the fault and willfulness, carelessness, mismanagement, or misdirection of the person or persons in charge of the sloop, which the persons in charge of the steamboat could not have foreseen nor guarded against, whereby the said sloop was run into the said steamboat by the person in charge of said sloop, and with so much force

and violence as to drive the bowsprit of the sloop into the steamboat and do a great damage to said steamboat, or that the said collision arose otherwise from the fault, mismanagement, misdirection, or incompetency of the person or persons

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in charge of the said sloop, and that the said collision happened without any fault, misdirection, or mismanagement of the persons in charge of said steamboat."

"And this respondent, further answering says that he is not informed of the rate at which the said sloop was proceeding before and after their arrival off Blue point, but he has reason to believe and does believe that the said sloop was proceeding much more rapidly through the water, both before and after their arrival off Blue Point, than as aforesaid is stated in said libel, and he denies on information and belief that the wind failed as said sloop arrived at the point. And this respondent denies on information and belief that the said steamboat, with her tow boat, at the time she came in sight of the sloop or at any time on her said trip or voyage from New York, either did or could have proceeded at the rate of near twelve or fifteen miles per hour, but she was moving at a much slower rate, and very slow, and he likewise denies, as he is informed and believes, that said steamboat was at any time after her coming in sight of said sloop nearer to the east shore of said river than said sloop; but whether or not the person or any persons having charge of said sloop directed the man at the helm thereof to head the sloop more to the west shore of said river, and whether the same was done in manner and form as alleged in said libel, this respondent is ignorant, and would leave said libellant to prove the same; but he is informed and believes that as said steamboat, going up the river, was passing said sloop to the west of said sloop, and said sloop, going down the river, was passing to the east of said steamboat, the course of said sloop was suddenly altered through the manifest fault and carelessness, mismanagement, or misdirection of the persons in charge of said sloop, and so directed to the westward as to run her into said steamboat, and this respondent further says, as he is informed and believes, that as the said steamboat was passing said sloop to the westward, with her tow boat in tow on her west side as aforesaid, the said sloop being headed toward the eastward, before the sudden

change of direction of said sloop as aforesaid, he is informed and believes that said steamboat was directed further, and as far as possible, to the westward to keep clear of said sloop, and that she was not directed westward so as to cross the bow of said sloop, and that the said steamboat was not negligently or carelessly or otherwise headed across the bows of said vessel, nor was it attempted to pass said steamboat to the westward across the bow of the sloop or the course of the sloop, and this respondent denies on information and belief that it was in consequence of any negligent conduct or fault of those in charge of said steamboat that said steamboat struck

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the end of said sloop's bowsprit, and says, as he is informed and believes, that the allegation is more correct, as it is in accordance with the fact, to say that the end of the bowsprit of the sloop struck the steamboat than that the steamboat struck the end of the bowsprit of the sloop, which is not true as this respondent is informed and believes. And this respondent admits that said sloop sank at or soon after the collision; but he says, as he is informed and believes, it was through the weakness and insufficiency of the said sloop, and through the carelessness and mismanagement and insufficiency of those who had charge of her."

"4th. This respondent further says that as he is informed and believes, it is not true, as alleged in the third article of said libel, that it was impossible for said sloop *Hamlet* to get out of the way of the said steamboat for the reasons supposed in that article nor for any reason whatever, but, on the contrary thereof, this respondent is informed and believes that said steamboat was pursuing her course on the westerly side of the river, as aforesaid, and that said collision was occasioned entirely by the fault, misdirection, mismanagement, or incompetency of the persons having charge of the sloop in suddenly altering and varying her course as aforesaid, and in not keeping on her course as the said sloop ought and might have done, and for which she had sufficient headway, or otherwise through the fault, misconduct, mismanagement, or incompetency of the person having charge of said sloop. And he further says that if the person or persons in charge of said sloop had used proper precaution or reasonable skill or care, as in duty bound to

do, to avoid said collision, said collision might and would not have happened. And this respondent further says, as he is informed and believes, that every precaution was taken and effort made, and all reasonable care, skill, and diligence used, by the persons having charge of said steamboat to avoid such collision."

