

MIRCOVICH AND OTHERS V. THE BRITISH
BARK STAR OF SCOTIA, ETC.

District Court, S. D. New York. May 13, 1880.

ADMIRALTY—COLLISION—FAILURE OF VESSEL TO KEEP GOOD LOOKOUT AND AVOID A VESSEL ENTITLED TO HOLD HER COURSE.—Evidence considered, and the collision complained of in this case *held* to have been caused by the failure of defendant to keep a proper lookout, and in not keeping out of the way of the libellant's vessel, entitled to hold her course.

F. R. Coudert, L. Ullo and E. L. Owen, for libellants.

C. E. Souther and E. P. Wheeler, for claimants.

CHOATE, D. J. This is a suit to recover damages caused by a collision between the Austrian bark Sansego and the British bark Star of Scotia. The collision happened off the Jersey coast, about 60 miles south-east of Absecom Light, on the morning of the ninth of March, 1880, at about half past 2 o'clock. The Sansego was on a voyage from Marseilles to Boston, with a valuable cargo, consisting of 2,000 bales of wool and 200 barrels of sulphur. She was sunk by the collision, and this suit is for the value of vessel, freight and cargo, and the personal effects of the master and crew, the damages claimed being \$145,000. The Star of Scotia was on a voyage from Calcutta to New York. She was an iron vessel, originally ship-rigged.

The wind was about north-east. Both vessels were close hauled when they came in sight of each other, the Sansego on 579 the starboard tack. She was a vessel of 560 tons. The Star of Scotia was on the port tack. She was a much larger vessel; her tonnage is not given, but her length was about 220 feet from stem to stern. The night was overcast, with no moon or stars, but vessels' lights could be distinctly seen. The wind was a five to six-knot breeze. The Sansego was making about six knots. The Star of Scotia a little less.

The libel alleges that the lookout on the Sansego reported a light on the lee bow; that the mate went forward to see this light, and made the same to be a green light of a sailing vessel that was at the time crossing the bows of the Sansego; that this green light crossed to the weather side and then disappeared, and, although a good lookout was kept, no light was seen; that a short time afterwards the loom of a vessel appeared on the weather side, showing no light, and before it could be ascertained what course she was on she struck the Sansego on the starboard side, near the main rigging, and sunk her in less than an hour after the collision; that the Sansego kept her course close hauled from the moment she first sighted the green light until the collision; that the collision was wholly owing to the fault of the Star of Scotia in having no competent lookout, no regulation side lights burning, as required by law, and in that she did not keep out of the way of the Sansego, as she was bound by law to do.

The answer avers that the Star of Scotia was sailing close hauled on the port tack, and was headed S. E. $\frac{1}{2}$ S.; that the wind at the time was blowing from the N. E., or N. E. by E.; that the Star of Scotia had proper side lights brightly burning; that the officer of the deck saw a red light, which afterwards proved to be the red light of the Sansego, about a point and a half on the starboard bow; that as the wind was on the port side of the Star of Scotia and on the starboard side of the other vessel, it was the duty of the Star of Scotia to keep out of the way, and the duty of the Sansego to keep her course, and thereupon, in order to fulfil that duty, the officer of the deck ported his helm; that the Star of Scotia answered her helm, and the red light soon became visible on the port bow; and if the Sansego had kept her course there would have been no 580 collision; but that the Sansego thereupon

changed her course and showed her green light to the Star of Scotia; that the Star of Scotia was kept under the port helm until the red light was well on the port bow, when the helm was steadied; that the red light of the Star of Scotia was in full sight of the Sansego, and could have been seen from her if a proper lookout had been kept; that the Sansego did not keep her course, and did not keep a proper lookout, and did not observe the movements of the Star of Scotia with proper vigilance, but again changed her course and showed her green light to the Star of Scotia; that at that time she was so near the Star of Scotia that the loom of her sails could be seen from the deck of the Star of Scotia; that the Star of Scotia at once put her helm hard a-port, but the two vessels were so near each other that it was too late, after the Sansego had again changed her course, to avoid the collision; that the collision was caused by the negligence of the Sansego in not keeping a good lookout, and in not keeping her course.

Under the rules of navigation the Sansego was bound to keep her course, and the Star of Scotia was bound to keep out of her way. The Star of Scotia recognized this duty, and made certain movements to perform it, which she claims were ineffectual, by reason of the Sansego's changing her course, by going off before the wind. The principal question of fact, then, is whether the Sansego kept on her course, close hauled by the wind, till the collision. If she did, then the Star of Scotia is responsible for the collision, since she did not keep out of the way, and it is not claimed that she could not have done so if the Sansego kept her course.

