

Case No. 17,420.
[7 Ben. 539.]²

THE WESLEY SEYMOUR.

District Court, S. D. New York.

Jan., 1875.

COLLISION AT SEA—SAILING VESSELS—CROSSING COURSES AND OPPOSITE TRACKS—LIGHTS—LOOKOUT—CHANGE IN EXTREMIS.

1. A collision took place off Barnegat at night, between a schooner and a brig. The wind was about west. The schooner alleged that she was heading south by west, close-hauled on her starboard tack, and that she saw the red light of the brig a little on her port bow, and kept her course without change, till just before the collision,

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when her helm was put down to case the blow, if possible, but too late to affect the course of the schooner. The brig alleged that she was heading about north northeast; that she saw the green light of the schooner a little on her port bow; that she starboarded her wheel, and changed her course so as to bring the green light on her starboard bow; and that afterwards the schooner changed her course, and attempted to cross the brig's bows, when the helm of the brig was put hard down, but the collision could not be avoided. The vessels came together nearly at right angles, the brig striking the schooner on her port side: *Held*, that this was a case under the 12th article of the sailing rules, and, as the courses were crossing, and the schooner had the wind on her starboard side, while the brig had it on her port side, and was not close hauled, it was the duty of the brig to keep out of the schooner's way, and of the schooner to keep her course.

2. The brig, seeing the schooner's green light on her port bow, was justified in regarding it as on a vessel which was crossing from port to starboard of the brig, and her starboarding was a proper manœuvre, and was enough to have cleared the two vessels, if the schooner had held her course.
3. On the evidence, the schooner must be held to have changed her course after the brig had taken proper measures to avoid her.
4. Such porting by the schooner could not be held to have been a change of course in extremis, but it probably resulted from an inefficient lookout.
5. The brig was not responsible for the collision.

In admiralty.

W. R. Beebe, for libelants.

R. D. Benedict, for claimants.

BLATCHFORD, District Judge. This libel is filed by the owners of the schooner George W. Pettus against the brig Wesley Seymour, to recover for the damages sustained by the libellants, in consequence of injury to the schooner caused by a collision which took place between the two vessels, between 7 and 8 o'clock, p. m., on the 28th of January, 1873, in the Atlantic Ocean, off Barnegat. The schooner was bound from New York to the Chesapeake Bay. The brig was bound up the coast to New York.

The libel sets forth that the wind, at the time, was "to the southward and westward;" that the schooner was heading "about south by west," and was close-hauled on the wind; that the red light of the brig, headed for New York, with the wind free, was made on the lee bow of the schooner, about a point off; that the schooner continued her course until the brig had approached within hailing distance, when she was hailed from the schooner; that no attention was paid to the schooner's hail; that, when the brig had approached so close that a collision was unavoidable, the schooner put her helm down, "and her course was changed but a trifle, to case the blow," and the brig hit the schooner on her port side, breaking into and damaging her in such a manner that she had to return to port; that the collision occurred through the want of care and attention of those on the brig, and their want of skill in, amongst other things, not keeping a good lookout, not keeping out of the way of the schooner, not keeping at a greater distance, not in time changing her course, and luffing as she did; and that the collision was not caused by the fault of those on the schooner.

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The answer alleges that the brig had a proper lookout on duty; that the wind was blowing from about west; that the brig was proceeding on a course heading about north northeast, under the command of a pilot, and, while proceeding on such course, the green light only of the schooner was seen, some distance off, a little on the port bow of the brig, that the course of the brig was then changed more to the north, which brought the schooner on the starboard bow of the brig, the schooner still showing only her green light, and thus indicating that she would pass on the starboard hand of the brig; that, after continuing on that course for a short time, the schooner suddenly and improperly put her wheel down, and changed her course, and attempted to cross the bow of the brig, and thus caused the collision; that, as soon as the schooner so changed her course, it was discovered, on board of the brig, that a collision was imminent, and the helm of the brig was put hard down, but the collision could not then be avoided; that no collision would have occurred if the schooner had not so changed her course; and that the collision did not occur through want of care and attention of those on board of the brig, who did all in their power to avoid it, but it occurred through the negligence of those on board of, and in charge of, the schooner, in, amongst other things, not keeping a proper lookout, not seeing the light of the brig as soon as they ought, not keeping their course, as they were bound to do, luffing and attempting to cross the bows of the brig, and otherwise improperly and carelessly navigating.