"5th. This respondent, on information and belief, denies that said sloop, at the time of said collision, was tight, staunch, or strong, but, on the contrary thereof, was old, weak, and insufficient, and this respondent says that he is not informed, except from the libel, whether the said libellant was, at the time of said collision or since has been, the owner of the said sloop, her tackle, apparel, and furniture, and therefore does not admit the same, but leaves him to prove the same as he may be advised."

"6th. Whether the said libellant has sustained damages to the amount of \$3,500, or to any amount, by the collision aforesaid and the sinking of said sloop with her cargo this

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respondent is not informed save by said libel, and does not admit the same, and leaves him to prove the same as he may be advised, but this respondent insists that neither said steamboat *New Jersey* nor this respondent is liable for any part of such damage, if any there be."

"7th. That the said collision, as this respondent is informed and believes, occurred within the body of the County of Ulster or of Dutchess, in the State of New York, and not within the admiralty and maritime jurisdiction of this maritime court, and that therefore this Honorable Court has not jurisdiction, and ought not to proceed to enforce the claim alleged in the libel aforesaid against said steamboat or against this respondent intervening for his interest therein, and this respondent claims the same benefit of this exception as if he had demurred to said libel or pleaded specially to the jurisdiction of this Court."

"8th. That all and singular the premises are true, in verification whereof, if denied, the said respondent craves leave to refer to the depositions and other proofs to be

by him exhibited in this cause."

"Wherefore this respondent prays that this Honorable Court would be pleased to pronounce against the libel aforesaid and to condemn the libellant in costs, and otherwise right and justice to administer in the premises."

"J. NEWTON"

To this answer the libellant filed a general replication.

Twenty-five witnesses were examined, some of them being persons who were on board of vessels very near the *Hamlet* at the time of the collision and others persons who were on board of the steamboat. In order to show the contradictory nature of the evidence, the following depositions are inserted:

For the libellant:

"William Hallarbeck sworn. Was pilot of Eliza Wright; first saw steamboat when a little below Blue Point, at about Barnegat, close in to east shore, and kept right along up east shore to opposite Sands' Dock, and then sheered over northwest. Witness about one-third across river from west shore when steamboat came towards him heading about for him; came within three lengths of sloop. Witness shook his light, and she took a sheer west, cleared witness about as far off. *Hamlet* was then half way between witness and shore, a little astern of witness; steamboat kept her course west, and tried to pass *Hamlet's* bow; saw them strike steamboat. Hit bowsprit of *Hamlet*, and slewed her right round to westward; saw her sink within a minute or two; wind was very light and baffling, northeast and northwest and every way. Witness' boom

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at time, off east; was going three to four miles through water. Witness a little above the White House, nearly opposite to it."

" *Cross-examined.* Not quite a mile from White House, to Blue Point three quarters mile. Witness about length ahead of *Hamlet*, and she about half way

between White House and Blue Point, and about one-third of a mile from witness; she had no lights in her rigging; saw her bowsprit; night was then lit up a good deal. Witness' sloop steered well, about abeam; was going four miles to *Hamlet's* three, per hour; steamboat had tow boat on west side; did not stop for collision; did not observe vessels particularly after they struck and got clear; could see hull of steamboat a mile; a small flat between White House and Blue Point, not extending one-half length of sloop into river."

"Thinks steamboat passed him at rate of ten or eleven miles; does not know that she stopped her wheels before striking *Hamlet*; did not seem more than a minute after passing before she struck *Hamlet*; was room for steamboat to pass Eliza Wright on east side."

"Robert F. Osborn, sworn. master of sloop *Van Buren*; was coming down river night of collision; about half across river from Blue Point, when first saw steamboat; she was then on east shore, near Barnegat, one-third from shore; was then coming directly up the river, as he judged; very soon she altered so as to run more to west, and then again to about northwest; was astern of *Hamlet*, and a little east of her, about to end of her boom."

"Steamboat passed witness' bow; did not then know *Hamlet*. "

"Steamboat was steering well into west when she struck sloop; saw her strike; was then thirty or forty rods off; did not, to witness' knowledge, stop her wheels before striking; judged she was going nine or ten knots; blow slewed *Hamlet* west; witness jibed over to clear steamboat, and kept away; was about abreast of sloop when she sunk; steamboat was close along side of her; mast was over steamboat. Sloop went down, head first. Witness thinks he was running about two miles; wind north, directly down river, and light; had kept close with *Hamlet* from Crumelbow."

