

Case No. 15,779a. UNITED STATES V. THE MINEODA.¹

District Court, S. D. New York.

May 22, 1879.

COLLISION BETWEEN STEAMERS—EXCESSIVE SPEED—SIGNALS.

- [1. A steamer coming down the East river at night is in fault for approaching, at a speed of 10 miles an hour, a group of three vessels crossing the river both ways in front of her, especially after she has failed to get any answer to her first signal.]
- [2. Vessel *held* not in fault for failure to observe a weak signal blast given by an approaching steamer which was not seen because of the interposition of another steamer.]
- [3. The ferryboat M., going from New York to Brooklyn at night, was turning to go up the East river while the steamer P. was coming down midchannel. Between them, obstructing the view, were two other steamers, going towards the New York shore. The M. discovered the P. as the latter was sheering towards the Brooklyn shore to pass behind the intervening steamers, and signaled that she would pass the P. to starboard. The latter, however, answered that she was going to port, whereupon the M. immediately commenced backing, and continued to do so until struck by the P. *Held*, that the M. was not in fault]

{This was a libel by the United States against the steam ferryboat Mineola to recover damages for a collision between the Mineola and the lighthouse tender Putnam.]

Sutherland Tenny, Asst. U. S. Dist Atty.

Mr. Duer and B. D. Silliman, for claimants.

CHOATE, District Judge. This is a libel to recover damages caused by a collision between the steamer Putnam, a government lighthouse tender, and the steam ferryboat Mineola. The collision happened on the evening of the 21st of March, 1876, about 8 o'clock, in the East river. The night was clear and starlight; the tide, strong ebb; the wind, fresh from the southwest The Putnam was coming down the East river,

bound from Northport, L. I., to Governor's Island. The Mineola was bound from her slip at Fulton Ferry, New York, to her slip at Fulton Ferry, Brooklyn. When the Putnam was about opposite Catharine Street Ferry, on the Brooklyn side, she observed the Mineola leave her slip on the New York side. The Putnam was then coming down about the middle of the river at a speed, with the tide, of about 10 miles an hour. Almost at the same time that the Mineola left her slip, the ferryboat Hamilton left the Fulton Ferry slip on the Brooklyn side for Fulton Ferry, New York. The steamship City of Hartford had come down the East river on the Brooklyn side, and was at about the same time rounding to in the river to go into her berth at Peek Slip. The wheels of the City of Hartford were stopped, and she was ahead of the Hamilton, and so much in her way that the Hamilton found it necessary to slow and stop for her, after leaving her slip. The Mineola, in going out on an ebb tide, went out on a starboard wheel to counteract the effect of the tide, and she could not so overcome the effect of the tide as to head up the river till she got about to the middle of the stream. When the Putnam was nearly abreast of Catharine Ferry, on the New York side, the Mineola was clear of her slip and the Hamilton clear of hers, and both steering nearly straight across the river, and the City of Hartford nearer the middle of the river than the Hamilton, and heading towards the New York shore. The Putnam then, when the two ferryboats were well out in the river, gave one whistle, a single blast, which does not appear to have been observed on either the Hamilton or the Mineola. This may be accounted for by the fact that the whistle of the Putnam was not loud, and the wind was towards her. She proceeded on her course, and, no answer being given, she gave another single whistle. This was heard on the Hamilton, and understood by her to be a signal that the Putnam would cross her bows. It was not heard on the Mineola. At this time the relative positions of the vessels had changed. The Mineola had reached the middle of the river, and was turning so as to head up stream, but not yet heading directly up. The Hamilton had gone so far ahead as to be between the Mineola and the Putnam, and the City of Hartford was lying across the river, slowing, moving towards her slip, and still a little in advance of the Hamilton. The pilot of the Hamilton, on receiving, as he supposed, this signal from the Putnam, was just making his preparations to respond to obey the signal, when he observed the Putnam suddenly sheer towards the Brooklyn side, to pass under his stern, and he therefore kept on his course. Almost immediately after this signal was given by the Putnam, and this change of her course, the Mineola, being now headed well upstream, saw the white light—the masthead light—of the Putnam over the upper works of the Hamilton. The pilot of the Mineola made it out to be a steamer coming down the river, and heading somewhat towards the Brooklyn side, and evidently coming astern of the Hamilton and the City of Hartford. This second signal whistle of the Putnam had been intended as a signal for the Mineola, which had been seen by the Putnam before the Hamilton intervened between them. The pilot of the Mineola, on

