

Circuit Court, E. D. New York.

June 13, 1881.

COLLISION—FAULT—CHANGING COURSE.

Where two steamers were approaching each other on courses not involving a risk of collision, and one of them changes her course to one involving a risk of collision, when in close proximity, without giving sufficient previous notice in time, and without obtaining the assent of the other steamer to such change, *held*, that she was in fault, and that a libel brought by her for damages for the collision should be dismissed.

R. D. Benedict and *E. L. Owen*, for libellant.

T. E. Stillman and *W. Mynderse*, for claimant.

BLATCHFORD, C. J. In this case I find the following facts:

The steamer Bermuda and the steam-lighter A. T. Nichols came into collision in the North river at a point about 300 feet out from and a little below pier 1, on the seventh of December, 1877, in the afternoon, in daylight. The Bermuda was an ocean screw steamship, of 746 tons, British register. Her length was about 240 feet, and she was loaded at the time of the collision so that she drew about 10 feet of water. Her deck at the stem was about 16 feet from the water, and at the stern about eight feet from the water. The top of the rail was four feet above the deck. The bridge ran athwartships about midway between the stem and the stern, and was six feet above 914 the decks. The Bermuda had two masts, brig rigged. The masts were about 90 feet in height from the deck. She carried a full and sufficient crew at the time of the collision, and was under the immediate control, as to her navigation, of her master and a Hell-Gate pilot. The A. T. Nichols had formerly been a canal-boat, but at the time of the collision was fitted with steam-power and a screw, by means of which she was propelled. Her length was about 90 feet. She had no

masts, but had a derrick for the handling of cargo. She was carrying a cargo of hemp in bales. Her crew consisted of a master, an engineer, and two men. The master alone has been produced as a witness in this case. At the time of the collision the Bermuda was bound on a voyage from St. Johns, Newfoundland, to New York. She came through Long Island sound and Hell Gate, and down the East river. She had rounded the Battery, and was proceeding up the North river to her berth at pier 10, on the New York side. The pilot, on boarding her off Stratford, in Long Island sound, had taken his position on the bridge with the master, who had been on duty since 9 o'clock in the morning. On reaching Whitestone, about two and a half hours before the collision, the first mate had gone upon the lookout. He was stationed on a grating at the stem of the vessel. This grating was triangular in shape, with its apex forward right in the bow, and it ran thence about three feet fore and aft, and was about six or seven feet broad at its base. It was raised two feet and more above the deck. From the time of taking his station as lookout the mate had remained continuously upon the grating. He had no other duties than those of a lookout. Immediately after passing Hell Gate the engines of the Bermuda were worked at half speed only, and she proceeded down the East river with the engines working at half speed, and rounded the Battery and headed up the North river. With her engines working at half speed they were making from 30 to 35 revolutions per minute. At full speed they would have made 65 or 66 revolutions per minute. With her engines at half speed, the Bermuda, loaded as she was, could make about six miles an hour through the water, but on turning into the North river she encountered a strong ebb tide and a north-west wind, which reduced her speed to less than four miles an hour by the land. She went around the Battery on a port helm, and headed up the North river to

go to her pier, which was on the east side of the river. As she did so she discovered a large steam-boat putting out from a pier on the east shore, and heading down the river. She exchanged signals with the steam-boat, which afterwards passed down in safety on the starboard hand of the Bermuda. She also discovered a large double-decked barge, in tow of a tug, a little on her port bow. Before passing the barge the mate had seen the A. T. Nichols further off than the barge, and beyond her, but he did not report the A. T. Nichols at that time. She, too, was on the port bow of the Bermuda. The master and the pilot of the Bermuda did not see the A. T. Nichols until she emerged from behind the barge, as hereafter mentioned. Both the barge and the A. T. Nichols were proceeding down the North river, but neither of them was approaching the Bermuda on a course involving risk of collision. Nevertheless, the Bermuda gave a signal of one blast of her steam-whistle to the barge, to which the barge assented, and she afterwards passed down in safety on the port side of the Bermuda. The barge had double decks and a house, 915 and stood higher out of water than the hull of the Bermuda. The A. T. Nichols was very low in the water. As the barge and the A. T. Nichols proceeded down the river, and the Bermuda proceeded up the river, the vessels came into such positions that the barge was between the A. T. Nichols and the Bermuda, and shut out from the lookout and the officers of the Bermuda, for a short time, their view of the A. T. Nichols. When the A. T. Nichols so disappeared she was on a course not involving risk of collision with the Bermuda, but afterwards, as the vessels continued to advance, the A. T. Nichols was disclosed to the Bermuda at the distance of about 500 feet, and bearing about three points on the port bow of the Bermuda, heading almost directly for her, or close under her stern, which indicated to those on board of the Bermuda that the A. T. Nichols had,