" *Cross-examined*. Thinks course of river about north and south at that place. Witness' sloop minded her helm when he kept away; believes steamboat backed her wheels after collision; sloop sunk within two or three minutes; steamboat lay some time after; barge of steamboat on larboard side; did not see any light in

rigging of *Hamlet*. "

"Jonathan Reeve, sworn. Was pilot of Van Buren. Witness

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was at helm; at time of collision, one quarter to one-third from western shore, across river, right after *Hamlet* thirty or forty rods, perhaps, off; saw two vessels come together; should think steamboat was going eight or ten knots, steering west-northwest to northwest course."

" *Hamlet* heading directly down river; wind unsteady at time; witness going about two knots; saw steamboat a mile and a half off, and though she was on east side, and going up that side, as witness' sail shut her in; boom off east. Captain Osborn called to witness she was crossing river, and she soon opened to witness' view; did not observe that steamboat stopped her wheels till she struck; turned sloop round; head same way with steamboat; then thought she backed her wheels, and that started sloop a little backward, which rolled over to windward; then rolled back her mast towards steamboat, and sunk immediately; did not know sloop at time; had to keep away to get from steamboat."

" *Cross-examined*. Does not think was length of sloop from steamboat when passed her; witness did not alter course of sloop before collision."

For the claimant:

"George Dobson sworn. Second pilot of *Buffalo*; was pilot of *New Jersey* night of collision; was at wheel at time of collision, and from New York, except time of taking his tea; saw *Hamlet* a mile or more ahead, she being most to west of all the vessels; great many vessels coming down; made course to clear her, as he had all the rest from Clinton's Point up; had plenty of room, as if she had kept her course he should have had nearly one-third of river; first she luffed, and witness hauled more west to avoid her; she had been running straight down the river, and was perhaps one-third of a mile off when she changed her direction; when she luffed, she bore more for steamboat; should have gone clear had she kept her

course; fearing she would not clear steamboat, slowed her, and hallowed to sloop to keep away; then stopped steamboat, and hailed again to keep away, and saw man shove his helm down which would luff her up; it luffed her directly round; the instant witness saw him put his helm down, rang the bell twice to back, and sloop came head into her, as nearly head on as he could judge, might be a little glancing, and she ran against steamboat; hailed with loud voice; thinks would have cleared without trouble if sloop had not luffed last time; after helm was put down, nothing more could be done on *New Jersey* than was done; her direction could not be changed, and could aid in avoiding sloop only by backing. "

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" *Cross-examined.* That night went on board *New Jersey*; been three or four years in People's line; Mr. Van Santvoord sent witness to boat; does not know whether he is owner in line or not; he is one of the principal managers; Drew another, and then chief director; heard he was owner; witness hired to him as runner, but good deal of time has been pilot; has also been captain; passed more vessels that night than he ever before saw on river; first part of night very dark and bad, but had become more clear at time of collision; nothing to call witness' attention particularly to *Hamlet*; does not recollect passing any vessels in immediate vicinity of *Hamlet*; passed some below; did not pass any vessel close to eastern shore of Sands' Dock; was then one-third river off west shore; began at Clinton Point to lay his course gradually across river, so as to get on west side; wanted to get to windward of vessels which had generally jibed; could in such state generally run over to west shore; sloop nearer the shore when she struck than when she sunk; thinks she sunk nearly one-third of river off shore; she was dragged off by backing of *New Jersey*, he thinks all of 200 feet or more, before she went down; sloop luffed twice; second time came dead up and direct into *New Jersey*; *New Jersey* backed twice, once when sloop was sinking."

"Been on river seventeen or eighteen years pretty steady, in all twenty-five years."

"Has run season as pilot, sometimes not on same boat."

In July, 1846, the cause came on to be tried in the district court, when the following decree was pronounced:

"This cause having been heard on the pleadings and proofs, and argued by the advocates for the respective parties, and due deliberation being had in the premises -- "

"It is now ordered, adjudged, and decreed by the court that the libellant recover, in this action against the steamboat *New Jersey*, her tackle &c., the damages sustained by the sloop *Hamlet*, and the cargo on board."

