

Case No. 7,296. THE JESSE WILLIAMSON, JR.
THE BLANCHE PAGE AND THE JAMES A. BURDEN.

{17 Blatchf. 106.}¹

Circuit Court, S. D. New York.

Aug. 28, 1879.

COLLISION—TOW—LIGHTS.

1. Under rule 4 of the statutory navigation rules (Rev. St. § 4233), requiring “steam vessels, when towing other vessels,” to “carry two bright white mast-head lights vertically,” and requiring that each of those mast-head lights shall be of the same character and construction as the mast-head lights prescribed by rule 3, a steam-tug, which has no mast, and cannot carry a light at her mast-head, must carry two bright white lights vertically, of a character to be visible five miles away, on a dark night, with a clear atmosphere, and so constructed as to show a uniform and unbroken light ahead, and from ten points on one side to ten points on the other, of the tug.
2. Whether, if two lights of a power equal to what is required for mast-head lights are suspended

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vertically on the flag-staff at the stern of a tug, in such a manner as to show a uniform and unbroken light ahead over an arc of twenty points of the compass, they would be the legal equivalent of two mast-head lights, quere.

3. If circumstances are such as to make it proper for a steam tug to keep a tow 400 or 500 feet behind her, she should be specially careful not only to notify approaching vessels that a tow is following, but as near as may be, where it is.
4. Whether rule 9 of the board of supervising inspectors appointed under the authority of the act of February 28, 1871 (16 Stat. 440; Rev. St. §§ 4405, 4412), has the force of law in respect to the lights to be carried on canal boats and barges, while being towed by steam vessels, quere.

{Appeal from the district court of the United States for the Southern district of New York.}

These were cross libels filed in the district court, in admiralty, for a collision. John H. Starin, as owner of the barge James A. Burden, sued the schooner Jesse Williamson, Jr., for damages to the barge while being towed by the steam tug Blanche Page, through a collision between the barge and the schooner. William H. Sise and others, as owners of the schooner, sued the tug and the barge, for damages to the schooner by the same collision. The district court dismissed the libel against the schooner, and gave a decree for the libellants in the suit against the tug and the barge. Starin, the owner of the tug as well as of the barge, appealed to this court, in both suits.

The decision of the district court (BLATCHFORD, J.) was as follows:

“On the evening of the 2d of November, 1875, after dark, the schooner Jesse Williamson, Jr., collided with the barge James A. Burden, which was in tow, on a hawser, of the steam tug Blanche Page. The bowsprit of the schooner entered the port side of the cabin in the after part of the deck of the barge, and upset a stove which had fire in it, and the barge took fire and burned up, with her cargo. The schooner, also, was injured. John H. Starin, the owner of the barge and of the tug, sues the schooner to recover for the loss of the barge, and of her cargo, which the barge was carrying on freight. The owners of the schooner sue the tug and the barge to recover for the damage done to the schooner. The collision took place a short distance to the westward of Throgg’s Point, the schooner being bound to the eastward, and the tug and barge to the westward. The libel in the suit against the schooner sets forth, that the hawser by which the barge was towed was about 80 fathoms long; that, after the tug had passed around Throgg’s Point, the schooner was discovered by those in charge of the barge, to the leeward of the tug, and showing only her red light; that, at that time, the barge was following after the tug almost in a straight line, but heading a little to the windward of her, the wind being from the northwest or thereabouts; that the schooner passed the tug, on the port hand of the tug, at such a distance that she could easily have cleared the barge also, if a proper lookout had been kept, so as to see the barge, or if proper care had been taken in reference to the navigation of the schooner; that, as soon as the schooner was seen by the master of the barge to be approaching the barge in such a way as to render a collision probable, the

