

THE HELEN HASBROUCK.¹SOPER *v.* PAREIS.PAREIS *v.* THE HELEN HASBROUCK.*(District Court, E. D. New York. July 23, 1886.)*

COLLISION—SCHOONER AND TUG—OVERTAKING VESSEL—LIABILITY.

Where a collision occurred in the North river between a schooner and a tug, whereby the latter was run down by the sailing vessel, it was held, on the evidence, that the schooner was the overtaking vessel, should therefore have avoided the tug, and was in fault for the collision.

In Admiralty.

Owen & Gray, for Soper and the Helen Hasbrouck.

Alexander & Ash, for Pareis.

BENEDICT, J. The course of the schooner is proved to have been directly up the North river, or one point to the eastward of the course of the river. The difference of one point would not be important. The case turns upon the course of the tug; for if the course of the tug was the same as that of the schooner, or within one point of the course of the schooner, the schooner, which broke ground below the tug, was the following vessel, and bound to avoid the tug. If, on the other hand, the tug's course was crossing that of the schooner, the obligation to avoid the schooner rested upon the tug, and she was in fault for not having done so. Upon this question my opinion is with the tug. The testimony from the schooner as to the course of the tug is too strong, for they make the tug heading towards Central Ferry, Jersey City. Bound, as the tug was, for Sixty-eighth street, in New York, it seems to me incredible that she should have been sailing towards Central Ferry, Jersey City. Her natural course would be the course given by those in charge of her, viz., up the river. Upon that course it is evident that, with a proper lookout, which she says she had, the approach of the schooner from astern might not have been observed. Upon that course she might have been struck as she was struck. Upon the course given her by those on the schooner, such a blow as the schooner delivered her, the schooner bringing up on the tug's fantail, and her martingale jamming the pilot-house door, does not appear to me possible.

The evidence from the respective vessels cannot be reconciled. The testimony of some of the witnesses must therefore be disregarded. The probabilities of the case, the distance of the tug, and the blow that was delivered, lead me to disregard the testimony from the schooner that the tug was seen by them upon a course for Central

¹ Reported by R. D. & Wyllys Benedict, Esqs., of the New York bar.

Ferry, and to adopt the testimony of those witnesses who say that the tug was going up the river, and was run over by the schooner overtaking her from below. The libellant, John J. Pareis, must therefore recover for the loss of his tug, and the libel of Soper for the injury to the schooner must be dismissed.

THE BURGUNDIA.¹

CARTARSSO, Guardian, etc., v. THE BURGUNDIA.

(District Court, S. D. New York. December 27, 1886.)

NEGLIGENCE—NEGLECT OF THOSE IN CHARGE OF INFANT—IMPROPER PLACE—LIABILITY OF VESSEL—RUDDER CHAINS.

Libellant's ward, an infant three years old, was injured on board of the steam-ship *Burgundia*, by the rudder chain, which ran in an open box on the main deck. Previous to the accident, the infant's nurse had left him to himself, and, when hurt, he was in a part of the ship where he had no right to be. *Held*, that the fault rested with those who had charge of the child, and that the vessel was not liable for the injury.

In Admiralty.

A. B. Stewart, for libellant.

Benedict, Taft & Benedict, for claimants.

BROWN, J. The libellant's ward, Louis Cartarso, a child of three years old, while on a voyage to this port from Naples, on the second day out, had its fingers crushed in putting them into the trough that carries the rudder chain across one of the pulleys upon the main deck. The child, being uneasy, had been set down by the nurse a few minutes before, and ran aft of the place where the steerage passengers were allowed; and, as the evidence shows, a few minutes afterwards its screams were the first notice that the nurse had that it was meddling with the chain. The wooden groove or box was such as is usual upon nearly all steam-ships, and no customary precaution was neglected. It is necessary that such chains shall be subject to constant and immediate inspection. It is plain that the child was where it had no business to be, and was improperly left to run into what dangers it might find. There is no law that requires a ship to prevent the possibility of accidents to infants incapable of taking care of themselves, who are suffered by those in charge of them to roam about the ship. The box provided in this instance was a reasonably sufficient precaution against liability to accident, and the blame is wholly on those in charge of the child.

The libel must be dismissed.

¹Reported by Edward G. Benedict, Esq., of the New York bar.