On the part of the schooner four witnesses have been examined—the master, Frank W. McKay; a seaman, Daniel McKay, who was at the wheel; McCretchie, the mate; and McLeod, a seaman, who was forward, on the lookout McLeod says, that he was forward of the windlass, keeping a lookout, and had been on the lookout over half an hour before the collision. The first that he saw was a red light, a point or a point and a half on the lee bow, that is, the port bow, and not over six lengths of the schooner away. He sung out, “a light on the lee bow,” and McCretchie, the mate, then went forward to where McLeod was standing. McLeod says, that, after he made the red light, he kept it in sight until the collision; that he saw no other light but the red light until after the collision; that he saw no change in the course of the brig until she struck the schooner; that, when the schooner was about three lengths off, the mate sung out to her to keep off; that he saw no change in the course of the schooner; and that she was sailing close on the wind all the time, with her sails full. He also says that the light he saw did not change its position any, while he was looking at it, relatively to the schooner, but approached all the time. McCretchie, the mate, says, that he went forward to call a man in the fore-castle,

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and, while at the door of the forecabin, heard McLeod report a light, and then went and looked and saw a red light, about a point and a half on the lee bow, and 300 or 400 yards off; that he watched the movements of the brig from the time he first saw her red light until the collision, and saw no other light on board of her at any time but the red light; that the schooner did not come any into the wind; and that she was, at the collision, full on the starboard tack, with her booms on the port side. Daniel McKay, the man at the wheel of the schooner, says, that when he went to the wheel, the schooner was close-hauled on the starboard tack, headed south by west; that she was going so all the time he was at the wheel; that he could see all to the starboard of the point of the schooner's jibboom; that he saw no light, and saw nothing of the brig, until just before she came into the schooner, and then he looked under the boom, and to leeward, and saw her port or red light; that he heard her light reported about a minute and a half before the collision; that he ran on his course about a minute after that, before he got an order to hard down; that he put his wheel down, but the schooner had not changed her course at the collision; that the schooner's sails, when the brig struck her, were full on the starboard tack, with her booms on the port side. The master of the schooner had been below. He says he was "called on deck by the alarm about the light," and went from the cabin through the companion way opposite the wheel, to the port side of the deck alongside of the man at the wheel, and looked, and saw a red light that bore about a point on the lee bow; that, when the vessels were about thirty feet apart, he told the man at the wheel to put the wheel down; that the red light of the brig was still on his port; and that the schooner had not changed her course any before the collision, and was then headed about south to south by west, with her sails full on the starboard tack. The master says that the stem of the brig hit the schooner right amidships. Daniel McKay says that the brig came pretty near bow on, and struck the schooner amidships on the port side. The mate says that the brig struck the schooner about bow on, on the port side. McLeod says that the brig struck the schooner amidships, between the fore and main digging, on the port side. Daniel McKay says that the wind was about west southwest. McLeod says that the wind was off shore.

On the part of the brig four witnesses have been examined—Brady, the pilot, who had charge of her; Riske, who was at her wheel; Zedke, a seaman, who was on deck, aft; and Spicer, the master. Brady says that he saw the green light of the schooner about a point on his weather bow, bearing north; that the wind was west; that, after that, he went below to light his pipe, and came on deck again, and then saw the green light right ahead; that, before he went below, he had told the man at the wheel to luff a point; that that order was obeyed, and brought the light ahead; that he should think the light was two miles away when he came on deck after lighting his pipe; that, after so coming on deck, he told the man at the wheel to luff another point; that that order was obeyed, and brought the light a point on the lee bow; that, when the schooner was distant twice her own length,