helm of the barge was put hard-a-port, and the schooner was loudly hailed to keep away from the barge, which it was even then possible for her to do by porting her helm, but, without making any such change, she kept on, and ran into the barge; that the tug and the barge had all the regulation lights properly set and burning brightly; and that the collision was caused by the negligence and carelessness of those in charge of the schooner, in that, among other things, she had no lookout properly performing his duty, and she did not continue her course to pass the barge on the port hand, as there was ample room for her to do, there being nothing whatever in her way, and she did not take proper measures to avoid the barge by changing the course she was on when she was hailed. The answer of the schooner alleges, that, when the schooner was about two miles to the westward of Throgg's Neck, and sailing on an easterly course, in about the middle of the channel, she discovered the green light and the white light of a vessel about one point over her port bow, and apparently distant about 2% or 3 miles, which lights approached the schooner, and shortly changed, showing both green and red lights; that, when still nearer to the schooner, said vessel closed her green light, and showed the red and white only; that, at that time, said vessel and the schooner (which was moving at the rate of about six knots an hour)" had approached so that said red light bore over the schooner's port bow, and distant about half the distance between the schooner and the New York shore, and had gone so far by the course of the schooner, as to be entirely out of her track; that, within a short time afterwards, the lookout on the schooner discovered a barge, which proved to be in tow of said vessel, (which was a tug,) on a very long hawser, (of about 100 fathoms in length,) which barge was far to the southward of the course of the tug, and heading nearly across the channel, into which position the wind and tide had carried her, in consequence of the neglect and mismanagement of those in charge, and the length of the hawser by which she was towed, and the change of course of the tug in rounding Throgg's Point; that there were no lights visible on the barge and no lookout; that, immediately on discovering her, the schooner was ported; that the schooner had all the regulation lights properly set and burning brightly, and a careful lookout properly stationed and attentive to his duties; and that the collision was caused solely by the

carelessness and negligence and improper seamanship of those in charge of the tug and barge, in, among other things, towing the barge on a hawser of undue and unsafe length, and not having any light on, or lookout or proper person in charge of, the barge. The libel of the owners of the schooner contains the same averments as their answer to the libel of the owner of the barge. The answer of the owner of the tug and the barge, which was filed after the other three pleadings had been filed, avers, that the tug and the barge had come around Throgg's Point on the starboard side of the channel and as near to the starboard edge of the channel as was prudent; that, after the tug and the barge had just passed around Throgg's Point, the schooner was discovered, by those in charge of the tug and those in charge of the barge, to the leeward of, and ahead of, the tug, bound eastward and showing only her red light; that the barge in tow of the tug was following after the tug, almost directly behind her, but heading a little to the starboard of her; that it was not possible for the tug and the barge to have passed on the other side of the schooner; that, at the time, the tug had all the regulation lights properly set and burning brightly, and indicating that she had a vessel in tow, and the barge had the regulation light also properly set and burning brightly; and that there was negligence in the schooner, causing the collision, in that she did not take proper measures to avoid the barge by porting her wheel, and changing the course she was on, in time to avoid the barge, and in that, although she was approaching the tug and the barge on their port hand, in such a way as to head for the barge, and in such a way that the tug could not possibly draw the barge out of the way, and that the barge could do nothing to avoid her, except to port her wheel, which she did, the schooner kept on her course toward the barge until she struck. In other respects, the answer of the owner of the tug and the barge contains the same averments that his libel does.

"The libel of the owner of the barge, in averring that the tug and the barge had all the regulation lights properly set and burning brightly, does not state what lights either vessel had. This averment is contained in the third article of such libel. The answer to that libel denies all the allegations contained in such third article, except as specifically admitted. There is no admission of the allegation as to the lights on the tug and the barge, except what is found in the statements in the answer, above recited, respecting the green light, the red light and the white light, of the tug. The answer states, that there were no lights visible on the barge, and, while it alleges fault in the tug and the barge, in that the barge had no light, it does not allege, as a fault in the tug, that the tug did not have all her proper lights, or did not have the proper lights to indicate that she had a vessel in tow. So, too, the libel of the owners of the schooner mentions the red, the green and the white lights of the schooner, and avers that there were no lights visible on the barge, and alleges that the collision was the fault of the tug and the barge, in that the barge had no light, but it does not allege any want of proper lights on the tug. The answer to such