The testimony of those on the Sansego is clear and explicit that she kept her course. It was the mate's watch. His testimony is that he was standing on the poop deck, and the lookout forward, on the forecastle, reported a green light a little to leeward. He could not

see it from where he stood, and he went forward, with his glass, to look at it. When he got on the forecastle he saw it, without the glasses, right ahead; that he looked with his glasses and saw the light, but 581 could not see the vessel's sails; that it was right ahead, coming towards them and going to starboard; that it got about a point or a point and a half on his starboard bow; that he went back to the poop deck, and, leaning there on the weather rail, he saw the green light; that when it got about a point and a half on his starboard bow it disappeared, and he could see no light; that when it disappeared he called to the carpenter, and asked him if he saw the light; that the carpenter was looking to windward and told him that he could not see anything; that he felt uneasy at the disappearance of the light, and continued to watch to see whether that or any other light would appear; that after the light disappeared he spoke to the man at the wheel and told him to keep the sails full; that he had noticed the sails shaking, the topgallant sails and royal; that after a short time, looking still to windward, he saw a shadow and then the loom of a vessel, and then, all at once, the other vessel was on top of them. He testified that the Sansego was heading N. W. by N. $\frac{1}{2}$ N.; that they had been heading so since 8 o'clock the night before; that the wind had been the same all the time. The lookout testified that he saw the light a little to leeward; that he reported it as a green light right ahead; that the mate came forward and looked at it, and then returned aft; that the light passed to windward and then disappeared; that he saw no light in place of it; that he looked for a light, expecting to see it again, or some other light; that he looked to windward and to leeward and saw nothing; that the next thing he saw was a vessel coming upon them; that the vessel was close hauled by the wind, braced sharp up; that the light disappeared a short time after the

mate went aft; that the vessel was kept by the wind all the time; that the sails were not changed; that they were kept full, lifting from time to time—when the sails lifted she would pay off a little. The man at the wheel testified that he had been on deck from 12 o'clock, and took the wheel at 2 o'clock; that the vessel was heading N. W. by N., by the wind on the starboard tack; that he heard the lookout report a green light ahead, a little to leeward; that he could not see it then; that as soon as it was reported the mate took 582 the glasses and went forward, and then came aft again; that he saw the green light when it passed to windward; that when he saw it the mate was on the poop deck; that the mate was looking at the light to windward when he saw it; that it bore N. by W. $\frac{1}{2}$ W. by the compass; that he continued to see the green light a short time, and next he saw it no more; that the vessel kept always the same heading; that he saw nothing else till he saw the loom of something coming upon them, but no light was to be seen; that, after the light disappeared, he saw the mate using the glass to see if he could see anything; that he heard him asking the carpenter if he could distinguish anything of that vessel or light; that he did nothing with his wheel after the green light was reported, up to the moment of the collision, except steering by the wind; that he was heading all the time by the wind, and seeing that the sails were full; that he kept looking at the compass and the sails; that when the other vessel struck them he was heading N. W. by N.; that he left the wheel when the vessels struck, and got up on the other vessel. He also testified that the mate spoke to him; told him that the light was clear of them, and told him to keep the sails full, so that they would not be luffing or shaking; that the green light disappeared all of a sudden. The man who had been at the wheel up to 2 o'clock testified that, till that time, the vessel was sailing close hauled—as close to

the wind as he could get—heading N. W. by N., seven points from the wind; that when he was relieved he went forward and stood by the foremast; that the man on the lookout reported a green light ahead, a little on the lee side; that he saw it—that it was a little on the lee side; that the officer of the deck went forward and then went aft; that after the mate had gone aft the lookout called him to the forecabin to see the light; he went forward, and saw it a little on the lee side; that he went back to his place, and shortly after the lookout called to him again that a ship was running on top of them; that he ran forward and saw the vessel, but saw no light. The carpenter testified that he heard the lookout report a green light ahead, a little to leeward; that he saw it himself, a little to leeward, as he stood on the lee side, by 583 the main backstay; that the light passed to windward, and he crossed over to the windward side and saw it to windward; that when he saw it from the leeward side he saw it straight ahead; that he saw it there by the time the mate got forward; that when the light had crossed over to the weather side it disappeared; that when the mate came aft he asked this witness if he saw the light, and he answered that he did not see it any more; that there was no change in the vessel's sails up to the time of the collision.

