

was something more than eight feet, he is sure, from the eastern pier; that it was from "five to six feet," he thinks, from the obstruction. It is plain that if this witness' statement is accurate, the schooner, following exactly on the tug's course, would necessarily encounter the obstruction.

A decree must be entered for the libelant.

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THE MARY N. HOGAN.

HOOPER v. THE MARY N. HOGAN.

(Circuit Court, E. D. New York. June 30, 1888.)

TOWAGE—STRANDING TOW—OBSTRUCTIONS WELL KNOWN TO NAVIGATORS.

On additional evidence adduced in this court, showing that the rock upon which libelant's boat struck when in tow of the *Mary N. Hogan* was an obstruction well known to navigators, *held*, that the tug was liable for such stranding. Reversing 80 Fed. Rep. 927.

In Admiralty. On appeal from district court. 30 Fed. Rep. 927.

*Goodrich, Deady & Goodrich*, for appellants.

*Carpenter & Mosher*, for appellee.

BLATCFORD, Justice. In this case I find the following facts: On July 11, 1885, about half-past 5 o'clock in the morning, the three-masted schooner *Mabel Hooper*, laden with coal, while being towed from Hoboken, in New Jersey, to Hart's island, by the steam-propeller *Mary N. Hogan*, for hire, was run aground below North Brother's island, and between Woolsey's dock and the Sunken Meadow, on a part of a ledge of rocks called the "Middle Ground." The propeller had the *Hooper* on her starboard side, and another loaded schooner on her port side. The *Hooper* was drawing 16½ feet of water, and the master of the propeller had notice of that fact. The tide was two hours flood. The place where the *Hooper* struck was a part of a ledge of rocks which was well known to navigators, and was and is about 300 yards long between the lines of three fathoms. From the government charts and published sailing directions, existing for several years before this occurrence, it appeared that the buoy was so placed on the middle of the ledge that, by giving it a berth of 100 yards to either the eastward or the westward, vessels would pass safely in from 12 to 15 fathoms at low water. The locality was well known to navigators to be dangerous water. The propeller was not proceeding in accordance with such charts and sailing directions, but negligently took the *Hooper* too close to the buoy, and thus caused the accident. It is not true, as alleged in the answer of the claimant, that the propeller was navigated with all due care, skill, and caution, and that the *Hooper* suddenly struck some obstacle on the bottom, unknown to navigation. The *Hooper* was seriously injured by the accident. On

the foregoing facts I find, as a conclusion of law, that the libelant is entitled to a decree against the propeller for his damages, with costs in the district court and in this court; the damages to be ascertained by a commissioner on a reference.

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THE ALASKA.

WRIGHT *et al.* v. THE ALASKA.

(Circuit Court, S. D. New York. July 3, 1888.)

1. COLLISION—SUDDEN SHEER.

The steam-boat M., in an attempt to pass the S., which was bound in the same direction, suddenly sheered to the starboard, and thereby collided with the steam-boat A., bound in an opposite direction, on a course at a safe distance outside the S. The A. starboarded to let the M. break her sheer and recover her course, which the latter attempted, but failed. *Held*, that though the A.'s pilot, by porting his helm an instant before the collision, might have swung her stern enough to have enabled the M. to pass without touching, the failure to do so was no fault, but the sole cause of the collision was the previous fault of the M.

2. ADMIRALTY—JURISDICTION—CASE HEARD OUT OF DISTRICT UNDER STIPULATION—PRESUMPTION.

Cross-libels for damages sustained in the same collision, one filed in the S. district and the other in the E. district, were tried together in the E. district, before the judge thereof, under stipulation, "to save two trials." The decree in the case in the S. district appeared on its face to have been made at a stated term held in that district by the judge of the E. district, and no application to set it aside was disclosed in the record. Under Rev. St. U. S. §§ 591-596, 600, under which such judge might have been designated to hold court for the S. district, *held*, that it would be conclusively presumed that he was actually holding such court when the decree was rendered, and that the decree was valid.

In Admiralty. Libel for damages. On appeal from district court. See 33 Fed. Rep. 527.

This suit was brought in the district court of the Southern district of New York, by Moses G. Wright and Gilbert A. Wright against the steam ferry-boat Alaska to recover damages sustained from a collision with the *Morrisania*. The libel was dismissed, and libelants appealed.

*McMahon & Handley*, for appellants.

*Wilcox, Adams & Macklin*, for appellees.

BLATCHFORD, Justice. I agree with the district judge that in this case the issue is as stated by him in his decision, and that, on that issue, the clear weight of the evidence is with the Alaska; that there was no fault in the navigation of the Alaska; and that the sole cause of the collision was the fault, on the part of the *Morrisania*, of suddenly sheering out from under the stern of the Superior, and across the course of the Alaska.