

Case No. 4,414.
[6 Ben. 58.]¹

THE ELM CITY.

District Court, S. D. New York.

April, 1872.²

COLLISION NEAR HELL GATE—STEAMBOAT AND
SCHOONER—LIGHTS—ESTIMATES OF DISTANCE—MOVEMENT IN EXTREMIS.

1. A schooner, bound to New York, was beating through the East river against a light southwest wind, the tide bang ebb, about midnight of July 18th, 1871. She alleged that, having fully beat out her tack, she was in stays close in under Negro Point bluff, on Ward's Island, when a steamboat, bound from New York, ran into her, striking her on her port bow a blow, angling aft, which sank her. Both vessels had the regulation lights set, and both had lookouts stationed forward. The story of the steamboat was, that, as she rounded Hallett's point, she saw the schooner's red light off her starboard bow; that shortly afterwards she saw both lights of the schooner, then about a quarter or a half a mile off; that very soon afterwards the schooner's red light disappeared, the green light remaining visible, whereupon the steamboat's wheel was starboarded to go under the schooner's stern, and her engine slowed; that thereafter the red light suddenly came into view again, indicating that the schooner had changed her course; and that thereupon the steamer stopped, but too late to avoid a collision. *Held*, that, on the evidence, the pilot of the steamer mistook the distance he was from the schooner, when he starboarded to go between her and Ward's Island, and was then too near her to allow time for the schooner to get off on the other tack.
2. The schooner made no change back to the port tack after having come about on the starboard tack.
3. Although the schooner's jib was held up so as to keep her in stays, yet that did not contribute

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to the collision, and was done in the extreme peril and alarm consequent on the close approach of the steamboat head on.

4. The steamboat was solely liable for the damages.

In admiralty.

R. D. Benedict, for libellants.

B. H. Owen, for claimants.

BLATCHFORD, District Judge. This libel is filed by the owners of the schooner Oscar C. Acken, and the owners of the cargo laden on board of her, to recover the damages caused by a collision which took place about midnight, on the 18th of July, 1871, between the schooner and the steamboat Elm City, off Negro Point bluff, in Hell Gate, whereby the schooner was sunk. The steamboat was bound from New York to New Haven. The schooner, bound to New York, was beating down against a light southwest wind, the tide being the first of the ebb. The stem of the steamboat struck the port bow of the schooner, near the schooner's stem, a blow ranging inboard on the schooner a little, in a direction towards the schooner's main hatch.

The libel alleges, that, at the time of the collision, the schooner had beat fully across the channel, and was in stays close in under Negro Point bluff; and that the collision was caused solely through the fault of those in charge of the steamboat, in that, among other things, she did not take a course that would have taken her to the southward of the schooner, or wait till the schooner had crossed to the southward, and then pass to the northward of the schooner, in not having a competent and proper lookout, and seeing the position of the schooner sooner and more accurately, in not sooner stopping and backing, and in otherwise not taking proper measures to avoid the schooner.

The answer avers, that, when the steamboat rounded Hallett's point, she discovered the schooner's red light, bearing off the steamboat's starboard bow, such light being, as near as could be ascertained, somewhere abreast of, or to the eastward of, Negro Point bluff; that both vessels continued on their respective courses, and, shortly after, the schooner exhibited both of her signal lights, green and red, she being, at that time, as nearly as can be stated, about abreast of Negro Point bluff, and near the west shore, and from a quarter to a half of a mile distant from the steamboat; that, very soon thereafter, the schooner's red light disappeared and her green light alone remained visible, whereupon the steamboat's wheel was immediately hove to starboard, to go under the schooner's stern, between her and Ward's Island, and the bell was rung to slow, which was promptly answered, and the steamboat was slowed; that, immediately thereafter, and suddenly and unexpectedly, both lights of the schooner again came into view, whereupon the steamboat was immediately stopped and backed, and every effort made, that could be, to avoid the collision, yet the vessels came together, the steamboat's stem striking the schooner on her port side, somewhere forward of the port fore-rigging, and the schooner sank; that, from these various changes of the lights of the schooner, the pilot and those navigating