It is claimed, however, on behalf of the *Star of Scotia*, that the case thus made by the *Sansego* is overborne by the weight of evidence tending to show that the *Sansego* did change her course, by starboarding and going off the wind; that is, by sheering more to the westward or leeward, after the two vessels came in sight of each other. Four classes of proof are relied upon by the claimants as showing this: (1) What was seen from the *Star of Scotia* of the movements of the *Sansego*; (2) what was done on the *Star of Scotia* in respect to her own movements; (3) the angle at which the vessels came together, and their

heading at that time; and, (4,) as bearing on the third point, the position and nature of the injuries done to the Star of Scotia.

The testimony as to what was done on the Star of Scotia, and what was seen of the movements of the Sansego, by those on her deck, is briefly as follows:

It was the second officer's watch. There were eight men and boys, all told, in his watch, six of whom were examined—the second mate, the wheelsman, the lookout, and one seaman, and two apprentices who were on watch standing by about amidships.

The second mate testified that they were close hauled by the wind, heading by compass S. E. $\frac{1}{2}$ S. The wheelsman says S. E., with a possible variation of a quarter of a point to the south. The wheelsman thought she would lie up to within seven points of the wind.

The second mate thought not quite so close with that wind, which he says was not steady. The bark, being an iron vessel, there was a variation of the compass, which, however, 584 the second mate was not informed of, having, as he said, left that to the captain and chief officer. The deviation of their compass at S. E., as given by the captain, was one point westerly, making the actual heading, while on the wind, S. E. by E. to S. E. $\frac{3}{4}$ E., according to the wheelsman; S. E. $\frac{1}{2}$ E. according to the second mate. Assuming the wind to be N. E., as it is testified on both sides, the course of the Star of Scotia may be taken to have been at S. E. $\frac{3}{4}$ E., without much possibility of error.

It is clear, from the testimony of both the wheelsman and the second mate, that their heading, as given in the answer, S. E. $\frac{3}{4}$ S., is the heading by compass, and not the actual heading; and, as she could not lie closer than seven points to the wind, that the wind must have been nearer to N. E. than N. E. by

E. The wind is stated in the answer in the alternative, N. E. *or* N. E. by E. The second mate then testified that he first saw a red light on his starboard bow; that it bore about S. S. E., or a point and a-half on his starboard bow. He evidently is speaking of its bearing by compass, as S. S. E. is a point and a-half from S. E. $\frac{1}{2}$ S., which was their compass heading as he gives it. If the compass bearing of the light was S. S. E., its real bearing was, according to the captain, S. E. by S. $\frac{1}{4}$ S., the variation at this point being $\frac{3}{4}$ of a point westerly. The second mate took the red light to be the port light of a vessel sailing by the wind on the starboard tack, and he says that he immediately gave the order to the man at the wheel to port, and that he helped him heave the wheel over. The wheelsman testifies that the order was hard a-port; and on cross-examination the mate appears to admit that this was so. The difference, perhaps, is of very little importance. At this time no light had been reported by the lookout.

The mate's testimony, then, is that, as soon as he had helped the man at the wheel heave the wheel over, he hailed the lookout and asked him if he saw that light on the starboard bow, to which the lookout replied that he did. At this instant, according to the testimony of the mate, and just as the ship began to pay off, the red light changed to green.

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The lookout testified that the first light he saw was a green light on the starboard bow, about a point on the starboard bow; that he saw it just at the moment the mate hailed him. Upon the red light changing to green the mate gave no new order to the wheelsman, and the ship continued to pay off under the port or hard a-port wheel, and while this was being done the green light passed across the bow, from starboard to port. While there is considerable confusion in the testimony as to how much the green light broadened

on the port bow, there is no doubt that it passed over to the port bow with the porting of the vessel. Then, with the paying off of the vessel to starboard, the green light again changed to red. Thus far there is a substantial agreement of the witnesses on the *Star of Scotia*. The mate does not expressly say that the green light crossed to the port side, but he says the green changed to red, and that the second time the red appeared it was on the port bow. The lookout saw it first on the starboard bow, and he testifies that the red light of the same vessel appeared on the port bow, about two points, as they were paying off to starboard. The man at the wheel did not notice anything till he got his wheel over. After that he saw the red light on the port bow. The seaman amidships took no notice till a little while after, hearing the mate hail the lookout. Then he looked and saw the green light nearly ahead on the port bow. He followed it till it changed to red. One of the apprentices testified that he first saw the green light on the starboard bow, it was crossing over to the other side. He saw it again on the port bow, and after that he saw the red light on the port bow. The other apprentice was in the house eating when he heard the mate hail the lookout. He put his head out and saw a green light on the starboard bow; then he went back into the house, and did not look out again till the alarm was made that immediately preceded the collision.

