

The Mary Eveline

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Appeal No. : 83 U.S. 348

Appellant : The Mary Eveline

Judgement :

The Mary Eveline - 83 U.S. 348 (1872)

U.S. Supreme Court The Mary Eveline, 83 U.S. 16 Wall. 348 348 (1872)

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83 U.S. (16 Wall.) 348

APPEAL FROM THE CIRCUIT COURT FOR

THE SOUTHERN DISTRICT OF NEW YORK

SYLLABUS

1. Though a sailing vessel having the wind is *prima facie* bound to adopt such a course as will prevent collision with other sailing vessels not having it, it is still the duty of these last in an emergency to make their

courses so as not to render it difficult for the vessel having the wind to do her duty by rendering it doubtful what movement she should make.

2. This principle applied to a case where a vessel having the wind, in order to avoid a very strong tide (that in Hell Gate), was sailing so close to a shore wall that she could not safely have lessened the distance, and where the position of the other vessels in regard to a third vessel made it dangerous for the vessel having the wind to luff.

3. Under these circumstances, the vessel having the wind *held* justified in having kept her course.

On the afternoon of September 20, 1868, the sloop *Ethan Allen* and the schooner *Mary Eveline* came in collision while navigating the East River near Blackwell's Island. The sloop was sunk and her cargo was lost. Her owners filed their libel against the schooner and her owners, claiming as damages the value of the sloop and her cargo. The libel was dismissed in the district court, and the decree was affirmed in the circuit court. The libellants appealed to this Court.

MR. JUSTICE HUNT stated the case and delivered the opinion of the Court.

The *Ethan Allen* was going eastward through Hell Gate on her passage to some port in Connecticut. The wind was fresh and blowing from the southwest. She was running against a strong ebb tide, and for the purpose of avoiding the strength of the tide was running close under the eastern shore of Blackwell's Island. Her hull was within about seventy-five feet of the wall of the island, and her sails on her port side came within twenty or thirty feet of the island.

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The *Eveline* was sailing in the opposite direction, towards New York, and was close in company with the schooner *Hawley*, the latter being ahead. The two schooners were beating up against the wind. On the last tack before the collision, the *Eveline* was so close to the *Hawley* that when the latter tacked the former was obliged to keep off so as to go under the *Hawley's* stern. By the time the

Eveline got well under way on the last tack, the *Hawley* had crossed the river, and made her next tack near the Blackwell shore, and passed but a little way in front of the *Allen*. The *Eveline* passed on under the *Hawley's* stern, keeping off the wind for that purpose. As she luffed to go about, she ran directly into the *Allen*, striking her on the starboard bow. The answer admits that the *Eveline* took a direction to the leeward and astern of the *Hawley*, and that she just cleared her stern. It alleges also that the collision occurred through the sudden and confused orders of the *Allen*, and especially in this, that she first kept off and then luffed, whereby it became impossible for the *Eveline* to avoid the collision. The *prima facie* duty of avoiding the collision no doubt rested upon the vessel having the advantage of the wind. She was bound to adopt such course as would protect all the vessels, assuming that the other vessels would do their duty also. It was, however, the duty of the other vessels so to make their courses as not to render it embarrassing or difficult for the sloop to do her duty, or to make it doubtful what she should do in the emergency. The schooners were bound to take reasonable precautions on their part. The sloop, although having the wind, was not a guarantor against collision.

The channel was some 650 to 750 feet in width. The schooners were each 160 feet in length, occupying one-half of the width of the channel. The *Allen* was close to Blackwell's Island. Her position there was not only the best for herself, but in thereby giving to the schooners nearly the whole of the channel, was the best position on their account. She kept steadily on her course as near to the island as she could safely pass. The vessels had been in sight for some time, and each well understood the position of the other.

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The answer alleges that the *Allen* should have avoided the difficulty by luffing or keeping off. It does not, however, specify which she should have done. Her hull was within seventy-five feet of the island wall, and her sails within twenty or thirty feet of the wall. This was of itself a hazardous proximity. It would have been very unsafe to have lessened this distance. The evidence is that she was running as

close to the shore as it was safe for her to do. She could not, therefore, have kept off. If she had luffed, she would have brought herself out into the narrow channel, where the *Hawley* and the *Eveline* were both beating across in front of her, and the danger of a collision would have been much greater than by adopting the course she did.

We are of the opinion that, under the circumstances, the *Allen* did right in keeping her course, and that the fault was with the *Eveline*, rather than with the *Allen*. If the *Eveline* had tacked when the *Hawley* did, she would have avoided the collision. This would have brought her out of the way, leaving the passage next to the island clear for the *Allen*. Again, she should not have changed her course by keeping away on the last tack, thus rendering necessary a larger sweep to go about and bringing her nearer to the *Allen* when her course could not be changed. If she was at this point in a position of embarrassment, it was her own fault. She saw it in advance, should have known it, and avoided it, by keeping further to the leeward of the *Hawley* or by making her tack at an earlier period. She cannot shift upon another the consequence of an embarrassment produced by her own fault.

The captain of the *Eveline* did not expect the *Allen* to luff into the channel. He testifies that he supposed she would go to the Blackwell Island side, and that there was plenty of room for her there. He acted upon this theory, in which we think he was greatly in error, and the collision was the result.

On the most of the points of the case there is, as is usual in collision cases, a great conflict of evidence. Upon a careful

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review of the testimony, we think the error was with the schooner *Eveline*, and that the libel should not have been dismissed.

Decree reversed and record remitted with instructions to enter judgment for libellants, and for further proceedings in accordance with this opinion.

[See the [83 U. S.](#)]

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