

THE METIS.

[4 Ben. 120.]¹

District Court, S. D. New York.

April, 1870.

COLLISION—STEAMER AND
 SCHOONER—COURSES SLIGHTLY
 CROSSING—CHANGE IN EXTREMIS.

1. The schooner C. was in Long Island Sound, heading west, with the wind east, and sailing wing and wing, with lights properly set and burning. The night was dark, but without fog or haze. The steamer M. was heading east three quarters south, going 8 or 10 miles an hour. The green light of the schooner was seen from half a point to a point on the steamer's starboard bow. The steamer ran on till the schooner was about 300 yards off, when her wheel was starboarded, and her head was swung to port about a point and a half, and she was 207 steadied on a course east by north half north. The schooner's green light suddenly became invisible, and the vessels came together, the steamer striking the schooner on her port side, about amidships. The engine of the steamer was stopped and backed as soon as the green light became invisible. *Held*, that, if the disappearance of the green light had been caused by the schooner's having changed her course, under those circumstances, such change would not have been a fault on the part of the schooner.
2. On the evidence, she did not change her course, and the disappearance of the green light was caused by the steamer's crossing the line of direction of the schooner.
3. The steamer should have starboarded earlier or not at all. She was solely in fault.

In admiralty.

E. H. Owen and R. D. Benedict, for libelants.

J. H. Choate, for claimants.

BLATCHFORD, District Judge. This libel is filed by the owners of the schooner Cosmos, which was sunk and totally lost, with a cargo of lime in barrels, being carried on freight by her from Rockland, Maine, to the city of New York, through a collision which took place between her and the steamer Metis, between 1

and 2 o'clock, a. m., on the 4th of September, 1868. The collision occurred in Long Island Sound, off Plum Island. The Metis was a screw steamer, bound from New York to Providence. The wind was about due east, and blowing an eight knot breeze, at which rate the schooner was going about dead before the wind. The night was dark, but without fog or haze, and a vessel could, irrespective of her lights, be seen at the distance of at least half a mile. The schooner had set, her mainsail, foresail, jib, flying jib and main gaff-topsail, and was beading west.

The answer of the Metis, recognizing her duty to keep out of the way of the schooner, sets up, that the Metis was on her course, heading nearly due east; that those in charge of her discovered the schooner at a distance of about three quarters of a mile, bearing about a point off the starboard bow of the Metis; that only the green light of the schooner was seen; that this indicated that the schooner was on a course to the southward of the Metis; that no red light of the schooner was seen; that the Metis continued on her course, merely putting her wheel to starboard a little, so as to give the schooner plenty of room, but keeping the schooner's green light plainly in view all the time, and seeing no red light on the schooner; that the steamer continued running so, until the vessels had approached very near to each other, and, as near as could be judged, within about 100 to 150 yards, at which time there was a wide berth for the vessels to pass each other, if each kept her course, when suddenly the schooner's green light became invisible, and she made a complete change of her course, bringing her across the bow of the Metis; and that thereupon the engine of the Metis was stopped and backed, but it was impossible to avoid the collision, and the Metis struck the schooner about amidships on the port side.

This defence is thus put wholly on the alleged change of course in the schooner. It is to be noted that the answer puts the green light of the schooner only a point on the starboard bow of the Metis, when discovered; that the Metis does not claim to have done anything except starboard a little; that there is no allegation that, by such starboarding, the green light of the schooner was at all opened, or thrown any more to the starboard; and that the allegation of a change of course in the schooner is based on the fact that her green light became invisible.

