

Case No. 5,049.
[4 Ben. 181.]¹

THE FRANCONIA.

District Court, S. D. New York.

May, 1870.

COLLISION OFF POINT JUDITH—STEAMER AND SCHOONER—SPEED IN A
FOG—CHANGING COURSE BLINDLY.

1. The steamer F., bound from New York to Portland, while running at the rate of seven or eight knots an hour, in a thick fog, collided with and sank the schooner M. C. T., near Point Judith. On board of the schooner, a fog horn was blown at intervals of half a minute, and the steam whistle of the F. was heard for some half an hour before the collision. Immediately before the collision, the helm of the schooner was ported and the wheel of the steamer was put hard a starboard. *Held*, that the speed of the steamer was too great.

[Cited in *The City of Panama*, Case No. 2,764.]

2. As the schooner was crossing the course of the steamer from starboard to port, the proper manoeuvre for the steamer would have been to port her wheel instead of starboarding it, and, as she starboarded blindly, in ignorance of the true course and position of the schooner, and, as it turned out, erroneously, such change of her course was a fault.

[Cited in *The Alberta*, 23 Fed. 811]

In admiralty.

Scudder & Carter, for libellant

Beebe, Donobue & Cooke, for claimants.

BLATCHFORD, District Judge. This libel is filed on behalf of the libellant and the other owners of the schooner *Mary C. Terbell*, and of her crew, and of the owners of her cargo, to recover the sum of \$27,000, as the value of the schooner and of her cargo and pending freight, and of other property on board of her, lost by the sinking of the schooner through a collision between her and the screw steamer *Franconia*, on the 9th of June, 1868, between 7 and 8 o'clock, A. M., during a thick fog, at a point about three miles south south-east from Point Judith. The schooner was on a voyage from Boston to New York. The steamer was bound from

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New York to Portland, and had left New York at about 4 o'clock P. M. of the day before. The steamer struck the port side of the schooner, just aft of the fore rigging, nearly at right angles, and cut into her several feet, and she very soon sank.

The libel alleges, that the schooner was sailing by the wind, on a north-west course, with the wind west by south; that she had, for several hours previously, been on her port tack, steering in a north-westerly direction, and not changing her course, until about half a minute before the collision, when her master, observing that the steamer was bearing directly down upon him, and that a collision was imminent, and with the view of escaping it, if possible, ordered his helm to be ported, which was done; and that the schooner, in consequence, had changed her course about one point before the collision.

The answer avers, that the speed of the steamer at the time was only about half her usual rate, and was at a rate only sufficient to enable her to make her course, and that, when the vessels would have cleared, the schooner changed her course across the head of the steamer.

It is contended, on the part of the steamer, that the wind was about south-west by south, and that the schooner was, therefore, sailing about west, which would be making her course, and that she changed some eight points, so that she was heading north at the time of the collision; that the steamer, whose proper course was about east, kept it, and so struck the schooner at right angles; and that, if the schooner had not changed her course, the steamer would have passed safely to the northward of the schooner. As the steamer struck the schooner on her port side, at about right angles, if the schooner was at the time heading north, the steamer must have been heading about east. The proper course of the steamer, at the place of collision, was about east, and, therefore, if the schooner was in fact heading to the north, the steamer could not have materially changed her course to port. If however, the schooner had been heading to the north-west and changed one point by porting, that is to north-west by north, the steamer, to have hit her at right angles, must have been heading about north-east by east, a change of about three points from east, by starboarding.

The testimony on the part of the schooner is, that her sails were trimmed by the wind and that her sheets were hauled flat aft. This last fact is confirmed by the pilot of the steamer. The testimony of those on the deck of a sailing vessel, and in charge of her sails and her helm, as to the shape of her sails, and the course of the wind, is much more reliable than the testimony of those on board of a steamer coming from a direction which makes the wind at least three points abaft the beam of the steamer. On the whole evidence. I can have no doubt that the-course of the schooner, before she ported, was north-west, and that she was on her port tack, sailing within about five points of the wind, under a three or four knot breeze.

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The master of the schooner was on deck, and there was a man at the wheel. The steam whistle of the steamer was heard on board of the schooner for some half an hour before the collision. The sound came from off the weather bow of the schooner. The master of the schooner kept blowing a fog horn constantly, at intervals of half a minute, nothing being visible. Suddenly, he saw the bows of the steamer about five points off his weather bow, that is, in a direction about west by south. He immediately blew his horn again, and went into the cabin and brought out a musket and fired it off. He then directed the man at the helm to port it, which was done. He called the rest of his crew from below. They came up hurriedly and lowered the schooner's boat, from the davits at her stern, and it had scarcely reached the water before the steamer struck the schooner. The lower part of the steamer near the water was visible first to the master of the schooner, the fog being thicker above. He says, that, before he ordered his helm to be ported, he saw the steamer, and noticed that she was swinging towards his bows, that is, towards the north. That is the way she would have swung, if she had been running, at the time, on a starboard helm. The testimony of the pilot of the steamer is, that the steamer was running at a speed of between seven and eight knots an hour; that the first notice he had of the proximity of the schooner, was hearing something like a man halloing; that right immediately, about two seconds after, he heard something just like a board slap in a sail, which was probably the report of the musket; that the lookout sang out to him, that there was a noise on the starboard bow, something like a whistle, fog horn; that he and a man who was in the pilot house with him immediately hove the wheel of the steamer hard a starboard; that the steamer's engine was immediately stopped and reversed; and that they then saw the schooner coming out of the fog, across the bow of the steamer, and went into her and sank her. He also says, that, when he first saw the schooner, she was about a point on the starboard bow of the steamer. The pilot of the steamer, and the man who was with him in the pilot house, do not say anything, in their testimony, as to the effect in fact produced on the course of the steamer by putting her wheel hard a starboard. The latter says, that he and the pilot put it hard a starboard before the collision. For the steamer, from being on a course east, to have hit, at right angles, the schooner on a course north-west by north, would have required a change in the course of the steamer,

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by starboarding, of not over three points. That the steamer did starboard is admitted. That she swung to port, by starboarding, I have no doubt. She starboarded because the noise was reported to be on her starboard bow. In fact, the schooner was crossing the bow of the steamer, from the steamer's starboard side, to the steamer's port side. Therefore, porting, and not starboarding, was the proper manoeuvre for the steamer, and, if she could have seen the schooner, she would have ported. She starboarded blindly, in ignorance of the true course and position of the schooner, and erroneously, as it turned out, and it was a fault in her to do so. On the evidence, if she had not starboarded at all, but had merely stopped and reversed her engine, the chance is that she would have cleared the schooner, by passing under her stern, or would have struck her a glancing blow, and, probably, with less damage.

But there was another and more grievous fault on the part of the steamer. She was running at too great speed. The evidence of her pilot is, that he had been hearing fog horns all along in the morning; that, about two minutes before the collision, a fog horn on his starboard bow had passed him; that he heard another fog horn on his starboard bow, about a minute before the collision; and that, within ten minutes before the collision, he had heard a fog horn on his port bow. He was at the spot where all the coasting vessels coming from the eastward, through the Vineyard Sound, enter Long Island Sound, off Point Judith. Yet he plunged on, at a speed so great, that, as this schooner, after having given all proper warnings of her position, loomed up through the fog, he could not stop or sufficiently diminish the headway of his steamer, to enable him, by the retardation of her onward movement or the divergence of her course, to avoid crushing against her and sending her to the bottom.

The collision was due to the two faults, on the part of the steamer, which have been pointed out, and there must be a decree for the libellant, with costs, with a reference to ascertain the damages.

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