
Statement of the case.

THE S. B. WHEELER.

1. The doctrine, over and over again ruled by this court, that when in admiralty cases involving questions of fact alone, the District and Circuit Courts have both found in one way, every presumption is in favor of the decrees, and that there will be no reversal here unless for manifest error, again declared.
2. Whether the absence of a lookout at the bow of a sailing vessel, though at night, was or was not a contributing fault to a collision, is a question of fact, and where on a libel for a collision both the District and the Circuit Courts have held that it was not, the general rule of practice just above stated, as to the effect of decisions by the two courts in one way, applies.

APPEAL from the Circuit Court for the District of Massachusetts; the case being thus:

About one o'clock at night, on the 18th of July, 1871, a collision occurred in the Vineyard Sound, between the schooners C. F. Beebe and S. B. Wheeler, by which the Beebe was sunk and totally lost. Hereupon her owners libelled the Wheeler in the District Court for the District of Massachusetts.

The libel alleged that the crew of the Beebe saw the green light of the other schooner something more than a mile off, and over their starboard bow; that the Beebe kept her course until it became apparent that the Wheeler had changed and was still changing her course to starboard, so as to make a collision inevitable, and until she was within a hundred feet of the Wheeler, when the helm of the latter was put to starboard, as the only thing that could be done with any hope of escaping the collision or relieving the force of the blow; that under this change of helm she had fallen off about two points, when the Wheeler struck her amidships on the starboard side and cut her in two.

The answer set up that a red light was seen from the Wheeler about a mile distant and on the port bow; that the master, who was in charge of the deck, kept his vessel off until the light was two points on his port bow, and then

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ordered the helm to be steadied, and that afterwards, when said light was about seventy yards distant, the vessel bearing the light, and which proved to be the Beebe, suddenly fell away from the wind in the direction of the Wheeler; that the helm of the latter was immediately put hard aport, and that she fell away; but that the Beebe came down across her bows rendering a collision unavoidable.

After hearing numerous witnesses on both sides (the testimony being conflicting, and that of the claimants disclosing the fact that their vessel had no lookout at its bow, and no question of law being raised in the case), the District Court having found various facts as established by the evidence, dismissed the libel with costs, and on appeal the Circuit Court affirmed the decree. Thereupon the libellants appealed to this court, where the matter was again elaborately argued on the evidence.

Mr. J. C. Dodge, for the appellants; Messrs. G. A. Somerby and L. S. Dabney, contra.

The CHIEF JUSTICE delivered the opinion of the court.

Questions of fact only are presented by this appeal. There is no dispute as to the law. Two courts have already found against the appellants. It has been over and over again ruled by this court that under such circumstances the burden is on the appellant to show the error. Every presumption is in favor of the decrees below. We ought not to reverse unless the error is clear. Such is not the case here.

It is, indeed, urged that the claimants, by their own proof, established the fact that there was no lookout at the bow of the Wheeler when the collision occurred. This is so, but whether that was a contributing fault was a question of fact, and that has been twice found against the appellants.

We are entirely satisfied with all the findings.

JUDGMENT AFFIRMED.