the steamboat had, reason to understand and believe, that, when they first saw the red light, the schooner was standing over towards Ward's Island, that, by the subsequent appearance of both lights, she was coming around upon the opposite-tack, and that, by the disappearing of the red light, and the green light alone remaining visible, she had got around and was standing over towards Long Island; that, at that time, if the schooner had kept on, there was abundant time and room for the steamboat to have passed under her stern in safety, the steamboat's wheel having been starboarded, and: her speed slackened to accomplish it; that it was the duty of the schooner then and there to have held on her course towards Long Island, but instead of so doing, she, without any excuse therefor, wrongfully and improperly changed her course, and came around again with her head towards Ward's Island, which brought her port side towards the steamboat, and so baffled the navigation of the steamboat as to render the collision inevitable; and that the collision occurred by reason of the want of a proper and vigilant lookout on the schooner, and the erroneous and improper navigation on her part, and so changing her course, and thus baffling the lawful and proper efforts of the steamboat to keep out of her way.

The schooner had on board, at the time, her master, who was at the wheel, two seamen, who were forward, and a boy, 16 or 17 years old, who was steward. The master and the two seamen have been examined as witnesses for the libellants.

The master testifies, that he first saw the steamboat's red light when he was on his tack towards Long Island; that the steamboat was, at that time, about at Hallett's point; that he tacked on the Long Island snore, and stood towards Ward's Island, keeping the steamboat's red light in view, until he had got about half way over towards Ward's Island, when he saw the green light and the red light of the steamboat, as if she had turned to come towards him; that he stood over until within fifty feet of Ward's Island, and then tried to go about, the steamboat being, at that time, about 130 feet off, and still showing her green and red lights; that, in order to go about, he put his helm hard-a-starboard and held it there until the steamboat was not twenty-five feet off, and then let go of his wheel, and stepped a distance of two feet to the cabin door and called to the steward to come up, and then went back and put his hand on the wheel just as the steamboat struck the schooner; that the schooner, at the time of the blow, had got around nearly into the wind, so that her

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sails shook a little; that he did not put his wheel to port at all; that, when he let it go, it did not run back or move either way; and that he heard two whistles from the steamboat when she was about 150 feet off.

Palmer, one of the seamen on the schooner, testifies, that he was standing forward on the starboard side; that he first saw the steamboat's red light when the schooner was going about on the Long Island shore; that, after the schooner had got a little more than half way across towards Ward's Island, he saw both of the colored lights of the steamboat; that the schooner stood over towards Ward's Island as far as the eddy (elsewhere he says he supposes they began to go about when about fifty feet from Ward's Island, "may be more"), and then came up into the wind and lay there, and did not get off on the other tack, her sails shaking and she being right in the wind when the steamboat struck her; that, when the steamboat was about twenty feet off, her two colored lights being visible, he started to go aft; and that, just before he started to go aft, he heard the master call the steward. This witness states a fact which the master did not testify to, that, when the schooner came up into the wind, the master told him to let the jib swing amidships, and he did so, the effect being to keep the vessel from going about, and to let her lie in the wind. He says, that the schooner lay in the wind "a minute, may be," before she was struck; that, if the jib had not been suffered to swing amidships, they could have about got around on the starboard tack, before being struck, but could not have cleared the steamboat; and that tire steamboat was 150 feet off when the schooner got into the wind.

Lockwood, the other seaman, testifies, that he first saw the steamboat's red light when the schooner was about half way across on her tack towards Long Island; that, when the schooner was about half way across on her tack towards Ward's Island, he saw both of the colored lights of the steamboat; that, when the schooner got over to the eddy, about fifty feet from Ward's Island, and the steamboat was about 150 feet off, and apparently coming right towards the schooner, her two colored lights and her white headlight being visible, the schooner came head to the wind, but did not go around on the other tack; that, at the time the schooner got head to the wind, the steamboat was not over twenty or twenty-five feet off; that he stood forward, looking out and not handling the sails, and did not go aft before the collision; and that Palmer let the jib swing in when the steamboat was not over twenty-five feet off.

The sequence of events, as set up in the answer, is, (1) red light of the schooner seen off the steamboat's starboard bow; (2) both of the colored lights of the schooner seen, when the schooner was from a quarter to a half of a mile off; (3) the schooner's red light disappeared, her green light remaining visible, whereupon the steamboat starboarded and slowed; (4) both of the colored lights of the schooner again seen, whereupon the steamboat stopped and reversed.