"And it is further ordered that it be referred to one of the commissioners of this court to ascertain and compute the amount of such damages and to report thereon to this court with all convenient speed."

"SAMUEL R. BETTS"

On 25 September, 1846, the commissioner made the following report:

"In pursuance of a decretal order, made in the above-entitled case on 1 August instant, by which, among other things, it was referred to the undersigned, one of the

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commissioners of this court, to ascertain and compute the amount of damage sustained by the sloop *Hamlet* in her collision with the steamboat *New Jersey* and the value of the cargo on board: "

"I, George W. Morton, the commissioner to whom the above matter was referred, do report that I have been attended by the proctors of the libellant and claimant and have taken and examined the testimony offered in support of the libellant's claim and the testimony offered by the claimant in opposition thereto, and do find that the sloop *Hamlet*, at the time of the collision with the steamboat *New Jersey*, was worth the sum of \$2,800, and the cargo on board the sum of \$528.35, amounting in the whole to the sum of \$3,328.35, being the damages sustained by

the sloop *Hamlet* and cargo, in her collision with the steamboat *New Jersey*. "

"All which is respectfully submitted."

"GEORGE W. MORTON, *U.S. Commissioner* "

"September 25, 1846"

Exceptions were filed to this report, and on 14 October, 1846, a final decree was entered in the district court reducing the damages to \$2,403.70, which amount it was adjudged that the libellant should recover, with costs.

The claimant and libellant both entered an appeal from this decree, but the libellant not perfecting his appeal, the cause went up to the circuit court upon the appeal of the claimant alone.

On 10 September, 1847, the cause was tried upon this appeal in the circuit court, and on 11 November, 1847, the decree of the district court was affirmed, with costs.

The claimant appealed to this Court.

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MR. JUSTICE NELSON delivered the opinion of the Court.

This suit was commenced in the district court in admiralty against the steamboat *New Jersey* to recover damages arising from a collision on the North River in which the sloop *Hamlet* was run down and sunk in October, 1846.

The libel charges that the *Hamlet*, a vessel laden with a cargo of flagging stones, and of ninety tons burden, was proceeding down the river for the port of New York and had reached a place called Blue Point on said river; that after passing that point, the wind failed and the sloop proceeded with the force of the current and a trifling wind at the rate of from one to two miles the hour. That on her arrival at that point, the person in charge of the sloop descried the *New Jersey* coming up the

river at the rate of twelve or fifteen miles the hour, and nearer the eastern shore of said river than the sloop, upon which he directed the man at the helm to head her more to the west shore, which was done. That when the steamboat arrived within a short distance of the said sloop, she altered her course to the westward, and attempted to cross the bows of the sloop so as to pass between her and the western shore, and in the act of passing, struck her bowsprit, carrying away some twelve feet of the forward part of the vessel, in consequence of which she immediately filled and sunk. That at the time of the collision it was impossible for the

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Hamlet to get out of the way of the steamboat, having comparatively little headway, and being near to the western shore, and that there was room enough for the steamboat to have passed east of her, along the eastern shore of the river.

The answer of the respondent is that for three or four miles below the point where the collision happened the *New Jersey* was coming up the river along the western shore, and westward of the course of the sloop, with a tow on her larboard of some two hundred tons burden; that it was slack water, and the wind fresh from the west; that she did not cross the bows of the sloop, nor the course she was pursuing at the time the *Hamlet* first appeared in sight. But that the collision arose in consequence of the sudden luffing of the sloop by the mismanagement of the persons in charge of her, and that by reason of said improper maneuvers she ran her bowsprit into the steamboat, thereby doing great damage to her.

These are the allegations of the respective parties in the libel and answer as to the collision complained of. And the first observation we have to make is that, assuming the position and course of the *New Jersey* to be according to the statement in the answer, it by no means exonerates her from responsibility unless the other part of it is also maintained -- namely that it happened in consequence of the false movement of the *Hamlet* at the time. For assuming that the steamboat was coming up along the western shore, and was pursuing that course from the time she was first described by the hands on board the sloop, still the latter had a

right to persevere in her course down the river, notwithstanding the position and course of the *New Jersey*, and the duty devolved upon her, according to the established nautical rule, to take the proper precautionary measures to avoid the danger.