It is urged, on the part of the libellants, that the testimony of the second mate that he first saw a *red* light on his starboard bow before seeing the green light, is discredited by the circumstance that no other person on the *Star of Scotia* saw 586 it. It is insisted that this seeing of the red light was an after-thought; that it was devised for the purpose of justifying the maneuver of porting the wheel. But there is nothing inconsistent with the testimony of the second mate, that he saw this red light first, and

then almost immediately after saw the green light, just about when and where he did, in the case testified to by those on the Sansego. On the contrary, his testimony on these points singularly harmonizes with and confirms that of libellants' witnesses as to their own course, and what they first saw of the Star of Scotia's light. They say they were heading N. W. by N., and saw a green light nearly ahead, a little on their port bow; that while they kept their course the green light crossed over to their starboard bow, and after broadening some on the starboard bow, about a point and a-half, so that it became plainly visible to the wheelsman, who of course could not see it till it was off the bow, it suddenly disappeared. Therefore, when the mate of the Star of Scotia says he saw a red light, which changed suddenly to green, his vessel being on a course S. E. $\frac{3}{4}$ E., the light at that time bearing S. E. by S. $\frac{1}{4}$ S., this showed that he was just crossing the bow of the Sansego from port to starboard, and his observation of the bearing of the light at this moment does not vary a quarter of a point from the heading which those on the Sansego swear to as the course of their vessel, N. W. by N. This testimony clearly shows that the Star of Scotia thus crossed the bows of the Sansego from port to starboard very soon after the lights of each vessel came in sight from the other, and before the lookout or any one but the mate of the Star of Scotia had discovered the light of the Sansego.

The answer charges that this first change from red light to green, as seen on the Star of Scotia, was caused by a change of course on the part of the Sansego. The answer clearly charges two changes of course against the Sansego: first, at the time of this change from red to green; and, secondly, again after the Star of Scotia had, by falling off before the wind on a port helm, brought the red light of the Sansego on her port bow, and almost immediately before the collision happened.

It was evident, however, that the reconciliation of the testimony does not call for this alleged first change of course. There is nothing in the evidence, on the part of the Star of Scotia, to require it. On the contrary, if at that instant, just after the vessels came in sight of each other, and while the Star of Scotia was going to windward, the Sansego had changed her course to leeward to any appreciable extent, the Star of Scotia would not, so readily and quickly as she appears to have done, have crossed her bow again and brought her red light again in sight on her own port side. Moreover, the bearing of the light of the Sansego, as seen from the Star of Scotia just before this change from red to green, is so near to what it should be, if the Sansego was then heading as those on her say she was, when the green light of the Star of Scotia crossed her bow, that such crossing of the bow of the Sansego accounts by the Star of Scotia perfectly for the change of lights observed from the Star of Scotia.

This reasoning, from admitted or clearly proved facts, was so obvious that on the trial the allegations of this first change of course was abandoned in argument, and the charge of change of course was confined to that secondly alleged in the answer.

There is an entire agreement, also, as to the maneuver executed by the Star of Scotia after she thus first crossed the Sansego's bow from port to starboard. What those on the Sansego saw was the green light passing over to their starboard bow, and then, while it was on their starboard bow, it disappeared and they saw no light. This entirely agrees, so far as the green light is concerned, with the story told by those on the Star of Scotia. They say, in effect, that though their wheel was put a-port, the green light of the Sansego, which appeared first on their starboard bow, passed across their bow, and at some distance on their port bow it disappeared, and the red light appeared in its

place. So long as they continued to see the green light on their starboard bow they were showing, of course, their green light to the Sansego over its starboard bow, and that their green light must have disappeared, and their red light, if visible at all, must have 588 been seen over the starboard bow of the Sansego, is evident, because they say that they continued to see the green light on their port bow as they swung to port. The moment the green light crossed their own bow, their own green light must have disappeared to those looking at it from the Sansego; and this happened before the light of the Sansego changed from green to red, and consequently while their green light was still on the starboard bow of the Sansego.

The navigation, then, of the Star of Scotia, in pursuance of her admitted duty to keep out of the way of the Sansego, was this: Seeing her red light from a point and a-half to two points on the starboard bow, she ported her helm, intending to pass to leeward of her, leaving her to keep her course to windward.

The wheel being put to port, but before the vessel had had time to fall off, or, at most, but very little, the red light changed to green, still bearing about the same distance on the starboard bow. This indicated with great certainty that she was already crossing the bow of the other vessel from port to starboard, and also informed the officer in command of the Star of Scotia that the other vessel was heading about N. W. by N., and was probably a vessel sailing by the wind on the starboard tack.