seeing the light of the Putnam, and observing that she was intending to go astern of the Hamilton, concluded that the Putnam and the Mineola could not safely undertake to pass each other on the port side after the Putnam should pass astern of the Hamilton; that there would not be room or time enough for them to execute this maneuver after the Putnam got by the Hamilton. He accordingly gave a signal of two whistles, indicating his intention to pass the Putnam on the starboard side. The Putnam immediately responded with a single whistle. She was still hidden from the Mineola by the Hamilton. The Mineola, on receiving this signal, instantly slowed, stopped, backed, and continued to back till the collision. The Putnam, at or before the time she got the two whistles from the Mineola, stopped her engines. She did not back. Haying the tide with her, she continued to have considerable headway. She passed the Hamilton very near her stern. I think the preponderance of the testimony is that she sheered to starboard at or immediately after getting clear of the Hamilton; that, when the Hamilton first uncovered her to the Mineola, the green light of the Putnam was seen from the Mineola; that then, as she came on her, her green light disappeared, and her red light appeared. This is the testimony of the lookout on the Mineola, and it corresponds with the movements of the Putnam, as observed both from the Hamilton and the Mineola. The two vessels came together, their port sides striking each other a glancing blow, doing some damage.

That there was fault on the part of the Putnam cannot be doubted. She was coming at too high a rate of speed as she approached this group of vessels crossing ahead of her both ways, in a very narrow part of the river; and especially as her signals were not answered, and she could not certainly determine how, or upon what course, the Mineola was going, she should have sooner slowed and stopped, or, having run on as she did till she stopped, she should then have backed. The vessels were so near together at the time the Putnam stopped that they came together, although the Mineola instantly backed, on getting the Putnam's answer of one whistle to her own signal of two whistles.

The only serious question in the case is whether the Mineola was also in fault. It is urged that she was in fault in not observing

the first or second signals given by the Putnam, and in not, in obedience to those signals, keeping towards the Brooklyn side, in order to pass the Putnam on her port side. In respect to the first signal given by the Putnam, as the vessels were then so far apart, and especially as there were two steamboats in the river nearer to the Putnam than the Mineola, for either of which it might well have been supposed to have been intended, if it had been observed, it can hardly be claimed to have been a fault that it was not taken notice of by the Mineola. It is to be observed, also, that this first whistle was apparently not heard by the Hamilton, although the Putnam was seen from the Hamilton at or about the time it was shown to have been blown. This is of some importance as corroborating the testimony to the effect that the Putnam whistle was not a loud whistle. I do not think the testimony warrants the conclusion that the Mineola was in fault in not observing the second whistle of the Putnam. The Mineola was then only partly turned up the stream. The Putnam was hidden from her by the Hamilton and the City of Hartford. It is doubtful if the whistle was loud enough to reach the Mineola, except very faintly. If it had been heard, and had been understood to come from the Putnam, the natural conclusion of the pilot of the Mineola would have been that it was intended for the Hamilton, as the pilot of the Hamilton himself understood it; and, if this had been so, it could not have called for any movement of the Mineola to avoid the Putnam, since the Putnam must, if intending to cross the bows of the Hamilton, have sheered sharply towards the New York shore, and cleared the Mineola without any change in the course of the Mineola straight up the river, which she was then on the point of taking. The real question is whether the judgment of the pilot of the Mineola was correct, when he made the white light of the Putnam over the Hamilton, that the only safe way for them to pass with the Putnam going astern of the Hamilton was on each other's starboard hand; and on this question, while the testimony is conflicting, I think the preponderance of the evidence is in favor of the Mineola. Her headway was checked by turning to head up the river. The distance of the Hamilton ahead was short. The Putnam was obviously on a sheer towards Brooklyn to get by the Hamilton. If the Putnam kept on in the same course, she had ample room between the Mineola and Brooklyn shore to pass safely. If the Mineola attempted to run between the Putnam and Brooklyn with the Putnam on this sheer, it was at least doubtful if it could be done. Having formed this judgment as to the situation, the pilot of the Mineola gave the proper signal, and when the Putnam gave the contrary signal he instantly did all he could to avoid the collision. He instantly backed, and continued to back till the boats came together. The testimony does not show that the movements of the Mineola were governed, as suggested by the libellants' counsel, by the motive on the part of the pilot to keep a convenient position to make his slip, rather than to avoid the Putnam and prevent a collision. The libellants have failed to sustain their allegations of negligence against the Mineola, and the libel must be dismissed. Libel dismissed.

¹ [Not previously reported.]