

Case No. 91.

THE ADRIATIC.

{17 Blatchf. 176;<sup>1</sup> 8 Reporter, 615.}

Circuit Court, S. D. New York.

Oct. 1879.<sup>2</sup>

COLLISION—BETWEEN STEAM AND SAILING VESSELS—CHANGE OF COURSE.

1. A steamer collided with a sailing ship in the night, having changed her course and stopped and backed her engine, in an endeavor to avoid the collision. It appeared that, if the steamer had kept her course and speed, and the ship had done what she in fact did do, there would have been no collision. But, as the steamer had skilful officers, who exercised good judgment, in view of the appearances of, and changes in, the ship's lights, it was held that the steamer was not in fault.

{Cited in *Hoben v. The Westover*, 2 Fed. Rep. 93.}

{See note at end of case.}

2. The ship sank with all on board, and the steamer was held not to have been in fault for her conduct after the collision, in respect to getting out her boats and proceeding on her voyage.

{3. Cited in *The Westover*, 2 Fed. Rep. 93. to the proposition that if there is any uncertainty as to the lights or course of a sailing vessel, an approaching steamer must, if necessary, slacken her speed, stop or back and neither proceed nor change her course till the course of the sailing vessel is ascertained.}

{See note at end of case.}

This was a libel in rem, in admiralty, filed in the district court, to recover damages for a collision. That court dismissed the libel, [*The Adriatic*, Case No. 89] and the claimant appealed to this court. {Libel dismissed. Decree of circuit court subsequently affirmed by supreme court in *Marshall v. The Adriatic*, 2 Sup. Ct. Rep. 355, 107 U. S. 512.}

This court found the following facts: "During the forenoon of December 30th. 1875, the ship *Harvest Queen*, on a voyage from San Francisco, touched at Queenstown, Ireland, for orders. She was 187 feet long, 42.6 broad, 28.6 deep, and of 1,626 tons burthen, American measurement. She had on board 1,750 tons of grain, in bulk. Both vessel and cargo were owned by the libellants. Her jib-boom was 31.6 feet long and 16.5 inches in diameter. The bowsprit extended from the stem forward 33.6 feet, and from its heel to the stem was 12 feet. The size of the stem was 32x33½ inches. On top of the bow and over the bowsprit was a breasthook of oak, about twenty feet long and sixteen inches thick, extending each way from the stem about ten feet. A stick of timber from 28 to 32 inches square was required to make it. It was firmly bolted to the knightheads. Above this was the forecastle rail. Having received orders to go to Liverpool, the ship was towed

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out of the harbor by a tug, and left, about half-past eight in the evening, four or five miles southeast of Roche's Point, headed on her voyage. The wind at the time was blowing a fresh breeze from the southwest. The tide was ebb and running to the westward. The usual route for vessels bound from Queenstown to Liverpool was past Tuskar Light, off the southeastern extremity of Ireland. The proper course for a sailing vessel, from the point where the *Harvest Queen* was left, would be east by south, but, to make that course, under the circumstances of wind and sea which prevailed that night, it would be necessary to steer somewhat more to the southward. The *Harvest Queen* could not sail closer to the wind than seven points, and, with the wind as it then was, she was capable of making eight or nine knots an hour. The *Adriatic* was an iron steamer, running regularly between Liverpool and New York, in the White Star line. She was 450 feet long, 42 broad and 30 or 32 deep, with no bowsprit and a very sharp bow. She left Liverpool, on one of her regular voyages, at noon of December 30th, 1875, and was in all respects tight, staunch and strong, and properly officered, manned and equipped. She passed Tuskar Light a quarter of an hour after midnight, and the *Saltees* or *Coningbeg* Lightship, four or five miles away, at 1.55 A. M. of the 31st. The captain, after passing the Lightship, put her upon a course west  $\frac{1}{4}$  north, which was somewhat further away from the Irish coast than usual, as he was not to stop at Queenstown. At 2.15 A. M. he went into the chart room and lay down on a sofa, without taking off his clothes. He had been on duty all the time after leaving Liverpool, and, when he went away, gave orders to be called at four o'clock, or sooner, if any vessels were seen. The chart room adjoins and opens out of the wheel house. The first officer was then on watch. He stood on the bridge, and most of the time on the starboard side. Three seamen were on the lookout, two stationed one on each side of the No. 3 house, and the other on the port side of the bridge. The third officer was on the saloon deck, where he could pass orders from the bridge to the wheel. One of the quartermasters was at the wheel, and another in the wheel house with him. The forward deck was roofed, and, from its shape was called the turtle back, or whale back. No. 3 house was just abaft this turtle back. It was 130 feet from the stem, and both the turtle back and the saloon deck were reached from it by bridges. The spray dashed over the turtle back, so that the lookouts could not have seen ahead at all times, if they had been stationed there. For this reason they were put on the house. The bridge was one hundred and seventy-five feet from the stem. At 2.35 A. M., the first officer, from his place on the bridge, and looking through a night glass, saw a green light about two points on his starboard bow. It was so far away that it could not be seen with the naked eye. The steamer was then about fifty-two miles to the eastward of Roche's Point, and fifteen miles south-southeast of the Hook Tower Light. Both *Coningbeg* and the Hook Tower Lights could be seen from where she was. The wind was from southwest to south-southwest, blowing a fresh gale, and with a force indicated by the figures 7 or 8 on the Beaufort scale.