under the influence of a starboard helm, swung from the course which she had been following. The lookout then promptly reported the A. T. Nichols to the master and the pilot of the Bermuda on her bridge, who discovered her at the same time. The failure of the lookout to sooner report the A. T. Nichols did not contribute to the collision, nor did the failure of the master and the pilot of the Bermuda to see the A. T. Nichols sooner than they did see her. The master of the Bermuda at once, on seeing the A. T. Nichols, and having her reported, signaled her, by a single blast of the Bermuda's steam-whistle, to pass down on the port side of the Bermuda, no signal from the A. T. Nichols having been heard by any one on the Bermuda. The A. T. Nichols did not reply to the signal given by the Bermuda, but continued to swing as though under a starboard helm, taking a course crossing the bows of the Bermuda, and, when nearly in front of the Bermuda, and distant from 200 to 300 feet, the A. T. Nichols commenced to reverse her engine. Before this time those in charge of the navigation of the Bermuda had caused her engines to work at full speed astern from half speed ahead, and afterwards, and to further overcome the headway of the Bermuda, it being impossible to get sternway on her in so short a distance, and unsafe to attempt it, as sailing vessels were lying at anchor astern of the Bermuda, her port anchor was dropped. The engines of the Bermuda, up to the time they were so stopped and reversed, had been worked continuously at half speed ahead. The A. T. Nichols, still under the influence of her starboard helm, and her headway not being fully overcome, came down with the tide upon the Bermuda, striking her starboard side against the stem of the Bermuda, and then fell along-side and down the port side of the Bermuda, inflicting damage upon both vessels. At the time the A. T. Nichols was first seen from on board of the Bermuda, the Bermuda had already rounded the

Battery, and had taken a direct course up the river, not exactly parallel with the line of the piers, but drawing to the eastward, heading for about pier 10. That course she held unchanged up to the collision. Her helm was not altered, but when her engines were reversed, the reverse revolutions of her screw tended to throw her stern a little to port and her head to starboard. This tendency existed both before and after sternway was acquired, and until stern way was acquired her helm had no effect in guiding her movements. The port anchor of the Bermuda was carried out-board and was dropped by the handling of a lever in a very short time. To reverse the engines from half speed ahead to full speed astern occupied eight seconds.

916

The A. T. Nichols was, at the time of the collision, bound from Hoboken, New Jersey, to Newtown Creek, on the East river, with instructions to call at pier 1, North river, for orders. Her master was in charge of her navigation, and was stationed in the pilot-house. She had no lookout. She proceeded across and down the North river at the rate of about four miles an hour through the water, and between five and six miles by the land, with the tide. Later, and while the barge was obscuring her from the view of those on the Bermuda, she commenced swinging to port under the influence of a starboard helm. The masts of the Bermuda were not obscured by the barge from the view of the master of the A. T. Nichols, but the body of her was. The A. T. Nichols gave no signal to the Bermuda before she appeared to the view of the Bermuda from behind the barge. If she afterwards blew any signal to the Bermuda, which is not established, she blew a signal of two whistles, but it was at too late a period to be of any avail, and it was given while she was swinging to port under a starboard helm, and the whistles were not heard on board of the Bermuda, but not through any fault

or want of attention on board of the Bermuda. At the time the A. T. Nichols appeared from under the stern of the barge she was headed for the after-part of the Bermuda, or just under the Bermuda's stern, but was still swinging to port, so that, in a short time, her starboard side alone was exposed to the view of those on the Bermuda. This course she continued without change of speed until she was nearly ahead of the Bermuda, when she reversed her engine, but too late to enable her to back away from the path of the Bermuda. As the result of the collision, the A. T. Nichols sank, but she was raised and repaired.