The pilot, who was at the wheel, two wheelmen, who were also at the wheel, the lookout, and the engineer, have been examined from the steamboat.

Stephens, the pilot, testifies, that, on turning Hallett's point, he discovered the red light of the schooner on his port bow; that just as the steamboat was on the turn at Negro point, the schooner showed both of her colored lights, being somewhere near a quarter of a mile off, and the lights bearing on the port bow of the steamboat; that he then starboarded and slowed, so as to go between the schooner and Ward's Island; that the next thing he observed, in reference to the schooner's lights, was, that she shut in her red light, leaving her green light alone visible; that the next thing he observed, in regard to the schooner's lights, was, that she showed both of her colored lights again; that he then rang to stop and back, and blew two whistles; and that the schooner was gradually swinging towards Ward's Island, when she was struck. On cross-examination, he says, that he had turned Negro point, and got headed up the river, when he first saw the two lights of the schooner, the steamboat being then in about the middle of the river; that the schooner might, perhaps, have been 150 feet off, when she showed both of her colored lights the second time; and that, just before that, her green light bore-off the starboard bow of the steamboat, the steamboat being on a swing to port. He also says, that, at the time of the blow, the schooner's green light had disappeared, and her red light alone was visible; that the schooner must have swung off with her head towards Ward's Island, in order to have been struck as she was; that, when he rang to stop and back, he had stopped the swinging to port, by steadying the helm; that the stopping and backing swung the steamboat's head a little to starboard, but he did not change his helm when he stopped and backed; and that the vessels were too close together for porting by the steamboat, at the time she stopped and backed, to have been of any service.

Burt, one of the wheelmen, states, that, after seeing the schooner's red light, he saw both of her colored lights; that then the steamboat's wheel was starboarded, and she was slowed, the schooner being about a quarter of a mile off; that afterwards the schooner shut in her red light, and showed her green light alone; that then the wheel of the steamboat was let run amidships; that next both of the colored lights of the schooner became visible, and the steamboat was stopped and backed, the schooner being then over 200 feet off; that the wheel of the steamboat was not again changed; that

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afterwards, and before the blow, the schooner's green light was shut in, her red light remaining visible; that, if the steamboat had ported when she stopped and backed, she would not have cleared the schooner; and that the schooner, when hit, was swinging towards "Ward's Island.

Wedmore, the other wheelsman, testifies, that, after the schooner showed her red light, she showed both of her colored lights, being then about a quarter of a mile off; that then the steamboat starboarded and slowed; that, after that, the wheel of the steamboat was steadied; that after the schooner showed both of her colored lights, she next shut in her red light, her green light remaining visible; that next she showed both lights again, and then the steamboat was stopped and backed, when the schooner was 200 feet off; and that, when struck, the schooner was gradually swinging towards Ward's Island, and had shut her green light in.

Grant, the outlook, says that he stood about fifteen feet abaft the stem of the steamboat; that he reported the schooner as a sail off the port bow; that the schooner, after showing her red light, showed both of her colored lights, and then shut in her red light, her green light remaining visible, and then showed both of the lights again, when the steamboat was close to her; that, when struck, the schooner was swinging towards "Ward's Island; that, when he first saw both of the schooner's colored lights, the vessels were, he should think, 150 or 175 feet apart, or, it might have been, further; and that, when he saw both of her colored lights the second time, the vessels were somewhere in the neighborhood of ten or twenty feet apart.

The engineer of the steamboat says, that the steamboat made between two and two and a half turns back, before the blow, it taking about four turns back to stop her "headway when going slowed.

It cannot escape observation, that there are some discrepancies between the answer and the evidence of the witnesses from the steamboat. The answer states, that the red light of the schooner, when discovered, bore off the starboard bow of the steamboat; while the evidence is, that it bore off the port bow. The more important discrepancy is, that the answer sets up that the steamboat starboarded and slowed when, and not until, the schooner's red light was shut in; while the pilot and the two wheelsmen of the steamboat say that the steamboat starboarded and slowed when, the schooner showed her two colored lights, and before she shut in her red light. The evidence makes the starboarding and slowing of the steamboat to have taken place when the vessels were further apart than they were if such starboarding and slowing did not take place till the time stated in the answer.