On getting this new information, by seeing the green light, two courses were open to the officer of the Star of Scotia. One was to reverse his order, bring his vessel again up to the wind, and keep on the windward side of the other vessel, passing her starboard to starboard. To do this required only a change of wheel, as he had made no change in his sails. They remained

as before, with the yards braced sharp up as they were while she was by the wind.

The other course was to keep the wheel a-port and sweep round under a port wheel till he should cross the bow of the other vessel a second time and pass to leeward of her, or port side to port side. The officer of the deck adopted this second course. The mate testifies that when he first saw the red light he took it to be a vessel close hauled on the star-board tack, and obviously porting was then a proper movement.

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As the learned counsel for the claimants well suggests, he could not, on seeing the red light, know how close to the wind she was lying; and if it happened that she was a fore-and-aft schooner, which could lie within four and a-half points of the wind, as it well might be, it would be hazardous to attempt to cross her bows.

The only certain mode of avoiding her, if she was sailing so close to the wind, and bound, as she was, to keep her course, was to port. But when, immediately upon heaving his wheel up, he discovered the green light, and thereby ascertained that he had already crossed her bows, and that if close hauled she was seven points from the wind, and if not close hauled she was going off to leeward upon a N. W. by N. course, the situation was altered, and he was bound to act upon the more exact information thus acquired. The bearing of the light showed him that the courses of the two vessels diverged about two points, and that he had already passed the point at which their courses intersected. It seems to me, therefore, that in this new situation the obvious course of safety was to let his vessel come immediately up to the wind again, and keep his original course by the wind. It is objected to his doing so that it would have shown to the other vessel that his course was vacillating and confused; that it would have misled and confused the other

vessel as to his intended movement. The argument is, I think, unsound. He was still showing his green light to the other vessel, and had just begun to pay off to port. The testimony shows clearly that for quite an appreciable length of time afterwards he had not paid off sufficiently to show his red light, and there was ample time to heave the wheel down, and bring his vessel back to the wind, without showing his red light. This would have been more especially easy, as no change had been made in the sails on porting. The mate admitted in his testimony that if he had not seen the red light, and had first seen the green light, when the lookout answered his hail, which was the instant that he observed that the red had changed to green, he would not have ported, but would have kept on his course. The situation was not substantially 590 altered because the wheel had been hove up, the vessel not yet having paid off. The danger of continuing under the port wheel was that it involved the necessity of crossing the bow of the other vessel again, and her distance was a matter of great uncertainty.

The mate himself testifies that he could not judge of her distance when he first saw the light; she might have been a mile and a-half or three-quarters. He could not say that she was more than a mile off. Of course, in the night-time, with nothing but the appearance of the light to determine distance, that element in the problem is very uncertain. And the movement resolved upon by the mate required a considerable space for its safe execution. His vessel must come around and cross the bows of the other at a safe distance from her. Meanwhile both vessels would be covering the space between them at a combined speed, as the wind was of about a mile in five minutes.

The mate, though questioned on the subject, was wholly unable to say in what time his vessel would fall off four points, which is the amount it is claimed she did fall off before he judged that he was clear

of the other vessel and gave the order to steady. Nor could he say at what distance his vessel would run in falling off four points under a hard a-port wheel. While, however, the movement attempted must be held to have been an error, yet it is claimed that it was successfully accomplished; that the Star of Scotia came around under her hard-a-port wheel till she crossed the bow of the Sansego, and brought the red light of the Sansego at a safe distance on her port bow, and then, the two vessels being clear of each other, the Star of Scotia steadied, and the collision happened from the Sansego changing her course to leeward, and running across the bows of the Star of Scotia. If this is true, the earlier mistake did not cause the collision. It is, I think, fully established by the evidence that the Star of Scotia did bring the red light of the Sansego on her port bow. It was positively sworn to by so many witnesses on the Star of Scotia, as being seen on the port bow after the green light disappeared, that this point may be considered 591 established, as well as that the red light thus seen remained in sight on the port bow until it changed to the green light, close under the bow of the Star of Scotia, and immediately before the collision. But as against the positive testimony of those on the Sansego, that they kept their course close hauled by the wind till the collision, the questions are whether the red light was brought, by the porting of the Star of Scotia, so far on her port side that the vessels could safely pass each other, and whether, from the time the Star of Scotia steadied on her course with the red light so on her port bow, she kept that course, or, as the libellant's claim, gradually came up again to the wind, diminishing the distance which she had gained to leeward of the Sansego, and approaching her upon a line dangerously close to her course. It is evident that it is not enough merely to bring the red light on the port bow in order to pass in safety a vessel which is passing on the windward side close hauled.