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The night was dark on the water, but the sky was clear, with detached clouds. The sea was high and running strong from the southward. The steamer was going about twelve knots an hour, which was as fast as she could be driven under the existing conditions of wind and sea. She had all her regulation lights in their proper places and brightly burning. None of her sails were set, and she was propelled exclusively by steam. When the first officer discovered the green light, he had no means of telling what kind of a sailing vessel it was on, or what her exact course was. He did not change his course, but called the third officer to the bridge, who also looked at the light through the glass. Not long afterwards a light, bearing in about the same direction, was seen by the starboard lookout on the No. 3 house. He sent the other lookout stationed with him on the house, to give two strokes of the bell placed on the turtle back for signal purposes. This was promptly done, and signified that there was a light ahead off the starboard bow. It gave no indication of the color of the light. At 2.39 A. M. the green light, which had broadened to three and a half points on the starboard bow, or, possibly, something less, changed to red. The first officer thereupon ordered the wheel to port, and telegraphed the engineer to 'stand by,' following this, at once, with a further order, to 'slow.' All these orders were promptly obeyed, and, under the influence of her port helm, the steamer swung slowly to starboard. About a minute afterwards, the red light changed to green. By this time the bow of the steamer had gone off about a point to starboard, and was swinging more and more in that direction, under the continued port helm. As soon as the green light reappeared the first officer gave an order to stop the engine, and then, as soon as it could be done, to back at full speed. These orders were all obeyed, and the engine got under reverse motion at or about 2.41. No change of the wheel was then made, but the first officer directed that the captain be called, and this was done. The captain, when he was called, came out of the chart room into the wheel house, and, as he passed to the deck on the starboard side, noticed, by the indicator, that the wheel was to port. When he got on deck, the engine was under reverse motion, and this he detected. Looking ahead, he