he saw the collision was unavoidable, and ordered the man at the wheel to put his helm hard down; that the schooner was showing her green light; that that was the only light he saw, and he did not see her red light at all; that the brig struck the schooner just forward of her foremast, nearly at right angles, the brig heading northwest by north, and the schooner about southwest; that he heard a hail from the schooner just a moment or two before the collision; and that there was one man on the lookout, on the forecastle, and an officer on the quarter deck, and a man at the wheel. He also says, that, when he first saw the light, it was from two and a half to three miles off; that it was twenty minutes from the time he first saw the light of the collision; that he thinks there was time for the brig to change her course some after the order to hard down was given and before the collision; that when he gave the order to hard down, the schooner was about twice her length off; that he lost sight of her light when she was two of her lengths off under his bow, on account of the brig's being higher out of the water; that the last he saw of the light it bore the same, a point on his lee; and that he gave the order to hard down to break the force of the blow. Riske says that he was at the wheel of the brig; that he saw the light of the schooner—only one light—a green light, three quarters of a point on his port bow, the course of the brig being then north northeast; that he then got an order from the pilot to steer north by east; that he did so, and lost the light, because it got on his starboard bow; that he afterwards got an order from the pilot to put the wheel hard down, and did so, and got it hard down before the blow; and that the brig, at the time of the blow, was heading north. Zedke says that he was at the pump, and saw the green light of the schooner about three-quarters of a point on his port bow; that he saw the pilot come up out of the cabin, and heard him sing out “north by east;” that he afterwards heard him say “hard down;” that the man at the wheel obeyed these orders; that the course of the brig, when he first saw the light, was north northeast; and that he lost sight of the schooner's green light after the pilot gave the course “north by east.” Spicer, the master of the brig, was below, lying down, partly asleep, and was aroused by hearing the pilot sing out to the man at the wheel to put his helm to starboard; that he heard the pilot sing out, two or three times, “hard a-starboard;” that he (the master) sprang on deck, and got about half way from the cabin forward when he heard the

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crash; that the starboard bow of the brig struck the port side of the schooner amidships; that the schooner's booms were swung over on her starboard side, and her sails were full; that the wind was west by south; and that he thinks the brig was beading north northwest at the time of the blow, and the schooner northwest by west, three points difference, or perhaps four.

This case is one of difficulty. The people on the schooner say they saw the brig's red light a point or a point and a half on the port bow of the schooner, the schooner being headed south by west and close-hauled. Yet the people on the brig say they saw the green light of the schooner a point on the port bow of the brig when the brig was headed north northeast. These courses were crossing, and they crossed at a point ahead of each vessel and between the two vessels. Now, although the schooner may very well have seen the red light of the brig, yet it is difficult to understand how such red light could have been seen over the port bow of the schooner, at any time before the brig passed the point where such courses crossed each other. The red light of the brig ought to have been seen over the starboard bow of the schooner. And, if the schooner had seen the brig's red light over the port bow of the schooner, it is difficult to see why the red light of the schooner, and not her green light, was not visible to the brig.

This was a case under the 12th article of the steering and sailing rules. The vessels were crossing, so as to involve risk of collision. They had the wind on different sides, the brig having it on the port side and the schooner having it on the starboard side. The brig was not close-hauled. It was, therefore, the duty of the brig to keep out of the way of the schooner. The brig seeing a green light on her port bow, about a point, was justified in regarding such light as on a vessel which was crossing from port to starboard of the brig. Therefore, if the brig was to take measures to avoid such vessel, the proper manœuvre of the brig was to starboard, and let the other vessel pass to the starboard of the brig. The brig did starboard, so that she brought the schooner's green light a point on the starboard bow of the brig. This ought to have been sufficient to clear the two vessels, if the schooner held her course. Yet the stem of the brig hit the schooner amidships on the port side of the schooner. This being so, it would be supposed that the people aft on the schooner would see the green light of the brig, and that the people on the brig would see the red light of the schooner. Yet the former say, that they saw no light on the brig but her red light, and the latter say, that they saw no light of the schooner but her green light.