Every vessel close hauled on the wind will yaw more or less. She is kept by the wind by the constant but slight movement of the wheel as she tends to fall off or to come up.

The experts in this case estimate half a point each way, as the ordinary variation from her course by the wind, which must be generally expected from this cause. Then, also, the actual course of every vessel sailing by the wind is likely to be a little to the leeward of the apparent course as indicated by her lights, varying with circumstances, the weight of her cargo, her trim and sails.

In judging, therefore, of the case presented by the Star of Scotia, it is necessary to take these points into consideration. If a vessel thus passing another has not made due allowance for these things, and has not given a safe margin to allow for the possible leeway of the approaching vessel, and for her possible yawing while doing all she can to keep by the wind, she is liable to be surprised, as the Star of Scotia was, by the unexpected disappearance of the red light, and the appearance of the green light of the approaching vessel under her bows when it is too late to avoid a collision. On this question, how far on the port bow of the Star of Scotia the red 592 light of the Sansego was brought, and, as the two vessels approached, how it continued to bear,—in other words, how far to leeward of the course of the Sansego the Star of Scotia put herself, when, as she claims, she steadied, and how far to leeward she kept before the vessels were apparently in immediate danger of collision,—is, I think, left in great uncertainty on the testimony of those on the Star of Scotia. And on this point, unfortunately, those on the Sansego can give but little assistance, because they did not see the red light of the Star of Scotia, and saw nothing, after the green light disappeared some distance off on their starboard bow, till the loom of the vessel was seen rapidly coming upon them on their

starboard bow. The cause of the red light of the Star of Scotia not being seen will be hereafter considered. The second mate of the Star of Scotia, who was the officer responsible for the navigation, testifies that, when the red light appeared, it bore about two and a-half to three points on his port bow. He testified, also, several times, with great positiveness, that it ranged with or a little abaft the port fore rigging, as he stood on the weather or port side of the wheel.

This would be less than half a point. It is clear that if the latter statement be true the light was not brought well or safely on the port bow. Having brought the light on his port bow, so far as in his judgment made it safe to steady the wheel, and having given the order to steady, it was then his duty to watch the light as the two vessels approached. If his calculation was right, and he was safely to leeward, the red light, provided the other vessel kept her course, would have constantly broadened on the bow; yet his testimony as to the movement of the light after it was first seen is very confused. He does not testify that it broadened at all on his bow. On the contrary, he always puts it as ranging with the fore rigging, and he puts it there when it suddenly changed to green, and the other vessel was found under his bow. Yet, if it did not broaden, he should have noticed it, and should not have been taken by surprise, as he was, by its sudden change to green.

The lookout testified that the ship was paying off when he 593 saw the red light; that it was about two points on their port bow when he noticed that they stopped going off and appeared to be steadier; that he could not tell how long it was before the green light appeared again, but not very long; that when it came in sight the green light was crossing their bow; that the red disappeared and the green appeared, and then the collision. Being asked if the red light changed its bearing while he was watching it, he answered:

“Our ship was steadied after we saw it. It did not change its bearing for a minute or so—a good three minutes. It must have changed its bearing to produce the collision.”

One of the apprentices, who was about amidships, testified that he first saw the red light on the port side; that it bore nearly ahead; that he saw it about five minutes. The seaman, who was standing by amidships, saw the green light on the port side for a very short time. He watched it till it changed to red. He says he waited a minute, during which he saw the red, and then he saw both lights together. He could then see the loom of a vessel, and he ran aft to help the man at the wheel. When he first saw the green light it was well forward; he could give no idea of the distance, but it seemed to be pretty close.

He gives no testimony as to how the red light bore or its movement after it was seen.

The wheelsman testified that after putting his wheel hard up he noticed a red light; that it was just on the port bow. When asked if it broadened any on the port bow, he said: “Of course. We were keeping away. We kept away till we brought this light well on the port bow. We brought it a couple of points on the port bow. Then I got orders from the second officer to steady my wheel. I did so.” He also testified that she had swung off altogether three points; that the next thing he saw was a green light about two points on the port bow.

On cross-examination he said that he saw the light when he was to steady his wheel, and that it ranged between the mizzen rigging and the mizzen topmast backstay.

From where he stood thus would have been about two 594 points and a-half on their port bow. Again, he says he saw it as soon as he brought it on the port bow. If this was so, he must have seen it considerable forward of the mizzen rigging. He swears that he kept

the wheel steady after he got the order till the green light appeared again. Then he had an order hard a-port, and the wheel was put hard a-port before the vessels came together. He says the green light ranged between the main and fore rigging. He also says, on cross-examination, that the vessel fell off in all four points.