libel alleges that the tug had all the regulation lights properly set and burning brightly, and indicating that she had a vessel in tow, and that the barge had the regulation light (in the singular) also properly set and burning brightly, but it fails to state what lights the tug had or where they were placed, or what the lights were which indicated that she had a vessel in tow, or where they were placed. The tug had two common globe lanterns, with white lights, one above the other, about 2 feet apart, about 4 feet from the top of her flagstaff aft, and she had a white head-light, and red and green lights. Those flag-staff lights aft on the tug were not noticed by any one on the schooner. The barge had two globe lanterns, with white lights, similarly arranged on her flag-staff aft. They were not noticed by any one on the schooner. The pleadings on the part of the schooner are very unsatisfactory. If the schooner failed to see any towing lights on the tug, and so failed because the tug did not have proper towing lights, and thus was brought suddenly, and without receiving proper warning, into the presence of the barge, and that was believed by the schooner to have been a cause contributing to the collision, it was to be expected that averments to that effect would be found in such pleadings. But there are none of such averments. The failure to see the lights aft on the flag-staff of the tug, and the failure to aver in the pleadings that they were not seen because they were not proper towing lights, would show that there could be no issue regarded as raised as to whether such lights were proper towing lights, if only the averment had been made in the libel suit of the owner of the barge, (which was the first pleading filed,) that the tug had such lights as proper towing lights. But, the averment of that libel is only that the tug had all the regulation lights, and that averment is denied by the answer of the schooner. On the whole, I think the question must be examined as to whether the lights which the tug had as towing lights were the proper regulation towing lights. Rule 4 of the 'Rules for preventing collisions on the water' contained in section 4233 of the Revised Statutes, provides as follows: 'Steam vessels, when towing other vessels, shall carry two bright white mast-head lights vertically in addition to their side lights, so as to distinguish them from other steam vessels. Each of these mast-head lights shall be of the same character and construction as the mast-head lights prescribed by rule 3.' Rule 3 shows that, by a 'mast-head light,' as

spoken of in rules 3 and 4, is meant a light at the foremast-head, in a steam vessel which has a foremast; that each of the two towing lights in such a steam vessel is to be a bright white light, of such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to throw the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side; and that the two lights are to be arranged vertically, and are to be in addition to the green and red side lights. Rule 4 states the object of this arrangement of white lights to be to distinguish towing steam vessels from other steam vessels. This tug did not carry sail and had no foremast. She was, however, such a steam vessel as is spoken of in rule 7, and was required to carry the red and green side lights, and, in addition thereto, a central range of two white lights, the after light being carried at an elevation of at least 15 feet above the light at the head of the vessel, the head light being so constructed as to show a good light through 20 points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel, and the after light so as to show all around the horizon. Such central range of two lights the tug was bound to carry, as a steam vessel, when not towing, and she was bound, when not towing, to carry two lights at her head, arranged vertically. 'The light at the head of the vessel' prescribed in rule 7, is the equivalent of the light 'at the foremast-head' prescribed in rule 3, and, where a towing steam vessel of the class mentioned in rule 3 is required, by rule 4, to carry two bright white mast-head lights arranged vertically, to distinguish her from other steam vessels of her class, a towing steam vessel of the class mentioned in rule 7 is required, by rule 4, to carry two head lights arranged vertically, to distinguish her from other steam vessels of her class. I considered this question in the case of *The U. S. Grant* [Case No. 16,803], very fully, and arrived at the conclusion, that, under provisions of law such as are now found in section 4233 of the Revised Statutes, a steam tug, when not towing, is bound to carry a light at the head of the vessel, and an after light in a central range, and is bound, when towing, to carry two lights at her head, and to carry them vertically, that is, one above the other, and to dispense with the after light, but still to carry the green and red lights. The steam tug, in the present case, did not have two head lights arranged vertically. She had only one head light. The idea of the statute is, that one white head light shall indicate a steam vessel not towing, and two white head lights shall indicate a steam vessel towing; for, it expressly forbids sail vessels, whether under way or being towed, from carrying any white head light. As there is to be a white head light, in the front of the vessel, at her head, conspicuous, first to be seen, when she is not towing, so there are to be two of them, arranged vertically, one above the other, in the front of the vessel, at her head, conspicuous, first to be seen, when she is towing. The object is, that a tow shall be indicated to other vessels by the lights on the tug, at the earliest possible

