

## THE TITIAN.

[6 Ben. 346.]<sup>1</sup>

District Court, S. D. New York.

Feb., 1873.

COLLISION—LONG ISLAND SOUND—STEAMER  
AND SCHOONER—LIGHTS.

1. A steamer and a schooner came in collision at night in Long Island Sound. The wind was southwest, and the schooner was heading east, and making nine or ten knots an hour. The steamer was heading west by south, making five or six knots an hour. The schooner made no change in her course. When the lights of the steamer were first seen a little on the star board bow of the schooner, the latter showed a torchlight on that side, and afterwards showed it again shortly before the collision. The master of the steamer saw the torchlight, a little on the port bow of the steamer. He also, at the same time, saw a red light and several bright lights apparently on a steamer on his port hand. He ported for a little time, and then straightened up on his course again, and, on seeing the torchlight again on his port bow, ported again, as he said, because the pilot whom he had on board said it must be on a pilot boat, and he did not wish to be spoken; and, on the re-appearing of the torchlight a third time, still on his port bow, he put his helm hard a-port and stopped his engine, and then, seeing the schooner's green light, reversed it, but too late to avoid the schooner, which was struck on her starboard side and sunk: *Held*, that the steamer was bound to have kept out of the way of the schooner.

[Cited in *Brainard v. The Narragansett*, 3 Fed. 256.]

2. That the steamer was in fault in porting on first seeing the torchlight but a little on her port bow, without anything to indicate which way the vessel showing it was proceeding, and in following up the schooner, as she did, by repeated portings, instead of starboarding or stopping until she found which way the schooner was going.

In admiralty.

J. C. Carter, for libelants.

W. C. Barrett and C. Donohue, for claimants.

BLATCHFORD, District Judge. This libel is filed by the owners of the schooner Daniel Williams, on

their own behalf, and on behalf of the owners of cargo and other property which was on board of said schooner, to recover the sum of \$53,000, as the damages sustained through the sinking of said schooner by a collision which took place between her and the steam propeller Titian, between ten and eleven o'clock, p. m., on the 6th of December, 1871, in Long Island Sound, a short distance to the eastward of Little Gull light. The schooner was bound from New York to Boston. The steamer was on a voyage from Cape Breton to New York. The sky was overcast, but the atmosphere was clear, and there was no difficulty in seeing lights. The wind was southwest, and the schooner was making nine or ten knots an hour, with her foresail, mainsail, jib, flying jib, and fore gafftopsail set. The steamer was making five or six knots an hour. 1306 The story of the libel is, that the schooner was sailing on a course nearly or quite due east, when those on board of her discovered a bright light, apparently the masthead light of a steamer, a little over the starboard bow of the schooner, and which they supposed to be on a steamer approaching and bound west; that thereupon the master of the schooner showed a lighted torch on the starboard side of the schooner, and the vessel bearing said light approached, and, as she approached, bore further aft on the starboard side of the schooner, and soon exhibited her green light to the schooner; that, about this time, the torch so exhibited began to grow dim, and the master of the schooner, although it then appeared to him that the approaching vessel was designing to pass, and would pass, the schooner at a safe distance on the starboard side, nevertheless went below, and redipped and relighted his torch, and again exhibited it as before; that, just as he went below for that purpose, the approaching vessel showed her starboard light, and, when the master of the schooner again came on deck, the said vessel, which proved

to be the steam propeller Titian, was coming up and directly upon the schooner, and did come upon her, striking her a square and heavy blow just forward of the main rigging, and crushing in her starboard side, so that she speedily sank, one of her crew going down with her, and being drowned; that the schooner, besides exhibiting such torchlight, had colored lights set, according to law, and the same were burning brightly; that, at all times, from a considerable period of time before the masthead light of the Titian became visible to those on board of the schooner, down until the collision, the schooner kept her course without change; that the collision was wholly caused by the improper and unseamanlike conduct of those in charge of the Titian; and that they saw one, at least, of the colored lights of the schooner, and also the said torchlight, in ample time to enable them to take the requisite precautions to prevent the collision.