He says he observed how much she fell off by the compass, but still he leaves it uncertain whether it was three points or four points.

And, if he noticed what it was by the compass at the time, it is clear that when he was examined he did not remember how she was heading by the compass at the time he steadied. He also testified that she fell off under the hard a-port wheel the second time—that is, after the green light was seen and before the vessels struck—two or three points, he thought, but he did not observe it by the compass. The second mate testified that he steadied at S. $\frac{1}{2}$ E. This, being by compass, must be corrected by the variation, which makes the true heading at that time, if his statement is correct, according to the master's testimony, S. $\frac{1}{4}$ E. If this were so, they had changed from their original course of S. E. $\frac{3}{4}$ E. four and a-half points when they steadied. He also says that they were just paying off at the time of the collision, and he noticed the heading at the time of the collision, and it was S. $\frac{1}{2}$ E. that is, exactly what he had observed it to be when they steadied. It is difficult, if not impossible, to reconcile the testimony of the second mate and the wheelsman, or the different statements of either, made at different parts of their examination, with themselves on these material points.

If it be true, as testified to by the wheelsman, and apparently agreed to by the mate, that she fell off on the second porting of the wheel, then either the ship was not kept steady, as the wheelsman testifies, but was allowed through his inattention to come up again

towards the wind, or else one of the second mate's observations of the compass was erroneous

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If one, which one was it? If the wheelsman is right that she fell off at first three points only, then the mate's observation of the compass the first time was wrong, or he does not remember it aright.

It is suggested that, as the yards and sails were not changed, she would tend to come up in the wind upon the wheel being steadied. Several experts have been examined upon this point, the result of whose testimony seems to be that with the sail she was carrying, and at three to four points off from the wind, an attentive wheelsman would have no difficulty in keeping her head steady, with her yards still braced sharp up as they were. It is, however, consistent with some parts of the claimant's evidence, especially that of the mate and wheelsman, above referred to, and the testimony generally as to where the red light was seen after the wheel was steadied, that the wheelsman, through inattention, allowed her to come up some part of the distance she had fallen of when he steadied. Taking the evidence of the mate, as a whole, I am far from being satisfied that he kept that careful observation of the light, after he brought it on his port bow, which the situation and his responsibility required. He was not able to give such an intelligible account of its bearing and movements, down to the time the green light appeared again, as he should, and could have done, if he had been observant and alert.

The testimony on the part of the claimants as to what was seen and done on the Star of Scotia has not that certainty which is sufficient to control and overweight the positive evidence that the Sansego kept her course by the wind. I think that the evidence, on the part of the claimants, at least, leaves it doubtful whether the Star of Scotia kept off to leeward of the course of the Sansego sufficiently far to pass her safely

on the port hand; or whether, after having ported till the officer of the watch judged it safe to steady the wheel, the vessel was kept steady on her new course; or whether the other vessel was attentively kept in view and watched, as was necessary to prevent a collision. The second mate's ignorance concerning the deflection of his own compass was itself 596 negligence imperiling the safety of both vessels. It tended to render his judgment erroneous or uncertain both as to the course of the Sansego and the navigation of his own vessel. It affected the accuracy of his observation in respect to how close to the wind the Scotia was sailing when her red light changed to green, and also in respect to how far his own vessel had fallen off under her port wheel; the two principal points which controlled or should have controlled his movements to avoid a collision. It is impossible to say that this ignorance on the part of the officer in command of the Star of Scotia was not the cause of the collision. I have not overlooked the argument for the Star of Scotia, that what the mate of the Sansego said to the wheelsman after the green light disappeared, which was that he should keep the sails full, was, or may have been understood to be, an order to keep off. I do not think it could have been so understood by any seaman. It was no more than a caution to keep her full and by the wind. The claimants rely on the evidence as to the angle at which the vessels struck, as shown by diagrams made by the various witnesses. They all, with the exception of the second mate of the Star of Scotia, make the blow of the stem of the Star of Scotia on the Sansego starboard quarter an oblique blow, angling towards her stern. They vary considerably in the angles they make. Such diagrams are of very little value. When two vessels are coming together thus, with the instant expectation of a collision, the minds of the witnesses are not fixed on the precise angle they make;

and, especially in the night-time, their observation on such a point is liable to great uncertainty.