The fact, therefore, that the *New Jersey* was ascending the river on the western shore for some distance below, and had not suddenly taken a sheer across from the eastern side after having pursued it till within a short distance from the point where the *Hamlet* was descending, is a matter of no great importance.

The real question in the case is whether or not the accident happened notwithstanding every proper precautionary measure had been taken on the part of the steamboat to pass the sloop in safety, in consequence of an improper movement of that vessel by the mismanagement and unskillfulness of the person in charge of her. If it did, then the damage is attributable to her own inattention and want of skill, and not to the steamboat. This must of course depend upon the evidence.

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And on looking carefully through it on this point, on which, it must be admitted, it is not entirely reconcilable, and after the best consideration we have been able to give it, we feel bound to say that this allegation in the answer is not maintained. On the contrary, the weight of the evidence is that no substantial change in the course of the sloop, in descending the river, took place after the precautionary one of heading more towards the western shore, when the *New Jersey* was first descried, some three or four miles below.

This is the testimony of the two hands in charge of her at the time, confirmed by that of the masters of vessels in the vicinity, and who witnessed the collision. The only contradictory evidence is to be found in the testimony of the pilot of the *New Jersey* and in some loose conversations of the two hands after the accident had occurred, which, as detailed, is very general and indefinite, and not entitled to much consideration. This conclusion is also strengthened by the concomitant

circumstances. The sloop was heavily laden and under little headway, the wind being light and baffling, and it is difficult under such a state of facts to believe that her course could have been suddenly changed by the action of the helm to the extent and within the time supposed by the pilot.

We think, therefore, that the collision arose from the fault of the person in charge of the *New Jersey* in not taking proper precautionary measures to avoid the sloop while endeavoring to pass her.

We cannot omit to remark before leaving the case that the pilot of this vessel was greatly to blame in not having slackened her speed as he approached the fleet of river craft which was slowly descending this stretch of the river at the time it opened to his view. The channel is about half a mile wide at this point, and there were some seven or eight vessels coming down, all within a reach of less than two miles, and, from the state of the wind, not in a condition to make effectual maneuvers with a view to avoid immediate danger. And yet the clear weight of the evidence is that the steamboat continued her speed, passing several of them, which narrowly escaped the danger, until she reached the sloop in question, at a rate of from eight to ten knots the hour.

It is manifest to common sense that this rate of speed, under the circumstances stated, exposed these vessels to unreasonable and unnecessary peril, and we adopt the remark of the court in the case of *The Rose*, 2 Wm. Rob. 3,

"that it may be a matter of convenience that steam vessels should proceed with great rapidity, but the law will not justify them in proceeding with such rapidity if the property and lives of other persons are thereby endangered. "

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It is a mistake to suppose that a rigorous enforcement of the necessity of adopting precautionary measures by the persons in charge of steamboats to avoid damage to sailing vessels on our rivers and internal waters will have the effect to produce carelessness and neglect on the part of the persons in charge of the latter. The vast speed and power of the former, and consequent serious damage to the latter

in case of a collision, will always be found a sufficient admonition to care and vigilance on their part. A collision usually results in the destruction of the sailing vessel, and not unfrequently in the loss of the lives of persons on board.

We think also that the *New Jersey* was in fault for not having a proper lookout at the time of the collision. The pilot at the wheel was the only one, as no other person appears to have been above or on deck. It is apparent from the evidence that with a competent lookout and slackened speed of the steamboat there could have been no great difficulty in passing this fleet of rivercraft in safety. The disaster, in all probability, happened from a neglect to observe these proper precautionary measures.

We think the decree below right, and that it must be

Affirmed.

MR. JUSTICE DANIEL, dissenting.