The answer sets forth, that the Titian had on board an experienced Long Island Sound pilot; that the wind was southwest, blowing a ten-knot breeze, and the night dark and cloudy, with a clear horizon; that the Titian was steering west by south; that her master and the Sound pilot were on the bridge, two men were at the wheel, and one man was on the lookout; that the speed of the Titian was about five knots an hour; that her master and her pilot observed "a red and several bright lights" on her port bow, "and also a flare-up light close to Gull Island light," and almost at the same moment the lookout reported "said light on the port bow;" that the vessel with the flare-up light, if she had continued an east course, would have passed on the Titian's port bow; that the helm of the Titian was ported, and her course headed to the northwest, and the master and pilot, seeing that "said light" was a good distance on their port side, and seeing no sign of any flare-up light, changed the course of the Titian from northwest to her original and true course of west

by south, and some time thereafter a flare-up light was again seen by those on board of the Titian, about two points on her port bow; that the vessel with the flare-up light, if she had continued an east course, would have passed on the Titian's port bow; that the helm of the steamer was again ported, to give "said vessel with the light" abundant room, and, "the light approaching," the helm was put hard a-port, and the engines were stopped and reversed full speed, and then, for the first time, a dim green light was observed on the approaching vessel, the fact being, that the schooner had starboarded her wheel, and changed her heading, to cross the Titian's bow; that, at the moment the green light was observed, the Titian was three points off her course, and was heading northwest by west; that, in about a minute after the green light on the schooner was observed, the vessels collided, the schooner striking the Titian about five feet abaft her port bow; that, at the time of the collision, the headway of the Titian was nearly stopped, and she was barely moving through the water, heading northwest by west, while the schooner was right before the wind, heading northeast; that the collision was occasioned solely by the ignorance and want of skill of the master and crew of the schooner; that the collision was the fault of the schooner, in not keeping on her proper course, in starboarding her helm, and in not having proper lights set and burning brightly; and that the schooner was not properly provided with steering apparatus.

It is impossible not to remark the confused statements of the answer. From them, it cannot be ascertained, whether it was a red light, or a flare-up light, that was reported by the lookout, or what light he reported; or whether, on "the vessel with the flare-up light" any other light was seen by the Titian at the same time that the Titian saw on that vessel the flare-up light; or what light it was which was seen a good distance on the port side of the Titian at the time

no sign of any flare-up light was seen; or when the flare-up light which had been seen had disappeared. A motive for the confused and indefinite statements in the answer may, perhaps, be found in the fact, that the lookout on the Titian had been examined by a deposition in writing on the 15th of December, 1871, as a witness on the part of the libellants, and that the master of the Titian had been examined by a deposition in writing on the 21st of December, 1871, as a witness on the part of the claimants, and that the answer was sworn to on the 13th of January, 1872. The lookout, Diez, who was on the top-gallant forecastle, testifies, on his direct examination: "Q. Did you see the schooner, or her lights, before the collision? A. Yes, sir; I saw the light Q. 1307 What lights did you see? A. I saw a green light and a flash light. Q. How long before the collision did you see these lights? A. I can't tell exactly. I think it was near ten minutes. Q. What did you do, if anything, upon seeing the lights? A. I reported them. Q. Do you recollect whether you saw the green light or the flash light first? A. I believe it was the green light I saw first. I could not make out what light it was first. My belief was it was the green light. It was too far off first. Q. How did you first report it—what did you say? A. A light a little on the port bow. Q. Did you afterwards see that light nearer, so as to make out what it was? A. Yes, sir. Q. And what was it? A. A green light. Q. Did you report it more than once? A. No, sir. Q. When you reported it, was any response made? A. I did not hear any answer. Q. Was it afterwards reported again by anybody? A. Not that I know. Q. How soon after you first saw the light did you see the flash light? A. I can't tell exactly. Q. State how the vessels came together? A. The schooner came very near across our bow, so that we struck her about amidships, on the starboard side, about a square blow." On cross-examination, he testified: "Q. Can you tell me which light you first

saw on the schooner? A. The first I saw I could not make it out what light it was, but I believe it was the green light. Q. On which side of the schooner did you see the light? A. It was on the starboard side of the schooner. Q. On which side did you see the flash light? A. It must have been on the starboard side. I could not see it on the port side. The sails were on that side. Q. Can you tell me what time passed between the time you saw the first and second light on board the steamer? A. There was not much time; a short little while.”