The second mate of the Star of Scotia makes the angle of the collision about 45 degrees, ranging forward on the star-board quarter of the Sansego, instead of aft, as all the others make it. This extraordinary error itself throws great doubt on the accuracy of his observation on other points, especially upon his testimony in respect to the heading of his own vessel. The angle may well have been sharper than any of the witnesses make it. Moreover, as it is uncertain on the evidence how much the Star of Scotia fell of the second time, 597 no certain conclusion can be drawn from the angle at which they came together as to how she or the Sansego was heading just before she saw the green light and ported. The claimants have laid great stress on the testimony of a ship-builder and surveyor of vessels who had examined the injuries done to the bow of the Star of Scotia, and who testified that, in his opinion, those injuries were made by a blow nearly square on; that a certain hole made in the plates on the port bow, between two and three feet above the water, could only have been made by the channels of the Sansego, and that to make this hole the Star of Scotia must have struck the blow at an angle of at least 45 degrees. It impaired very much the fact of this testimony when it was shown, as it was, that the Sansego had no channels. The evidence is purely speculative, and, I think, entitled to very little weight. With both vessels moving forward rapidly, and rising and falling more or less with the sea, such speculations must be often at fault; nor does any experience acquired in ship-yards, or in the observation in port of injured vessels, suffice to render any man's judgment on such a point trustworthy, or entitled to control other proofs which are reasonably certain in their results. The question whether or not the Star of Scotia had a port light

which could be seen from the Sansego is not itself a decisive question, if it be found that the Sansego kept her course. It has been made important, however, as the determination of that question one way or the other affects somewhat the weight to which the testimony of those on the Sansego is entitled. They swear positively that the green light, when about a point and a-half to windward, disappeared, and they could see no other light. It is suggested by the learned counsel for the claimants that they did not see it because they did not look in the right place; that they looked to windward, in the direction where the green light disappeared, whereas they should have looked to leeward, to which side the Star of Scotia had passed. But this theory does not meet the case. As is shown by the testimony of those on the Star of Scotia, as above referred to, the moment her green light disappeared her red light ought to have been seen in 598 the same place off the starboard bow of the Sansego, and to have moved from there across the bow of the Sansego. These men were watching the green light. It disappeared. This was a noticeable, a striking circumstance. Their attention was especially attracted by it. They spoke to each other about it. They expected to see another light. They looked for it in the proper place and saw nothing. It does not seem to be a matter about which they can be mistaken. If there was a good bright light there, brought within range of their vision when the port side of the Star of Scotia was turned towards their starboard bow, as was shown by those on the Star of Scotia, it seems impossible that they should not have seen it. This is very different from the ordinary case of a mere failure to observe a light that might have been seen. It is very strong evidence, if the witnesses are credible, that the light was too dim to be seen, at any rate, at and soon after the green light disappeared. And there is some evidence on the part of the Star of Scotia that the

port light was not burning as it should have done that night. At half past 11 it was found necessary to take it down and trim it. One of the apprentices testified that he trimmed it then by knocking off whatever of crust there was on the wick; that it was then replaced. There is also evidence that it was burning brightly at 12 o'clock. The lookout who went on duty at 2 o'clock testified with great confidence that both side lights were burning brightly all the time after he went as lookout up to the collision; that he could not help seeing them as he walked to and fro on the fore-castle deck. Another witness, however, testified that to see them from the deck it was necessary to lean over the rail. They were set at the break of the fore-castle, about at the height of the fore-castle deck, outside of everything. One of the apprentices, however, testified that, soon after the Sansego sunk, he took down the port light and trimmed it again. This he did without orders, and it was not his watch. He says that it was an extra precaution to make it burn more brightly. He testifies that it was burning well, and that the glass was clean. The sail-maker testified that after the collision the side lights were taken down; that 599 the green light was put up again in the mizzen rigging, because, as the vessels hung together, it was in danger of being carried away where it was; that he saw and passed to another man the port light, which was afterwards put back in its place; that it was burning well, but had a scum around the glass. There is some evidence that one of the men was seen cleaning the glass of a light after the collision, but it is not satisfactorily identified as the red side light, while it is true that those who saw and handled this port light deny substantially that it was dim, or the glass obscured. I think the fact that it was found necessary twice that night, once before and once after the collision, to trim it, throws considerable doubt on its condition; and that, on all the evidence, the red light was not seen by those on the Sansego,

for the reason that when the green light disappeared the red light was not bright enough to be seen at the distance at which the two vessels were then apart.

The conclusion, therefore, upon the whole case, is that the Sansego was not in fault; that she kept her course close hauled on the wind; that the Star of Scotia was in fault in not keeping a good lookout, and in not keeping out of the way of the Sansego, as she was bound to do.

Decree for libellants, with costs, and a reference to compute their damages.

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