moment, so that they may give both tug and tow a sufficiently wide berth. For that purpose, the towing lights are to be head lights, and each is to be of the brilliancy and size and in the position of the usual head light. In the present case the tug ought not to have had any light on her flag-staff aft. The two globe lanterns she had aft were not proper towing lights. They were not head lights, and were not calculated to attract attention, and it is not shown that they were of a brilliancy equal to that of the head light. If the tug had had proper towing lights at her head, in the same position with the head light which she did have, it is quite clear that they would have been seen by the schooner as soon as the head light of the tug was seen. That was seen by the schooner a long distance off, and so were the red and green lights of the tug. The fact that the two after lights on the tug were not seen from the schooner indicates that they must have been very feeble lights. The schooner had no proper notice that the tug had a vessel in tow, and the failure to give such notice was a fault in the tug, which contributed to the collision. The barge and the tug, as one vessel, and that a steam vessel, were bound, as between either of themselves and the schooner, to keep out of the way of the schooner, if the schooner, on the one hand, and the barge and the tug, on the other, were proceeding in such directions as to involve risk of collision, although the barge was being towed astern of the tug; and it was the duty of the schooner, as well as her privilege, to keep her course, unless there were special circumstances rendering a departure from these requirements necessary, in order to avoid immediate danger. *The Cleadon*, 14 Moore, P. C. 92, 97; *The Warrior*, L. R. 3 Adm. & Ecc. 553; *The Civilta* [Case No. 2,775]; *The U. S. Grant* [supra]. The evidence shows, I think, that the schooner did not change her course so as to embarrass the tug or the barge. She cleared the tug and she had no reason to suppose the barge was being towed behind the tug. The lights which the barge had were as feeble to indicate her presence as were the after lights on the tug to indicate there was a tow. The fact that the schooner saw the head light and side lights of the tug and did not see the two lights aft on the barge, indicates that those lights were defective, as a warning to the schooner, either in position, or size, or brilliancy. The obligation

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resting on the barge and, the tug, to keep out of the way of the schooner, imposes on them, as the schooner did not change her course to their embarrassment, the necessity of showing affirmatively that the schooner committed a fault in not changing her course, or that there were special circumstances which required her to do something which she did not do, or to avoid doing something which she did.

“The libel of the barge sets forth, as a fault in the schooner, that she had no lookout properly performing his duty. The mate of the schooner, with two seamen, Blake and Saunders, were forward on the lookout, when the lights of the tug were first seen from the schooner. The master was aft by the wheel, and a seaman, Frisbie, had the wheel. The schooner was heading east. The mate reported to the master a green light on the port bow ‘way ahead.’ In a few minutes he reported it was a steamer showing a white bow light, and green and red lights, coming nearly for the schooner, and then he reported that she had hidden her green light and showed only her red light and her white light. The master then called the mate aft, and he came aft, and then the master went forward himself, telling Frisbie to keep the schooner east by south, which was done. The master then sent aft the two men who were forward, to get ready to haul aft the main sheet, preparatory to turning Throgg’s Point. They started aft, but, before they got aft, the master saw the barge rise up before him. He ordered his wheel hard-a-port, and the order was obeyed, but the barge and the schooner collided. The schooner, from the time she sighted the tug, made no change towards the tug and the barge. She changed one point away from them, from east to east by south, and afterwards, by hard-a-porting, she changed more away from them. From these circumstances, and from the way in which the vessels struck each other, it is manifest that the barge was not moving either west or west by north, but was moving crosswise of those courses, to the northward. I am not satisfied, from the evidence, that the master, or any one else on the schooner, ought to or could have seen the barge any sooner than she was seen, or that there was any deficiency in the lookout on the schooner, which contributed to the collision. The libel of the barge also alleges fault in the schooner, in that she did not continue her course to pass the barge on the port hand. If this means, that, after sighting the tug, the schooner changed towards the tug and barge, the evidence shows the contrary. Such libel also alleges that the schooner took or kept such a course that she collided with the barge. The evidence shows that she changed her course away from the barge, as soon as she sighted the barge, and that there was no fault in her in not seeing the barge sooner. The libel of the barge also alleges, that the schooner was in fault because she did not change her course by porting, when she was hailed from the barge. It appears that she heard no hail, and it does not appear that she ought to or could have heard any hail which the barge made, and it is shown that she did port as soon as she discovered the barge. The answer of the tug and the barge contains no averments as to fault in the schooner, which are not covered by the foregoing