The master, Buchanan, was on the bridge, 123 feet abaft of the stem of the vessel, in a less favorable position than Diez was for making out what the uncertain light was which Diez says turned out to be the green light of the schooner. The master testifies, that, while on the bridge, he observed “a red and several bright lights, apparently a steamer, and a flare-up light, close to Gull Island light;” that he ported, and stood to the northward for some little time; that, “observing the red light to be a good distance on the port side, and no signs of the flare-up light,” he “kept the steamer on her course again;” that, about ten minutes afterwards, he saw the flare-up light again, about two points on the port bow; that he asked the Sound pilot what was the meaning of the flare-up lights, and received the reply that it must be a pilot boat; that he ported the helm; that the flare-up light showed again, evidently closing; that he ordered the helm hard a-port, and turned the telegraph to stop, and then, for the first time, seeing a green light, turned the telegraph to reverse full speed; and that the lights closed rapidly, the sails of a schooner could be made out, and the vessels collided. The master also says, that his first porting brought the vessel to northwest, a change of five points, she having been heading west by south; that, when the flare-up light was seen the second time, it appeared to be a safe distance on

the port side; that he then ported again, because he had a Hell Gate pilot on board, in addition to the Sound pilot, and, thinking that the flash light was a pilot boat, wanted to keep clear of her, so as not to be asked to take a pilot from her; that, when he saw the green light, the steamer must, by the hard a-porting, have been two points off her course, but he does not speak from seeing the compass; that, immediately before he put his helm hard a-port, the light on the schooner bore nearly two points on his port bow; that, at the time of the collision, the Titian must have been heading north of northwest, which would be more than five points off her course of west by south; that the schooner was, at that time, right before the wind, heading northeast; that the flare-up light appeared three times, and disappeared twice; that "the flare-up light" was reported by the lookout, almost simultaneously with its being seen by the master; that the report of the flare-up light was, "a light on the port bow;" and that he heard no other report from the lookout of any light, after that, and before the collision.

The purport of the testimony of Diez is plainly, that he reported a light but once; that no other report of any light was made; that the light in reference to which he made the report was not a flash light; and that his report was "a light a little on the port bow." I do not understand the testimony of Diez as expressing a doubt as to whether the first light he saw was a green light or a flash light, but I understand it as meaning that his doubt was whether the first light he saw was a green light or a red light, and so a doubt whether such first light was on the starboard side or the port side of a vessel. When he first saw the first light, he could not make out clearly what it was, as between a green light and a red light. Whatever it was, he reported it merely as "a light." But, when the light he so first saw and so reported came nearer, he saw it to be a green light. When he saw the flash light, he recognized it as a

flash light that is, a white light, and not a colored light and never had any doubt that it was a flash light, and never supposed it was a colored light.

The master of the Titian admits, that the report of Diez was merely "a light on the port bow," and that that was the only report there was, and yet the master calls such report a report of a "flare-up light," because he himself, 123 feet abaft the stem, saw a flare-up light almost at the same time, and saw no green light at that time. He saw a red light and 'several bright lights, all apparently on one and the same vessel, and that a steamer. That would indicate a steamer coming from 1308 the westward, and on his port hand. He also saw a flare-up light. If such flare-up light was on a vessel other than such steamer, he could tell nothing as to the direction in which such vessel was going, because he saw no colored light or lights on her. But he ported and stood to the northward for a little time. This brought the red light of the steamer coming from the westward (for there was one), a good distance on the port side. The flare-up light was no longer seen. He then stopped porting. He afterwards saw the flare-up light again, on his port bow, and, although he regarded it as being at a safe distance on his port side, he ported again, because the Sound pilot said the flare-up light must be on a pilot-boat, and he, the master, did not wish to be bothered by having the pilot-boat speak him; that then the flare-up light disappeared; that afterwards the flare-up light re-appeared on his port bow, and he then put his helm hard a-port, and stopped his engine; that then, for the first time, he saw a green light; and that he then reversed at full speed, and saw the sails of the schooner, and the vessels struck. Such is the story of the master of the Titian.

