

## THE MILWAUKEE.

{2 Biss. 509;<sup>1</sup> 4 Am. Law T. Rep. U. S. Cts. 147.}

District Court, E. D. Wisconsin. April, 1871.

## COLLISION—SPEED—FOG WHISTLE.

1. Seven or eight miles an hour is not a proper rate of speed for a steamboat having barges in tow, at a dangerous point on the Mississippi river.
2. Steamboats on the Mississippi river are in fault for neglecting the rule for the government of pilots, which requires steamboats running in a fog to sound the steam whistle at intervals not exceeding two minutes.

This was a libel by the Security Insurance Company, insurer, against the steamboats Milwaukee and Imperial, to recover the value of 5,521 bushels of wheat, shipped at St. Paul, Minn., by John Robson on barges in tow of the steamer Imperial, and lost by collision with the steamer Milwaukee. The wheat was to be delivered in good order at the port of Dunleith, in the state of Illinois, “unavoidable dangers of the river and fire only excepted.”

Emmons & Van Dyke, for libellants.

John W. & A. L. Cary, for respondents.

MILLER, District Judge. The Imperial, with her barges, was compelled to make a landing at Brownsville, about twelve miles below La Crosse, and remain there over night, on account of a fog. On the morning of the 13th of September they left that port and proceeded down the river for about two miles, to Coon slough, where the Minnesota shore makes a sharp projecting point, causing the river to cross to the Wisconsin shore. By reason of this bend the channel beyond the point cannot be seen until the point is passed. The pilot discovered a fog hanging over the point in the slough.

The steamboat Milwaukee was on a trip from Dubuque up to St. Paul. On the 13th of September, early in the morning, the weather being thick and foggy, the steamboat laid up near the elbow of Coon slough. About eight o'clock in the morning, the fog having cleared away somewhat, she proceeded on her voyage. For some distance there was some fog, then the river became comparatively clear of fog, and the pilot could see from half to three-quarters of a mile ahead, except when intercepted by an occasional bank of fog. And as the steamboat Milwaukee approached the bend in the river she discovered a bank of fog resting over the river, about 150 or 200 yards ahead; and at about the same time she discovered the steamboat Imperial with three barges in tow, emerging from the bank of fog, on her course down the river. The steamboat Milwaukee struck the starboard side of the starboard barge, the Robert C. Rodgers, causing the cargo of wheat to be lost in about eight feet of water.

The libel and answer both aver that their respective boats were running slowly and cautiously, on account of a fog hanging over the river. The fog was partially lifted where the sun reached it, but in the shade it still hung over the river. The evidence is, that both boats were running about seven or eight miles an hour, which I consider much too high a rate of speed in that state of the weather, and particularly at that difficult point of navigation.

Rule seven, for the regulation of pilots on rivers, requires the pilot of a steamer running in a fog, or thick weather, to sound his steam whistle at intervals not exceeding two minutes. It is apparent from the evidence that the Imperial had not sounded her whistle within several minutes before the collision. And it is certain that for some time 427 before seeing the fog bank, the Milwaukee did not sound her whistle. If the required signals had been given, it is highly probable that the boats would have avoided

the collision. Stopping their respective engines while running into each other was too late. I consider that both steamboats are in fault, for running at too high a rate of speed while the river was not clear of fog, and for not blowing their steam whistles every two minutes, as required by the rules.

Reference is made to a commissioner to ascertain the amounts to be decreed.

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