observations. In the suit against the tug and the barge, there must be a decree for the libellants against both vessels, with costs, with reference to ascertain the damages. In the suit against the schooner, the libel is dismissed, with costs.”

This court found the following facts: “About half-past seven o’clock in the evening of November 2d, 1875, a collision occurred in the East river, near Throgg’s Neck, between the schooner Jesse Williamson, Jr., owned by the libellants in the second suit, and the barge James A. Burden, in tow of the tug Blanche Page, both owned by the libellant in the first suit. The evening was clear, but dark, and the moon had just set. The wind was heavy from the northward and westward. The schooner was loaded with coal and on a voyage from Port Johnson, New Jersey, to Portsmouth, New Hampshire. Her crew consisted of a captain, mate, three seamen and a cook. Her regulation lights were properly set and burning. The tug was on her way from New Haven to New York, and towing the barge astern, by a hawser at least seventy or eighty fathoms long. The length of the barge was one hundred and twenty or one hundred and thirty feet. The lights of the tug were as follows—a white head light forward; a red light on the port side; a green light on the starboard side; and two white globe lanterns on the flag-staff aft, hung one above the other. The lights aft were not of a character to be visible on a dark night, with a clear atmosphere, at a distance of five miles, and were not otherwise constructed, or fixed, as mast-head lights. The barge had two white globe lanterns hanging one above the other from her flag-staff, burning dimly, but no other lights whatever. The speed of the tug, with her tow, was five or six miles an hour, and that of the schooner somewhat more. The usual course from the east around Throgg’s Neck, is southwest by south to the point, and then around the buoy, to west-northwest. In this case, the tug, when she rounded the buoy, hauled a point, or a point and a half, further north, on account of the wind. The schooner was steering so as to make Throgg’s Point as close as she could with safety, because, when she rounded the point, she would be compelled to come up more into the wind. She had on deck her captain, mate, and three seamen. The mate was on the lookout and the two seamen were forward with him. The captain was aft and the third seaman was at

the wheel. The mate, on the lookout, saw and reported the green light of the tug off the port bow, then the white head light, then the red light, and finally the green light shut out. No other lights were seen. After this the captain called the mate aft and went forward on the lookout himself. Soon after getting forward he sent the seamen to tend the main sheets, on rounding the point. The schooner passed the tug port to port, at a safe distance, and steadily kept her course. The red light of the schooner was seen from the tug about the time of passing the buoy. This was when the tug's lights were first discovered from the schooner. The vessels could not then have been more than a mile apart, if as much as that. The red light of the schooner was alone seen from the tug. Immediately after the seamen were sent aft, the captain saw the hull of the barge loom up close by, out of the darkness, and angling across the schooner's bow. He saw no lights. This was the first time that the barge, or anything on her, had been seen from the schooner. The wheel was at once put to port, but not in time to avoid a collision. The schooner struck the barge on the port side, fifteen or twenty feet forward of the stern. The blow knocked down the stanchions and joiner work, which caught fire from a stove. The barge was partially burned and sunk, with her cargo on board. As soon as the man at the wheel of the barge saw, by the way the schooner was coming, that a collision was possible, he ported his wheel, and then, when the schooner lapped the barge, starboarded it, hoping to swing the stem off. The commissioner's report as to damages is supported by the evidence. Rule 9 of the rules and regulations of the supervising inspectors appointed under the authority of the act of February 28, 1871 (16 Stat. 440; Rev. St. §§ 4405, 4412), is as follows: 'Steam vessels, when towing other vessels, shall carry two bright white masthead lights vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these masthead lights shall be of the same construction and character as the mast-head lights which other steam vessels are required to carry; and, in addition to the lights herein referred to, when engaged in towing canal-boats and barges, or both, as is customary on the Hudson and other rivers, white lights shall also be carried on the extreme outside of the tow on either hand, and also on the extreme after part of the same.' This rule was approved by the secretary of the treasury."

