

ROBINSON *et al.* v. FIFTEEN THOUSAND FIVE HUNDRED AND SIXTEEN BAGS OF SUGAR.¹

(District Court, E. D. New York. May 12, 1888.)

ADMIRALTY—COSTS—MARSHAL'S FEES—COMPROMISE OF CLAIM—BASIS OF COMPUTATION.

The sum paid a libelant in settlement of his claim, and not the amount claimed in the libel, is the basis upon which the marshal's commissions are to be determined, under section 829, Rev. St.

In Admiralty. Appeal from clerk's taxation of costs.

E. B. Convers, for libelant.

Martin & Smith, for claimant.

Charles M. Stafford, U. S. Marshal, in person.

BENEDICT, J. This case comes before the court on an appeal from the clerk's taxation of the marshal's fees. The claim set forth in the libel amounted to \$1,959.98. After the service of the process by the marshal, and before trial, the case was compromised by the parties by the payment to the libelant of \$1,200. Thereupon the marshal presented for taxation his bill of costs, in which he claimed commission on \$500 at 1 per cent., and commission on \$1,459.98 at $\frac{1}{2}$ per cent. The claimants do not object to the commission of 1 per cent. on the first \$500, but claim that the $\frac{1}{2}$ per cent. commission should be on \$700, instead of \$1,459.98. The clerk allowed a commission of 1 per cent. on \$500, and $\frac{1}{2}$ per cent. on \$700. The marshal appealed.

The question to be decided is whether the marshal is entitled to calculate his commission on the amount paid by way of compromise of the claim, or the amount set forth in the libel as the libelant's claim. The words of the statute are:

"When the debt or claim in admiralty is settled by the parties without the sale of the property, the marshal shall be entitled to a commission of one per cent. on the first five hundred dollars of the claim or decree, and one-half of one per cent. on the excess of any sum thereof over five hundred dollars."

In my opinion, where the amount due the libelant is not fixed by decree, but agreed on by compromise, the amount paid by way of compromise to settle the claim is to be considered the amount of the claim within the meaning of this statute. Such has always been the interpretation of the statute, so far as I know, in this court, and it seems in harmony with the decisions upon the subject. See *The Clintonia*, 11 Fed. Rep. 740; *The City of Washington*, 13 Blatchf. 410; *The Russia*, 3 Ben. 471. These cases are not precisely similar to this case, but it will, I think, be in harmony with the principle of these cases to hold that, when a libelant agrees to accept a certain sum of money in settlement of his demand, that sum becomes his claim within the meaning of the statute. Of course the libel could at any time be amended by reducing the

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

demand to the amount agreed to be accepted as the libellant's claim, in which case there would be no ground to contend that the amount paid was not the amount of the claim. The clerk's taxation is affirmed.

THE CITY OF NEW YORK.

MACHAM *et al.* v. THE CITY OF NEW YORK *et al.*

Circuit Court, S. D. New York. June 25, 1888.)

1. COLLISION—FOG—STEAMER AND SAILING VESSEL—RATE OF SPEED.

The steamer City of New York, outward bound, at 11 o'clock at night, in a fog in which vessels could not be discovered at more than one-eighth of a mile distant, was steaming 11 knots an hour, all she could do against the wind, headed S. by W. $\frac{1}{4}$ W. The bark H., headed about N. E., was sailing about four knots. The watch on the steamer heard the fog-horn of the bark about two minutes before the collision, and thought from the sound that she was about one point off the starboard bow. The steamer's wheel was put hard a-starboard, and the steamer continued at full speed for about a minute, when the bark was seen, going eastward across the steamer's bow. Alarm whistles were sounded, the bark luffed to starboard, the steamer's engines were reversed, and her wheel ported. She was then not over 150 feet from the bark, and her headway could not be stopped. She struck the bark in her port side, and the latter sank almost instantly. *Held*, that the steamer violated both injunctions of the twenty-first sailing rule, in that she did not go at a moderate speed in a fog, and did not slacken speed after hearing the bark's horn, but kept on until the danger was imminent.

2. SAME—CHANGE OF COURSE.

The steamer also was to blame in her movement to port under a hard a-starboard wheel, when she could not reliably locate the bark's position by a single signal of her fog-horn.

3. SAME—INJUDICIOUS ACT IN EMERGENCY.

The bark's change of course in the excitement, when, owing to the misconduct of the steamer, the danger was imminent, and the vessels were within 200 or 300 feet of each other, if injudicious, was not a fault.

In Admiralty. Libel for damages. On appeal from district court. 15 Fed. Rep. 624, 23 Fed. Rep. 616.

FINDINGS OF FACT.

(1) The British bark Helen, an iron vessel of 282 tons register, while on a voyage from Havana to New York city, loaded with sugar, was sunk by collision with the steam-ship City of New York, June 28, 1879, about 10:50 p. m. The captain and three of the seamen of the bark were drowned when the vessel sunk. (2) The collision took place at a point off the coast of New Jersey, 6 $\frac{1}{4}$ miles from shore, in 10 fathoms of water, 12 $\frac{1}{4}$ miles from Barnegat light-house, and 9 $\frac{1}{4}$ miles from Tucker's Beach light-house. The City of New York was a wooden steam-ship, 242 feet long and 1,715 tons register, having a left-handed propeller, and was bound on a voyage from New York to Havana. Her full speed was about 12 knots an hour, and, when going at full speed, her head-