The evidence on the part of the Metis shows, that she was running on a course east three quarters south, when the schooner was sighted, sailing winged out, about from half a point to a point on the starboard bow of the Metis; that, notwithstanding the schooner was thus made out nearly ahead, and was seen to be winged out, and, therefore, moving with the full force of a wind dead aft, and the Metis was going at the rate of 8 to 10 knots an hour, the Metis ran on, making no change, until she had approached to within some 300 yards of the schooner, when her wheel was starboarded and her head was swung to port about a point and a half, and she was then steadied on her course at east by north half north; and that, after all this, the schooner bore only from one to two points on the starboard bow of the Metis. This shows that the starboarding of the Metis had no substantial effect in the way of throwing the schooner more on the starboard bow of the Metis, but that the Metis really ran at the schooner. As the Metis was heading east three quarters south, and the schooner was heading west, the courses of the two vessels were in fact crossing. The error of the Metis is shown in her answer, by the statement, that, as she saw only the green light of the schooner, and saw that a point on her starboard bow, she concluded that the schooner was on a course to the southward of the Metis, that is,

that their forward courses were not crossing courses. Hence, as her answer says, she did nothing but put her wheel to starboard a little, thinking that all was safe so long as the green light of the schooner was kept in sight to the starboard.

The testimony of the mate of the schooner, who was at her wheel, corroborates this view of the movements of the Metis. He says, that, on the steamer's being reported, by the lookout, as ahead, he looked, and saw her red light, and her forward and after white lights; that the forward white light was a little to the port from him of the after white light; and that this view continued until just before the collision, when the red light of the steamer disappeared, and her green light came into view, and her forward white light went more to the starboard of him than her after white light. This shows that the 208 courses of the vessels were crossing, and that the Metis did not starboard until she was close upon the schooner, and substantially ran directly at her.

Now, if, under these circumstances, the schooner, running thus rapidly before the wind, and seeing a large steamer coming upon her without making any movement to avoid a collision, had, in alarm, changed her course in the jaws of danger, at a distance off from the steamer, which, at the combined speed of 16 miles an hour, would be traversed in a space of less than 40 seconds, or according to the answer, of not over 20 seconds, such change could not be imputed to her as a fault.

But I am satisfied that there was no change of course by the schooner. The green light of the schooner disappeared, because the Metis crossed the projection forward of the schooner's course. It did not disappear until after the Metis had starboarded and steadied. She did not begin to starboard until she had got within 300 yards or so of the schooner. She must have nearly lost the green light when she

starboarded. Her starboarding caused the green light to keep in view a little longer, while she was really running straight at the schooner. Then, as the forward course of the schooner carried her green light out of sight, the Metis, running on, struck the port side of the schooner forward of her main rigging, angling aft. This produced the impression on board of the Metis, that the schooner had changed her course, and had run across the bows of the Metis, at a time when otherwise the schooner would have gone clear, to the southward of the Metis. But the fact was, that the Metis actually ran across the course of the schooner, from north to south, and then, as the result of her starboarding, ran into the port side of the schooner. If she had starboarded earlier, or had not starboarded at all, when she did starboard, there would probably have been no collision. In the former case, she would have passed to the northward, and in the latter case to the southward, of the schooner.

The evidence is satisfactory, that the schooner had her proper lights set and burning. Even if she had no red light burning, as is claimed by the Metis, the absence of it could not have contributed to the collision. She kept her course at all times from the time she sighted the Metis, and she had a proper and competent lookout, who saw and reported the lights of the Metis at some two miles' distance. It being the duty of the Metis to avoid the schooner, it is for her to establish a change of course by the schooner. As the change claimed is one that would have brought the schooner's head to about northwest, the Metis running east by north half north, and the wind being east, it follows that, if the schooner had ported to make such change, both of her booms would have gone to port, and her jibs would have filled to port. But the evidence is satisfactory, that, up to the actual blow, her main boom was off to starboard, and her fore boom to port, and her jibs were hanging amidships, not filled.

There was no fault on the part of the schooner, and the Metis was solely in fault in the collision. There must be a decree pronouncing her liable for the damages caused to the libellants thereby, with costs, and ordering a reference to ascertain such damages.

{The case was heard, at a later date, when exceptions to the commissioner's report were overruled, and the report confirmed. Case No. 9,500.}

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