George A. Black, for schooner.

Robert D. Benedict for tug and barge.

WAITE, Circuit Justice. The only question which I think it necessary to consider in this case is, whether the tug carried "two bright' white mast-head lights vertically," or their legal equivalent. Rule 4 of the statutory navigation rules (Rev. St. § 4233), provides, that "steam vessels, when towing other vessels, shall carry two bright white masthead lights vertically, in addition to their side lights, so as to distinguish them from other steam vessels. Each of these masthead lights shall be of the same character and construction as the "mast-head lights prescribed by rule 3;" that is to say (rule 3) "a bright white light, of

such a character as to be visible on a dark night, with a clear atmosphere, at a distance of at least five miles, and so constructed as to show a uniform and unbroken light over an arc of the horizon of twenty points of the compass, and so fixed as to show the light ten points on each side of the vessel, namely, from right ahead to two points abaft the beam on either side." Such a light must be carried at the foremast-head of an ocean-going steamer, or a steamer carrying sail. Steam vessels not carrying sail and navigating bays, lakes, rivers, or other inland waters, are required, by rule 7, to carry, in addition to their colored lights, "a central range of two white lights, the after light being carried at an elevation of at least fifteen feet above the light at the head of the vessel. The head light shall be so constructed as to show a good light through twenty points of the compass, namely, from right ahead to two points abaft the beam on either side of the vessel, and the after light so as to show all around the horizon."

This tug could not carry a light at her mast-head, for she had no mast, but she could carry two bright white lights vertically, of a character to be visible five miles away on a dark night, with a clear atmosphere, and so constructed as to show a uniform and unbroken light ahead, and from ten points on one side to ten points on the other of the vessel. This would be a light of the character and construction which ocean steamers, and steamers carrying sail, are required to have at the foremast-head. I deem it unnecessary to decide, in this case, whether, if two lights of a power equal to what is required for mast-head lights, are suspended vertically on the flag-staff at the stern of a tug, in such a manner as to show a uniform and unbroken light ahead over an arc of twenty points of the compass, they would be the legal equivalent of two masthead lights; for, I am clear, that, unless there are two lights of that power and efficiency, carried vertically somewhere on the vessel, rule 4 is not complied with.

That such lights were not carried on this tug is very apparent from the evidence. It is conceded, that ordinary globe lanterns only were used. The mate, when acting as lookout on the schooner, must have been vigilant. He saw, first, the green light, then the white at the head, then the red, and then the green shut in, as the tug approached and rounded the buoy, and put herself on