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saw a green light not very far away, about two points off the starboard bow. Then green and red lights appeared together, and then the red alone. Without any consultation with the first officer, he gave the order from the deck 'hard a-starboard,' and went on the bridge. This order was obeyed. In go-going astern the effect of a starboard helm is the same as that of a port helm when going ahead; it swings the bow to starboard. Very soon after the captain got on the bridge the Harvest Queen appeared through the darkness. She was apparently under as much sail as she could carry and headed for the Adriatic. Before anything further could be done on the steamer to avoid a collision, the jib-boom of the Harvest Queen ran over the turtle back and was in some way broken so that it fell down over the side of the steamer. The Adriatic's engines were at the time backing at full speed, and, if the vessel herself was not actually under sternway, she was not going ahead much, if any. She kept on backing, and, when the vessels got separated, as they soon did, a part of the ship's outer jib and its blocks and rigging were found on the turtle back and hanging over the port rail. The fish davits were made of round iron six and a quarter inches through where they leave the turtle back, and bent upwards like a bow. At the time of the collision, they were ranged forward along the side of the vessel. The anchor stocks were of iron  $\frac{3}{4}$  inches through. There were light iron guard rails around the turtle back. After the collision the port fish davit was found bent downwards towards the deck seventeen inches, or thereabouts, the port anchor stock broken and hanging by the lashings, and the guard rails on both sides bent, and some of the stanchions broken. The paint on the bow was somewhat chafed and scratched, but not very much. The first fish davit was thirty-seven feet from the stem, and the bent and broken rails about twenty-eight feet. The broken anchor stock was a short distance forward of the fish davit. No other injury was done to the Adriatic. The shock of the collision was scarcely perceptible abaft the foremast. There was no hail from the Harvest Queen, but, just after the collision, the first officer of the Adriatic hailed her once from the turtle back. No answer was heard. The Adriatic continued backing until 2.53 A. M., when her engines were stopped. After the vessels separated, the Harvest Queen passed across the bow of the steamer from port to starboard. Her masts appeared to be all standing and the sails upon them set, but, in some way, she was injured by the collision, so that she sank not long afterwards, with all on board, and became a total loss. Nothing has since been heard of her or any of her crew. When last seen she was apparently half a mile away from the steamer, and showing her green light four or five points off the starboard bow. Immediately after the vessels got separated, orders were given on the Adriatic to clear away the boats, and the men at once set to work to do so, but, the Harvest Queen still keeping in sight, the order was countermanded, for the moment. The Adriatic then steamed slowly toward the Harvest Queen, until she became lost to view. About the time she disappeared cries for help were heard in the water off in the direction of where she was last seen. The orders to lower the boats

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were then promptly repeated, and two boats put out. Some confusion occurred in getting the boats away, as the crews had not been assigned to them, the steamer having only just left port. There was no unreasonable delay, however. The boats were put in command of the second and fourth officers, and rowed in the direction of where the voices came from, and where the ship was last seen. They remained out from half an hour to an hour, when they were recalled by a signal from the steamer. Nothing was found except a piece of timber supposed at the time to be a part of the broken jibboom, and a piece of rope. At 4.30 A. M., the Adriatic again started on her voyage. The movements of the engine, after it was stopped at 2.53, were thus recorded in the engineer's log; '2.54 A. M., ahead slow; 3.00, stop; 3.15, astern slow; 3.16, stop; 3.23, astern slow; 3.26, stop; 3.45, ahead slow; 4.00, stop; 4.09, astern slow; 4.11, stop; 4.15, astern slow; 4.16, stop; 4.26, ahead slow; 4.30, full speed.' When the green light was first seen from the Adriatic, it is not probable that the Harvest Queen was where she could see the Coningbeg Light-ship. She must have been just then coming within the range of that light, which is placed some miles outside of the land. It is at the southeastern extremity of a series of dangerous rocks extending out a considerable distance from the land, known as the Saltees Rocks. On the 12th of January, 1876, a piece of the port side of the breast-hook of the Harvest Queen, seven feet and then inches long, and a piece of the starboard fore-castle rail, extending from the cathead forward to the towing chock, were found cast ashore about a mile and a half west of Carnsore Point, which is on the coast of Ireland about midway between Tuskar and Coningbeg. Near the same place were also found a small piece of the name board of the Harvest Queen, and part of an oar, with her name on it. No other parts of the wreck have ever been found. The place at which these articles were found was where the wreckage would naturally have drifted, if the Harvest Queen went down in the neighborhood of where the collision occurred. The breasthook was broken square off, apparently about eighteen inches or two feet

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from the stem. The piece found was torn from the frame to which it had been bolted. in such a manner as to leave the bolts standing in the original position, only a few being bent, and none drawn out. The name board was of light pine, not more than two or three feet long, and a foot wide.”

Thomas E. Stillman, for libellant.

Everett P. Wheeler and Joseph H. Choate, for claimant.

WAITE, Circuit Justice.<sup>4</sup> Many of the facts disputed below have not been questioned here. The claimant does not deny that the vessels actually collided, or that the Harvest Queen sank with all on board, in consequence of injuries received in the collision. The libellants also concede, that, if the Adriatic was not in fact going astern when the collision took place, she was making little or no headway. These questions are, therefore, out of the way, and the controversy about the facts is reduced to the color of the light first seen by the Adriatic; its distance; the time it appeared; the changes in color and bearing; and the movements of the Adriatic.