It is apparent, from the evidence, that the light of the schooner was seen from the brig a considerable time before the light of the brig was seen from the schooner. Probably, the brig had already starboarded, to avoid the schooner, before her light was discovered by the schooner. The schooner's lookout says, that the brig's light was not over six lengths of the schooner away when he first discovered it. He reported it. Some alarm ensued on board of the schooner, for her master says, that he was called on deck by the alarm about

the light. The libel states, that the helm of the schooner was put down, that is, ported, and that her course was changed, though but a trifle, and that this was done to case the blow when the brig had approached so close that a collision was unavoidable. The libel is sworn to by the master of the schooner. In his testimony, he says, that the vessels were about thirty feet apart when he told the man at the wheel to put the wheel down, that is, to port, and that the schooner had not changed her course any before the collision. The man at the wheel says, that he got the order to hard down, and put his wheel down, but the schooner had not changed her course at the collision. It is impossible to see how the collision occurred, unless the schooner changed her course and threw herself across the bows of the brig at a time when, but for such change, the brig would, in consequence of the measures she had taken to clear the schooner, have succeeded in doing so. On the view that the schooner did so change, it is easy to see how the collision occurred. On the whole evidence, it must be held, that the schooner changed her course at such a time, and in such a manner, and to such an extent, as to thwart the efforts of the brig to avoid her, and as to cause the collision which would otherwise have been avoided. Daniel McKay, who was at the wheel of the schooner, says, that she was heading south by west, and that the wind was west southwest. This would make the vessel to head within five points of the wind. He also says, that she was close-hauled, and that, when the brig struck her, her sails were full on the starboard tack, with her booms on the port side. McCretchie, the mate of the schooner, says, that she did not come any into the wind, and that she was full on the starboard tack, at the collision, with her booms on the port side. He says nothing as to how the wind was. McLeod says, that the schooner was sailing close on the wind all the time, with her sails full. All he says about the wind is, that it was off shore, and that the schooner was running close hauled. He also says, that the schooner made no sheer before she was struck, and that her sails were full all the time. The master of the schooner says, that she was headed about south to south by west; that, at the time of the collision, her sails were full on the starboard tack; and that her booms were off on the port side, and she was close-hauled, with the booms close in. If the schooner was heading south by west, when struck, the brig, if she struck the schooner a square blow at right angles on her port side, must have been heading west by north. This is incredible, on the evidence.

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The pilot of the brig says that the brig had got around to head north-west by north, at the blow, and that the schooner was heading about southwest, at the blow. This would make the blow angle aft on the schooner one point from square across. It would involve a change of three points in the heading of the schooner. If the wind was west, the schooner, at south by west, was within seven points of it. If she changed only two points, or to southwest by south, she would have been, with the wind west, as much as five points from the wind, and the brig, at northwest by north, would strike her, angling aft on her, two points from square across. Exactly how the wind was, and how close the schooner could sail to it and keep her sails full, does not appear. If the wind was west, the schooner, at south by west, could, probably, have come closer to the wind, without gybing. The master of the brig testifies, that the schooner's booms were swung over on her starboard side, and her sails were full, that is, full to starboard, which puts her on her port tack; and so he says she was heading, at the blow, northwest by west, and the brig north north-west, which would make the blow angle forward on the schooner five points from square across. This testimony of the master bears marks of exaggeration. The testimony of those on the schooner is, that their booms were to port, and their sails full to port, at the blow. This, on the whole evidence, is not inconsistent with the schooner's having come up to the wind enough to throw herself across the brig's course, and is consistent with the libel. It is very certain, from the testimony of the persons on the schooner, that they did not see the brig till she was near them, that there was alarm on the schooner, that her master gave the order to port, and that that order was obeyed. The brig was, at the same time, in the discharge of her duty to avoid the schooner, starboarding. It was proper for her to do so, with a green light crossing her course from her port to her starboard, and she had, by starboarding, brought that light from being a point on her port bow to being a point on her starboard bow. Therefore, it was for the brig to keep on starboarding, which she did. Any porting by the schooner, under such circumstances, baffled the brig. Such porting cannot be regarded as a porting in extremis. It resulted from the fact, that the lookout on the schooner was Inefficient, and that, consequently, the light of the brig was not seen as soon as it should have been. The brig was not crowding the schooner, but was manoeuvring to pass her at a proper and safe distance.

I have given this case a great deal of consideration; and, while there are matters of evidence on both sides that are incapable of comprehension, I think the brig cannot be held responsible for the collision, and that the libel must be dismissed, with costs.

² [Reported by Robert D. Benedict, Esq., and Benj. Lincoln Benedict, Esq., and here reprinted by permission.