her course down the river. The head light was seen, while those from the flagstaff were not. The presumption is, that the light ahead was such as was required by rule 7, and, therefore, of the same character and construction as that prescribed by rule 3, for the mast-head. As that light was seen, the conclusion is irresistible, that the stern lights were not of the same power, or were not so placed as to present the view which the law required. This, under the circumstances, is not only a fault in law, but a fault in fact. The schooner, while, to my mind, in all particulars vigilant, was not actually informed that she was to meet a tow, until the hull of the barge loomed up out of the darkness, immediately ahead, almost at the very moment of the collision. Clearly, if the circumstances are such as to make it proper for a tug to keep a tow four to five hundred feet away from her, she should be specially careful not only to notify approaching vessels that a tow is following, but, as near as may be, where it is. A sailing vessel must hold her course while a steamer is keeping out of her way in passing, but this obligation continues only so long as the steamer is passing. The sailing vessel should, therefore be told where the steamer is, and as, for the purposes of this rule, the tug and her tow are to be considered as one vessel, and that the tug, it is necessary that the required information should extend to both tow and tug. In the day time, the tug may assume that both will be seen from the sail vessel, and act accordingly; but, at night, and in the dark, this is impossible, and, consequently, the law has supplied a system of arbitrary signals, intended to make up for the loss of vision by day. If these signals are omitted, and the sailing vessel comes into collision for want of them, the loss must fall on the tug, where the fault lies.

There can be no doubt that this collision was caused, in part, at least, by a want of proper towing lights. Had the schooner been told, in the appropriate way, of the approach and presence of a tug and tow, she would have watched as well for the tow as the tug, and, if she had found the tow driven out of its course, as this one undoubtedly was, by force of the wind, or otherwise, she would have taken some measures herself to prevent a collision. From the manner in which this schooner was navigated, I have no doubt whatever, if she had known that a tow was following the barge, the loss never would have happened. She was keeping up as close to Throgg's Point as she could, in order to take advantage of the wind and save herself from going off too much to leeward, when she got by. There was room enough for her to keep off; and there can be no reasonable doubt that she would have done so had she known it was necessary. Not knowing of the barge, she held her course, as she certainly had the right to do, with the information she had. In this I recognize fully the rule, that, while a tug must keep herself, as well as her tow, out of the way, a sailing vessel is not permitted to run down a tow, if it gets beyond the control of a tug, and she can, with reasonable effort, avoid it.

Holding, as I do, that a tug, while towing in inland waters, must exhibit vertically two bright white lights, of equal power with the mast-head lights of sea-going steamers, so

fixed as to present a uniform and unbroken light right ahead and ten points on either side, and that this tug was in fault in this particular, it is unnecessary to inquire whether rule 9 of the board of supervising inspectors has the force of law, as a rule of navigation. By section 4412 of the Revised Statutes, the board has the right to "establish such regulations, to be observed by all steam vessels, in passing each other, as they shall, from time to time, deem necessary for safety," and, by section 4405, these rules, when approved by the secretary of the treasury, "have the force of law." The statutory navigation rules (section 4233, Rev. St., rule 8), prescribe lights for sailing vessels while being towed, but omit any provision for canal-boats, barges, &c, when towed, as is customary in rivers and other inland waters. This is an important omission, and, if there is really any doubt as to the power of the board to bind towing steamers by this rule, in passing sailing vessels, the necessary legislation to remedy the defect should at once be obtained. The absolute necessity there is for some such rule must certainly be acknowledged, if tugs are permitted to separate themselves long distances from their tows, and then make up the tow of any size or form they please.

I see no reason for disturbing the report of the commissioner as to the amount of damages. A decree may be prepared, dismissing the libel of Starin, with costs in both courts, and in favor of Sise and others, for \$1,076 74, and interest on \$627 86 from November 26th, 1875, and on \$446 88 from November 20th, 1877, at six per cent, that being the amount allowed by the commissioner.

[NOTE. A motion for judgment against the sureties on the appeal bond was denied. Case No. 7,297.

{After the attachment of the vessel in the district court a stipulation in the sum of \$2,100, as her appraised value, was given. When, therefore, the libellant appealed to the supreme court, the appellees moved to dismiss the appeal for want of jurisdiction. It was held that as the matter in dispute did not exceed the sum or value of \$5,000, exclusive of costs (section 3, Act Feb. 16, 1875; 18 Stat. 316), the court had no jurisdiction. The appeal was dismissed. Opinion by Mr. Justice Blatchford. 108 U. S. 305. 2 Sup. Ct. 669.]

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