It would not be easy to solve all these questions satisfactorily, if the evidence was considered only in its parts. Taking it as a whole, however, I have had no great difficulty in reaching the conclusions stated in the finding of facts. The recollection of witnesses as to time, distances and bearings, cannot be relied on, in all cases, with implicit confidence. It is, at best, but the impression of what the judgment of the witness was about a matter of which no special note was made at the time. In but few instances is it claimed that the time was actually taken from a time keeper, or the bearing by a compass. It is easy to see that such impressions would be more or less influenced by what afterwards happened.

1. As to the time. All agree that no one saw the light until after five bells, or half past two. It was seen by the first and second officers on the bridge before it was by the look-outs. The officers put the time at 2.35, so recording it in the log, and I see no reason to doubt the accuracy of their estimate or recollection. No witness directly contradicts them, and they are strongly supported by what is known to have taken place afterwards. At any rate, they cannot be far from the truth.

The engineer's log shows that the engine was first stopped, after backing, at 2.53. This was after the collision. It is the duty of the engineer, or his assistant, to make a record of every change in the movement of the engine, and the time when it occurred. Entries are made, at the very time the changes take place, with chalk, on a blackboard kept near at hand for that purpose, and the time is taken from a clock hung where it can conveniently be seen from the place where the engineer stands when working the engine. If the assistant attends to this duty, his place is at the blackboard immediately behind the engineer. From these entries the log is afterwards written up. Such being the duty of the engineer, it is to be presumed, until the contrary is shown, that the log contains a true statement of the time when the engine was stopped.

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Upon this evidence, I have found that the light was first seen at 2.35, and that the engine was stopped after the collision, while backing, at 2.53. Consequently, eighteen minutes elapsed between the first discovery of the light and the time when it was deemed safe, after the collision, to stop backing the Adriatic, and go slowly ahead to see what was necessary to be done to save life or property.

2. As to the distance. The regulations require colored lights to be of such a character as to be visible on a dark night, in a clear atmosphere, from the deck of a ship, and with the naked eye, at least two miles. This light was first seen from the bridge of a large steamer and with a glass. The sea was high and the vessels consequently unsteady. Under such circumstances, it has seemed to me that the addition of half a mile or a mile to the regulation distance, on account of the glass and the height of the place of observation, was, probably, enough. This would make the distance of the light, when first seen, two miles and a half or three miles. The estimate of Hamilton, the lookout, that it was three or four miles off when he first saw it, must be wrong, for it can hardly be believed that he could see such a light that distance, on such a night, and keep it in view, with the naked eye, standing, as he did, on deck, some feet below the bridge. Everything goes to show that the actual distance could not have been more than three miles and that it was probably less.

3. As to the color. The first and third officers both say distinctly it was green, and the lookout on the bridge thinks that was the color. All agree it first appeared off the starboard bow. The vessels would naturally be on nearly opposite courses. The Adriatic was going from, and the Harvest Queen to, Liverpool. The Adriatic, being a steamer, undoubtedly took the shortest practical route to Coningbeg. The Harvest Queen, having the wind free and being able to go substantially where she chose, would be likely to shape her course so as to sail as near as she could conveniently over the course of the Adriatic between Coningbeg and Liverpool. At Coningbeg the Adriatic was set upon a course a little to the southward of that the Harvest Queen would take in coming up from Queenstown. This would naturally place the Harvest Queen, before

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she reached Coningbeg, to the northward, which would be on the starboard of the Adriatic and expose her green light, unless she was heading outside of and across the Adriatic's course. The evidence that the red light was first seen is not of a character to inspire the fullest confidence, and falls far short of satisfying me that the first and third officers, corroborated, as they are, by other undisputed facts, are mistaken. These officers had the means of knowing, and it was their special duty to know, what the facts really were. Their conduct was consistent with what they say they saw, and the scrap log, written up by the third officer, and afterwards transferred by the first officer, with such corrections as he thought necessary, to the official log, agrees with their testimony. These logs are the official record of what they saw. The light was either green or red. Whether the one or the other could alone be determined by the eye, and the impressions made at the time would be likely to continue, no matter what happened afterwards. If the logs are not correct, it is because they were intentionally falsified, a thing certainly not to be presumed.

That a red light was seen at some time before the collision is not disputed, and I entertain no doubt that it first appeared after the green.