The great discrepancies between the accounts given by the lookout and the master need no observation. Such accounts are both of them entirely variant from anything that can be made out from the answer; and



they serve to show why, with the stories of Diez and of the master spread upon paper, the claimants, finding it impossible to tell what the real truth was, put in the confused and uncertain answer which as been referred to. Moreover, the testimony of the master is a wide departure from the answer. The master distinctly gives it to be understood that it was the flare-up light which was reported; and that when, after porting the first time, he ceased to port, he did so because the red light of the steamer coming from the westward was a good distance on the port side, and because the flare-up light, so reported, and which he had seen, had disappeared. The answer says, that the light which had opened to a good distance on the port side, by the first porting, although not the flare-up light, was the light which the lookout had reported. In this view, if the light which had so opened, by the porting, was the red light of the steamer coming from the westward, the answer would mean that the light which the lookout reported was the red light of such steamer. Yet the master expressly testifies that the light which the lookout reported was the flare-up light.

Much cannot be said in favor of the management of a steamer which, seeing a flare-up light, apparently on a vessel, and but a little on the port bow, ports her helm, without anything to indicate which way the vessel showing the flare-up light is proceeding. Then the master steadies, after porting, and the light disappears, but he soon sees it again about two points on his port bow, and then ports again, and the light disappears, but he does not shake it off, and it appears the third time, no farther off than nearly two points on his port bow, and then he puts his helm hard a-port, and runs over the vessel that carries such light. How was this done? Manifestly, from the evidence, in this way. The flare-up light was first seen, before the first porting, but a little on the port bow of the Titian. The Titian and the schooner were approaching each other

nearly end on. The Titian then ported. The master says that such first porting carried her to northwest, and that he then kept her on her course again. But there is no satisfactory evidence that she got back to her original course. If she did not get back from northwest more than two points she would still have the flare-up light-two points on her port bow, as the schooner was heading east. Then, further porting, with the flare-up light, when seen, always on the port bow, brought the Titian so as to head, at the collision, to the north of northwest, while the schooner was still proceeding east. This accords with the story of the libel, which is fully supported by the witnesses from the schooner. The schooner kept an east course steadily, and did not change, and the steamer persistently followed the schooner up, by porting, instead of starboarding, or of stopping, without altering her helm, until she could tell which way the vessel with the flare-up light was proceeding.

The Titian was bound to keep out of the way of the schooner, or to show a satisfactory excuse for not doing so. The only excuse set up is, that the schooner changed her course, and that excuse is not made out.

There were two steamers going to the westward at the time and place of this collision. The schooner insists that the Titian was the most southerly one of these two steamers, and was on the starboard hand of the schooner, and that the most northerly one of these two steamers was on the port hand of the schooner, and passed by to the westward after the collision. The counsel for the claimants advanced the theory, on the trial, that the Titian was the most northerly one of these two steamers, and that the schooner collided with a steamer which was always seen off the port bow of the schooner, in order to make out that the schooner must have changed her course, so as to be struck on her starboard side by a steamer which was seen off her port bow, and which kept porting. The advancing

of such a theory, in the face of the evidence, shows a weakness on the part of the defence, which is a virtual confession of fault. The master of the schooner says, that the most northerly one of the two steamers passed him after the collision, perhaps half a mile off, while he was in the water. The master of the Titian destroys this theory of the claimants, in saying that he saw two other steamers, one going to the east, which passed on his port 1309 side, and one, shortly before the collision, on his starboard quarter. If the Titian was the most northerly steamer of the two going to the west, she should have seen a steamer on her port quarter, going to the west. The pilot of the Titian testifies, that there was a steamer going to the westward, behind him and a short distance to the northward of him, and that she passed him after the collision. In the face of this testimony, to urge that the collision was with the more northerly steamer, is to contend that the collision was not with the Titian.

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

<sup>1</sup> [Reported by Robert D. Bendict, Esq., and here reprinted by permission.

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 