There is also a discrepancy, in a very important particular, between the testimony of the lookout on the steamboat and the testimony of the three persons who were in the pilot house of the steamboat. The latter testify, that, when the schooner first showed both

of her colored lights, and the steamboat starboarded and slowed, the schooner was about or somewhere near a quarter of a mile off, that is, 1,320 feet off. The place where these observers were was some distance back from the bow of the boat, where the lookout was stationed, and was higher from the water. The lookout was fifteen feet abaft the stem, and gives his judgment of the distance apart of the vessels, when the schooner first showed both of her colored lights, as 150 or 175 feet, although, he says, it might have been further. The master of the schooner says, that, when he began to go about, the steamer was about 150 feet off. Palmer, one of the schooner's seamen, testifies, that the steamboat was 150 feet off when the schooner got into the wind; and Lock-wood, the other one of the schooner's seamen, says, that the steamboat was about 150 feet off when the schooner came head to the wind. Until the schooner got pretty well around to the wind, she would not show her green light to the steamboat.

So, there is another important discrepancy between the testimony of the lookout on the steamboat, and that of her pilot and her two wheelmen. The pilot says, that, when the schooner showed both of her colored lights the second time, and the steamboat stopped and backed, the schooner might, perhaps, have been 150 feet off; Burt says, over 200 feet off; Wedmore says, 200 feet off; and the lookout on the steamboat says, somewhere in the neighborhood of ten or twenty feet off. The master of the schooner says he did not let go his hard-a-starboard wheel till the steamboat was within twenty-five feet off, and that when he let it go he called the steward. He gives the distance off of the steamboat, when he heard her two whistles, as 150 feet. They were blown when the pilot rang to stop and back. Palmer says, that he started to go aft when the steamboat was about twenty feet off, and that just before he started to go aft he heard the master call the steward. Lockwood says, that the steamboat was not over twenty or twenty-five feet off when the schooner got head to the wind.

Estimates of the distance of lights, especially colored lights, seen across water, are of very little value to show their real distance. But the testimony, in this case, indicates, that, whatever the distance was, the lookout on the steamboat thought that the schooner was much nearer when she showed both of her colored lights and the steamboat starboarded and slowed, than the men in the pilot house of the steamboat thought she was and much nearer when the steamboat stopped and backed than the men in the pilot house of the steamboat thought she was. The testimony also indicates, that the men on the schooner thought the steamboat was much nearer, when the schooner got into a position to

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show both of her colored lights, than the men in the pilot house of the steamboat thought she was.

I am impelled to the conclusion, from all the evidence, that the pilot of the steamboat mistook the real distance off of the schooner, when he starboarded; that he starboarded and slowed instead of starboarding and stopping, or instead of stopping without starboarding, or instead of porting, under the mistaken idea that he was so far away from the schooner that he would have room, after she got about and off on her starboard tack, to go under her stern; that he ran on, under a starboard wheel, until he got so near to Ward's Island that he was obliged to steady his helm; and that then he found himself so close to the schooner that he could not avoid her, and had no time to port, but could only ineffectually stop and back. This starboarding of the steamboat, and her continuing to run directly head on towards the schooner, was, on the evidence of the steamboat's own witnesses, the result of the schooner's coming about so far as to show both of her colored lights, and, perhaps, to shut in her red light. Nothing is complained of by the steamboat as against the schooner, except that the schooner, after shutting in her red light showed it again with the green. But the evidence from the schooner as to what, in fact, was done on board of her, shows, that it was done in the extreme peril and alarm of the close approach of the steamboat, head on, both of her colored lights visible; and the entire evidence fails to show satisfactorily that anything done on board of the schooner contributed to the collision. It was the duty of the steamboat to avoid the schooner, and, not having done so, to show a clear excuse for not having done so. I think she fails to establish such excuse.

There must be a decree for the libellants, with costs, with a reference to a commissioner to ascertain the damages sustained by the libellants.

¹ [Reported by Robert D. Benedict, Esq., and here reprinted by permission.]

² [Affirmed by circuit court; case not reported.]