4. As to the bearing. The log states, that, when first seen, the light bore about two points on the starboard bow, and, when it changed from green to red, about three and a half points. This was the estimate of both the first and third officers. No memorandum was made of it until the scrap log was written up, between four and five o'clock in the morning. In the mean time the collision had occurred, and the attention of all had been directed for more than an hour and a half to a search for the other colliding vessel, and to the saving of life and property. From the other circumstances in the case, I am strongly inclined to think the officers have put the bearing further to the starboard than it really was, but still there is nothing which shows satisfactorily what, if any, change should be made in their estimates, and their record in this particular must be accepted as true.

5. As to the movements of the Adriatic, and, in this connection, as to where the collision occurred and when the changes in her movements were made. There can be no doubt that the steamer ran for some time after seeing the light without changing her course or speed. The first order was to port, and that was followed immediately by orders to "stand by" and "slow." These last were given, according to the engineer's log, at 2.39. The correctness of this entry was disputed on the argument, but I see no reason to doubt it. The chief engineer was alone at the engine when the orders came. The assistant got to his post as soon as he could after he heard the telegraph bell, and remained until the watch was changed. In the absence of the assistant it was the duty of the engineer to make the necessary memorandum on the blackboard. The presumption is that what ought to have been done was done, and I have found nothing in the case to indicate that



this officer was negligent in anything. His record should show the actual time, as given by the clock, when the change was made, and I am satisfied it does.

This being the case, it follows that the *Adriatic* kept her course at full speed four minutes after the light first appeared. The vessels, during that time, must have been lessening the distance between them at a combined speed of full twenty miles an hour, or about a mile and a third in the four minutes. At 2.39, therefore, they were probably not more than a mile and a half apart. The engine was then slowed, and, before the collision, the speed of the steamer ahead was run down from twelve miles an hour to nothing, if she had not actually acquired sternway. Her average speed from the time she slowed until her headway was entirely overcome was half what it was before, or say six miles an hour. During the same time the average combined speed of the two vessels was fourteen or fifteen miles an hour; and if, at 2.39, they were a mile and a half apart, it would take them six minutes, and, probably, a little more, to get together. The *Adriatic* stopped backing at 2.53. She was then supposed to be about half a mile from the place of collision. Her maximum speed in backing did not exceed seven miles an hour. Her average speed in getting up to this maximum, after she had stopped going ahead, would, consequently, be three miles and a half an hour, if there were no obstructions in the way. But, we know that, in addition to getting up her own sternway, she had to separate herself from the *Harvest Queen* almost entirely by the use of her own power, since the effect of the wind was to keep the two vessels together until they got free of each other. I think it fair to assume, therefore, that the steamer continued backing seven or eight minutes after the collision. In this time she would have gone about half a mile. In view of these facts I have had no difficulty in reaching the conclusion, that the wheel of the *Adriatic* was ported at 2.39, and that the collision occurred from 2.45 to 2.47.

The first officer says, that, when the green light appeared the second time, he telegraphed to "stop," and followed this order, as soon as possible, with another, to back at full speed. The engineer's log shows that the order to stop came at 2.40, and the one to back at 2.41. Time in seconds is not put on the log, and from entries of this kind it may fairly be inferred that one order followed close on the other.

Some discussion was had at the bar, in this connection, as to the time the captain was called, and how soon he came on deck, but

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to my mind these questions are unimportant, so far as this branch of the case is concerned.

It only remains to consider, under this head, what changes were made in the course of the Adriatic. At 2.39 the wheel was ported, and at the same time the engine was slowed. At 2.40 the engine was stopped, and at 2.41 put at full speed, under the reverse motion. The steamer could not, therefore, have run more than two minutes under her port helm before her screw began to turn backwards. In two minutes, at her full speed of twelve miles an hour, she would not have gone but two-fifths of a mile, and, under the "slow," it is not probable she made much, if any, more than a quarter of a mile. The estimate of the witnesses is, that, when the orders to stop and go astern were given she had not swung more than a point or a point and a half. This being so, her departure from her original course could not then have been very great, and, when the screw was reversed, the rudder had but little effect until sternway was acquired. Under these circumstances, I cannot think, that, when the collision took place, the steamer had gone more than two or three points off her course. Very little dependence can be put on the recollection of the officers or men as to the exact heading of their vessel. They were in a position which made it more important to look at the way they were to get out of the danger that threatened them, than to the exact angle of their course.