Had the cases just decided been, according to my view, regularly within the cognizance of the district and circuit courts, and therefore properly before this tribunal, upon the appeals taken, I could have no objection to the disposition made of those cases. The evidence appears to place the delinquency or the wrong done where this Court has pronounced it to be, and it can scarcely be doubted that the rules which have been prescribed for the government of vessels propelled either by sails or by steam when crossing each other's tracks will conduce to the preservation of both life and property. My dissent from the decision in these cases results from considerations much higher than any that connect themselves with the mere adjustment of private controversies. It is a deduction from my understanding of the constitutional power of this Court and of the courts whose decisions we have under review to adjudicate upon the rights of the parties in the exercise of that species of jurisdiction which has been, as to these cases, asserted and sanctioned. That jurisdiction I feel constrained to deny. I know that my opinions relatively to the sources and the extent of the admiralty jurisdiction of the federal courts have not accorded with those of the majority of this Court, but on

these, as on all other subjects involving the integrity of the Constitution the only true foundation of every

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power in the federal government, I hold myself bound, with respect to differences of opinion, not to yield an acquiescence which, in matters of minor importance, would be cheerfully conceded.

My own opinions relative to the admiralty jurisdiction vested by the Constitution in the courts of the United States have been heretofore too fully declared to render their repetition here in detail either proper or necessary. I content myself with a reference to them as expressed in the case of [*The New Jersey Steam Nav. Co. v. Merchant's Bank*](#), 6 How. 395, and in my concurrence with the opinion of Justice Woodbury in the case of [*Waring v. Clarke*](#), 5 How. 467, and with reasserting the positions there maintained, *viz.*, that the civil jurisdiction in admiralty of the courts of the United States, in tort or in contract, with the anomalous exceptions of seamen's wages and hypothecations, is limited to transactions occurring on the high seas, and embraces no transaction occurring either on the land, or within the bays, rivers, havens, ports, harbors, or other places within the body or jurisdiction of any county, and that cases of seizure under the revenue laws do not spring from any regular class or head of admiralty powers. My conclusions, thus stated, are fortified by the strong desire to preserve in fullest vigor that admirable institution of our Anglo-Saxon ancestors -- whose elevating influence on the character even of the humblest man is perceived in his consciousness that he forms a part -- an important, nay, an indispensable part, in the administration of the laws -- the venerable trial by jury; and in the next place, by my conviction of the duty incumbent on all to maintain with directness and in good faith those distinctions and distributions with respect to the judicial power which the Constitution and laws of the United States have ordained -- distributions which the power now claimed and exerted appears to confound and overthrow. Thus, in the second section of the third article of the Constitution, in a definition of the judicial power of the government, in which definition the admiralty jurisdiction is explicitly comprised, it is declared that the judicial power shall extend "to controversies

between citizens of different states." This distribution of judicial power by the Constitution Congress has carried into execution by the eleventh section of the Judiciary Act, and this Court in a series of decisions has maintained. Can it, then, comport with a just interpretation either of the Constitution or of the act of Congress, or with the decisions of this Court made in conformity with both, that they should all be annulled by a seeming evasion? Can it possibly be right thus summarily to abrogate the jurisdiction of the state courts over their own territory and their own citizens? If these things can

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be done, it follows, of course, that the trial by jury and the requisite as to citizenship of parties ordained both by the Constitution and laws may be abolished by the mere will of persons interested or by the fiat of a tribunal by which neither citizenship nor trial by jury is held in regard. It would be difficult to adduce a more striking example of the irregularities here pointed out than is furnished by one of the cases now before us -- that of *Newton v. Stebbins*. This is a case which the evidence shows to have occurred between citizens of the same state, upon the narrow waters, and far within the interior of the state, and necessarily, therefore, within the body of a county of the state. It presents within that locality an instance of simple tort, the proper subject of trespass or case at common law; yet this case, without regard to locality or citizenship, is wrested from the tribunals of the state and the common law modes of trial, and transferred to a tribunal whose peculiar and appropriate jurisdiction, we are told by the English authorities, attaches only where there is no vicinage from which the *pais* can be summoned. I am compelled, therefore, to deny to the admiralty the constitutional authority to take cognizance of these cases.

ORDER

This cause came on to be heard on the transcript of the record from the Circuit Court of the United States for the Southern District of New York and was argued by counsel. On consideration whereof it is ordered and decreed by this Court that the decree of the said circuit court in this cause be, and the same is hereby,

affirmed, with costs and damages at the rate of six percentum per annum.

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