

by all that the tug was informed by a hail from the master of the Hart when the line parted, and it is highly improbable that the tug, after being thus informed, would have cast off her lines from the schooner altogether, and so left the schooner with no line out on the wind and tide. The clear weight of the evidence is in accordance with the probabilities of the case, and it shows that the line parted after the tug had cast off. The master of the Hart indeed swears to the contrary, but he is interested to cast the blame on the tug, and he is overborne by the testimony of other witnesses. In my opinion, the sole cause of the collision was the insufficiency of the line which the Hart had put out to the Herriman, for which the Hart, and not the tug, is responsible.

The libel must be dismissed, and with costs.

THE HACKENSACK.

MORAN *v.* THE HACKENSACK.¹

(*District Court, E. D. New York. November 21, 1837.*)

COLLISION—FOLLOWING VESSEL—PROXIMITY—SUDDEN STOP.

It is a fault in a vessel following another vessel, and going with the flood tide in the East river, to approach so near the vessel ahead as to be unable to avoid her in case of a stop on the part of the leading vessel.

Carpenter & Mosher, for libelant.

Peter S. Carter, for claimants.

BENEDICT, J. The testimony in this case has satisfied me that the cause of this collision was the approach of the Hackensack to the Dumont ahead of her so near that, when the Dumont, in order to allow a vessel to pass, stopped her engine and reversed, the Hackensack had not time to avoid collision, although she promptly stopped her engine, and ported her wheel.

The proof is that the tide was strong flood, and that, as soon as the Dumont stopped and reversed her engine, the Hackensack stopped and hove her wheel hard a-port, but in spite of those efforts she ran into the Dumont. This shows the Hackensack to have been in dangerous proximity to the Dumont. To be so near the vessel ahead in that place was a fault, and the fault that caused the collision. There was no fault on the part of the Dumont. She made no stern-way but simply stopped and reversed her engine. When she did this she had the right to presume that in that place and tide no vessel would be so near her from behind as to strike her stern without backward movement on her part.

Let the libelant have a decree, with a reference to ascertain the amount of the damage.

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

PERRY and others v. CLIFT and others.

(Circuit Court, E. D. Tennessee. November 10, 1887.)

REMOVAL OF CAUSES—ATTACHING OF JURISDICTION—AMENDMENT OF PARTIES—REMAND.

After removal, the bill was demurred to on the ground that the heirs of P., who appeared in the caption as necessary parties, were not properly made parties; the bill containing no allegation that their names and residences were unknown, or that they were non-residents. The demurrer was sustained, and the bill amended by setting out the names of the heirs, and their citizenship as of the same state as that of the complainant. There was no severable controversy. *Held*, the amendment being compulsory, the case should be remanded, and not dismissed.

On motion to remand.

W. D. Speers, for complainants.

Cooke, Clift & Cooke for respondents.

KEY, J. This suit was removed from the chancery court of the state, upon the ground that complainants are citizens of New York, and the defendants citizens of other states. The bill in its caption shows that it is filed against several parties, and, among them, "the heirs of E. G. Pearl, deceased, names and residences unknown." There is no allegation in the bill that complainants had used any effort to ascertain the names of these heirs or their residence, or whether they are citizens of this state. After the removal of the cause to this court by a part of the defendants, their solicitors demurred to the bill upon several grounds, of which one is:

"Said bill shows upon its face that the heirs of E. G. Pearl, deceased, are necessary parties to said bill. There is no allegation in said bill that the names or residences of said heirs are unknown, or that they are non-residents, and the said heirs are not made parties to this suit in the manner required by law."

The demurrer was sustained upon this point, and complainants were allowed to amend their bill, and, within the time given, did amend it by alleging that Dyer Pearl, William E. Pearl, Cora Pearl, and Anna K. Pearl are the heirs at law of E. G. Pearl, and that they are citizens of New York. After the filing of this amended bill, complainants' solicitor moved to remand the cause, "because the complainants and a part of the defendants reside in and are citizens of New York," and defendants' solicitors move to dismiss the amended bill, "because it shows that some of the complainants and the heirs of Pearl, a part of the defendants, are citizens of New York, and the matters of controversy alleged by the bill are not severable, and this court has no jurisdiction to determine it." In other words, that the cause was properly removed, and the jurisdiction of this court took hold of it, and complainant cannot deprive it of it by his amended bill. It may be admitted that, if the amendment has been made in order to defeat the jurisdiction of the court, it should not be permitted to stand. In this case, however, complainant has been compelled