Without more as to the particular facts, I proceed to the consideration of what seems to me to be the real controversy in the case; and that is, whether, as a matter of law, the Adriatic was in fault for porting, stopping, or backing, or for starboarding on the order of the captain, when he came on deck. There is now no doubt, that, if she kept her course and speed, and the Harvest Queen had done what she in fact did do, there would have been no collision. It was a mistake, therefore, to change, but every mistake is not necessarily a fault, in admiralty. The law requires that those in charge of the navigation of vessels like the Adriatic should possess a very high degree of nautical skill. They are charged with the important duty of directing the movements of the powerful machinery placed under their control, so as not unnecessarily to endanger life or property, either on board or not on board. For this purpose they are required to exercise good judgment. They need not be infallible. It is enough if they do what others, having the requisite skill, and placed in a like situation, would ordinarily have done.

The conduct of those on the Adriatic must be considered in connection with the facts as they successively presented themselves at the time. And, first in order was the green light, seen a point and a half or two points on the starboard bow, two miles and a half or three miles away, and to the leeward. The wind was from the southward and westward, accompanied by a driving sea from the same direction. So long as that light alone was in view in that quarter, it was safe for the steamer to keep her course and speed, and no one could complain if she did. The highest skill would not be likely to suggest anything differ-

ent. Next, the green light was changed to red, and thus the green of the steamer exposed to the red of another vessel not a very great way off. At this time nothing but a light was seen. Neither the ship nor her sails had appeared. It was only known for a certainty that a red light was on the water, well off the starboard bow of the steamer, between her and a dangerous lee shore, and that it was probably carried on some kind of a sailing vessel, as no white light accompanied the red. What course the vessel was steering could not then be told with exactness. It was under such circumstances that the first officer was called on to decide whether he would attempt to cross in front of the light at full speed without porting, or whether he would port and slow, or do either alone.

I am aware that it is not every case of meeting port to starboard that will justify a port wheel, to put port to port. The rule is for one vessel not to cross the bow of another at a dangerous proximity, and it is just as wrong to knowingly do this by porting as it is by starboarding. Here, however, there was uncertainty. A light only was seen. It might be on a vessel beating down the channel, or on one coming up. The vessel might be one that could sail close to the wind, or another that was obliged to keep more away. On a steamer going at the rate of twelve miles an hour against or across the wind, it is not always easy to tell the exact direction from which the wind is blowing. Practice will undoubtedly enable some to make estimates that will approximate the truth, but it will not always do to venture on nice calculations, without more accurate observation than can generally be made under such circumstances.

The appearance of the red light in the place of the green indicated clearly that the vessel on which it was displayed occupied a different position towards the steamer from what she did before, and that in some way the courses of the two vessels were changed, so that they crossed ahead of where the steamer then was. How far ahead was uncertain. Under these circumstances it was that the officer in command deemed it prudent to put his wheel to port, so as to bring his red light opposite the same light of the approaching vessel, and, as there was doubt, to bring his vessel under better control in case of an emergency, by reducing her speed. It is now probable, that, if the ship could have been seen, and her exact position made out, neither of these things would have been done, but the question here is not what, with the knowledge we now have, ought to have been done, but what, with the facts as

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they then appeared, ordinary prudence would suggest. It needs no argument to show, that a speed of twelve miles an hour, with a vessel weighing, as the Adriatic did, 8,000 tons, would, under some circumstances, be dangerous. The natural impulse of a skilful navigator, if in doubt as to what was before him, would be to reduce this speed, so as to get his ship under better control while the uncertainty continued. So, to, a red light exposed to a green is more likely to be unsafe than red to red; and, where reasonable doubt exists as to the relative position of the two vessels, instinctively, almost, those in command endeavor to bring the two red lights together, as the appropriate way of avoiding all danger.

It has, however, been argued with much force, that, if the red light was first seen a mile and a half away, three points and a half over the starboard bow, the Adriatic ought to have known, that, with the wind as it was, she would cross the course of the approaching vessel long before there could be any danger of collision, and that to attempt to pass otherwise was a clear fault. I have very great doubt whether, when the red light appeared, it was as far over the bow as seems now to be supposed, but, be that as it may, the exact position of the ship could not be seen; and I do not think such a mistake as may have been made ought, under the circumstances, to be visited with the consequences of a legal fault. The change of the green light to red was calculated to induce the belief that the ship on which it was carried had changed her course, and I am by no means satisfied, from the evidence, that she did not do so. As the case stands, it now seems to me probable, that, if the steamer had kept her course, with that light in view, there would have been no collision. Soon, however the red light went out and the green-again appeared, still without ship or sails in sight to aid in determining what ought to be done. This added to the original uncertainty, and clearly made a case apparently for the application of the rule which requires a steamer in doubt to get away from apprehended danger. To go ahead would look like approaching the peril, while to back would seem to be withdrawing from it. A change of helm at that time was not specially important, because, before it could be made of any practical use, the screw would be under its reverse motion, and then the rudder could have but little effect until the momentum was overcome and sternway obtained. When that was done, the port wheel would have the same effect on the swing of the bow as a change to starboard would have in going ahead. If the witnesses are to be believed, the course of the ship appeared to be unsteady, and, that being so, it is hard to say that backing away from her was a fault. In the darkness which then prevailed that would seem to be the safest thing that could be done.

Complaint is made of the captain, because, after coming on deck, he ordered the wheel to starboard, without consulting the first officer. The captain says he gave the order when he saw the red light change to green, and when, as he supposed, the steamer was under sternway. I am satisfied, however, that the forward motion had not been overcome. The

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engine was working astern and throwing the "white water" forward, but the steamer herself was still going ahead. If she had been going astern the order would have been right, for the starboard wheel, in backing, would bring the bow to starboard, and thus assist in putting the vessels on parallel courses, with their green lights opposite each other. As long as she was going ahead slowly it made but little difference which way the rudder was, since the backward movement of the screw prevented the operation of the rudder to any considerable extent. The order, therefore, could not have contributed to the collision and did no harm.

It is again insisted, that the *Adriatic* was in fault for delay in getting out her boats, and for not waiting until daylight before starting on her voyage. The order to clear away the boats all agree was given with promptness, and I cannot find that there was any culpable delay in getting them out. Before they could be lowered, the steamer was half a mile away from the place of collision and from the ship. It was, certainly, good judgment to wait until the steamer could be got nearer before putting the boats in the water, and it is not seriously contended, that, when the order was given the second time, it was not obeyed with all the promptness that ought to have been expected. The engineer's log, the correctness of which I do not doubt, shows conclusively that the steamer was lying by and moving cautiously about in the vicinity of where the accident occurred for much more than an hour. The gale was all the time increasing, and the lee shore not far away was dangerous. The official report of the weather shows that the next morning at eight o'clock the wind was blowing a strong gale at Tuskar, the nearest signal station. The ship must have gone down before morning, and, probably, while the steamer was lying by. If the ship's boats had been got out, there can hardly be a doubt they would have reached the steamer, lighted as she was from the masthead. If they were not out, it is probable there was nothing left on the surface of the water to save, after the voices which had been heard were lost; and this must have been considerably more than an hour before the steamer left. In the meantime the steamer's boats had been out for nearly an hour, and diligent in their efforts to do all that could be done. While, therefore, it would have been more satisfactory if the steamer had staid by longer, I cannot say she was in fault for not doing so. The probability is that nothing more could have been done if

## The ADRIATIC.

she had held on, and she owed her first duty to those she had on board.

Complaint is also made of the unsatisfactory account of the collision given in the logs, of the painting over of the scratches on the bow in New York, and of the reticence of officers of the steamer on her arrival. All these furnish just cause for criticism, but I cannot say they overcome the effect of the other facts which to my mind have been satisfactorily established in spite of them.

My attention has also been called to some supposed discrepancies in the cases made by the logs, the answers, and the testimony given on the defense. I have failed to find any such substantial differences as to cast suspicion on the testimony. The difficulty with me has been not so much as to the facts, as to the duty of the Adriatic in connection with the facts I have found.

The case has been presented in the most satisfactory manner on both sides. Nothing has apparently been left undone by counsel or parties that they could do, to aid me in the determination of the facts or of the law; and, after the careful consideration which such laborious preparation deserves, I have been unable to reach any other conclusion than that the fault of the Adriatic has not been shown. A steamer is not justified in coming into collision with any other vessel, if it is possible to avoid it, that is to say, if it can be avoided by the use of such means as those having the requisite skill would ordinarily employ for that purpose under like circumstances. I cannot but think the officers of this steamer have brought their justification within the fair operation of this rule. Much of what was done at the time of this disastrous collision will never be known. It is impossible to tell with certainty how the vessels came together. The ship came and went in a comparatively short time, and necessarily in the midst of great excitement. Almost every witness has his own peculiar theory. Hardly any two of the large number of diagrams in the record, representing what the observers think they saw, agree in the material points, and it would be a useless task to attempt now to ascertain just how the damage was done. It seems almost incredible that so large, and apparently so strong, a ship could be broken into and sunk in so short a time, without inflicting serious injury on the Adriatic. As it was, the iron plating was hardly touched. Not a single indentation has been found which can fairly be attributed to an actual contact with the hull of the ship. The scratches on the paint must have been very slight, and it is by no means certain, from the testimony, that any were found on the stem, or the starboard, side of the bow. There is certainly no satisfactory evidence showing that the sharp bow of the Adriatic went any considerable distance inside the hull of the ship. As the Adriatic was stopped, or nearly so, it is evident that the blow which caused the loss must somehow have come from the Harvest Queen herself. It is a very remarkable fact, under the circumstances which are known to have existed, that no hail was heard from the deck of the ship before or after the collision. This seems entirely inconsistent with the idea that she could have had her proper

complement of men standing watch and attending to their duties at the time. Confessedly, a considerable time elapsed between the collision and the final disappearance of the ship, enough, certainly, to have given an opportunity to lower away her boats, if her crew had been at their posts. But it is not my intention to look for the faults of the ship. I place the decision entirely on the ground, that, upon the case as it stands, the steamer is free from blame.

A decree may be prepared dismissing the libel, with costs in both courts.

[NOTE. This case was appealed to the supreme court, in which, after a motion to strike from the transcript certain depositions and testimony had been heard and denied, a new rule on the subject, however, being promulgated, (103 U. S. 730.)—a hearing was had on the merits on the finding of facts above reported. In affirming the decree of the circuit court, Mr. Justice Field said: “When a steamer is approaching another vessel, and there is danger of collision from continuing the rate of speed at which she is going, it is the duty of her captain to slacken her speed. and, if necessary, to reverse her engines. and move her backwards. Such is the express language of rule 21 adopted by congress for the prevention of collisions on water, which is as follows: -Every steam vessel, when approaching another vessel, so as to involve risk of collision, shall slacken her speed, or, if necessary, stop and reverse: and every steam vessel shall. when in a fog. go at a moderate speed.’ Rev. St. § 4233.

\* \* \* The rule is for a sailing vessel meeting a steamer to keep her course while the steamer takes the necessary measures to avoid collision. Though the rule should not be observed when circumstances are such that it is apparent its observance must occasion a collision, while a departure from it will prevent one, yet it must be a strong case which puts the sailing vessel in the wrong for obeying the rule.” *Marshall v. The Adriatic*. 2 Sup. Ct. Rep. 355, 107 U. S. 512.. See, also. *Crockett v. The Isaac Newton*, 18 How. (59 U. S.) 583; *Williamson v. Barrett*, 13 How. 101; *Bedell v. The Potomac*. 75 U. S. (8 Wall.) 590; *Barker v. The City of New York*, Case No. 765..]

<sup>1</sup> [Reported by Hon. Samuel Blatchford, Circuit Judge, and here reprinted by permission.]

<sup>2</sup> [Affirming decree of district court, in *The Adriatic*, Case No. 89. Decree of circuit court affirmed by supreme court in *Marshall v. The Adriatic*, 2 Sup. Ct. Rep. 335, 107 U. S. 512.]

<sup>3</sup> [Number of inches not given in original report.]

<sup>4</sup> [This cause was heard by Mr. Chief Justice Waite, holding the circuit court for the southern district of New York, pursuant to Rev. St. § 617, at the request of Mr. Justice Hunt, allotted to the second circuit.]