On the foregoing facts my conclusions of law are that the collision was due to the negligence of those in charge of the navigation of the A. T. Nichols, in that they changed the course of their vessel from one not involving risk of collision with the Bermuda to one involving risk of collision with the Bermuda, when in too close proximity to the Bermuda, without giving sufficient previous notice in time to the Bermuda, and without obtaining the assent of the Bermuda to such change of course; and that the collision was due to the fault of those in charge of the navigation of the A. T. Nichols, in that after changing her course so as to have the Bermuda on her starboard side, the Bermuda having the A. T. Nichols on her port side, they did not keep the A. T. Nichols out of the way of the Bermuda; and that there should be a decree dismissing the libel, with costs in the district court, taxed at \$154.90, and with costs in this court to the claimant.

SAMUEL BLATCHFORD,

Circuit Judge.

BLATCHFORD. C. J. The A. T. Nichols, admitting that she had the Bermuda on her starboard hand, and that it was, therefore, the duty 917 of the A. T. Nichols to keep out of the way of the Bermuda, and the corresponding duty of the Bermuda to do nothing to interfere with the measures adopted by the A. T.

Nichols to accomplish that purpose, contends that the captain of the A. T. Nichols saw the Bermuda and took a course for the purpose of avoiding her, and gave notice thereof to her by a signal, which was not heard or heeded by the Bermuda; and that the Bermuda, by porting, followed up the A. T. Nichols and thwarted the effect of her starboarding, and thus caused the collision. The contention on the part of the A. T. Nichols is that her captain, after seeing and noting the position of the Bermuda, determined to cross ahead of her, and blew two whistles as a signal to her that he intended to do so; that he received no answer, and, after a time, blew two more whistles and starboarded his helm; that the second two whistles were blown as soon as he saw the Bermuda coming in sight from behind the barge; and that, seeing his signals were not heeded, and that a collision was imminent, he stopped and backed. It is urged for the A. T. Nichols that the failure of the Bermuda to heed the signals of the A. T. Nichols, and to starboard or to refrain from porting, was due to inattention on the part of the lookout of the Bermuda, and to his failure to report the A. T. Nichols when he first saw her. The evidence has led us to the conclusion that whatever signal of two whistles the A. T. Nichols blew, she blew but one such signal, and that that was blown, not to the Bermuda, but to the tug R. S. Carter, which was ahead of the Bermuda, going the same way. That being so, it was negligence in the A. T. Nichols to starboard and cross ahead of the Bermuda without full assent of the Bermuda to such course. If, as is contended for the A. T. Nichols, she starboarded after she had given two signals to the Bermuda and had failed to receive a reply to either of them, and could see that the Bermuda was advancing and not starboarding, that was negligence in the A. T. Nichols.

The failure of the mate of the Bermuda to report the A. T. Nichols when he first saw her is clearly

shown not to have contributed to the collision, for the A. T. Nichols was then on a course to pass safely on the port hand of the Bermuda, and the master and the pilot of the Bermuda, when afterwards they saw and heeded the movements of the A. T. Nichols, saw her after she had starboarded and was coming into the way of the Bermuda, without having notified the Bermuda, and when it was too late for the Bermuda to do anything but what she did. The A. T. Nichols starboarded while she was concealed by the barge from the view of the Bermuda, and, until such starboarding was 918 disclosed by her coming out from behind the barge, those on the Bermuda had a right to believe the A. T. Nichols would not be guilty of such negligence as to starboard and come into the way of the Bermuda. The Bermuda did not port her wheel in the sense alleged in the libel. She did not starboard, but she did keep her course. She was drawing into the shore, because her objective point was pier 10, and therefore her course was not parallel with the shore, but her head did not swing to starboard, and she headed in the same direction all the time. If, when the collision was imminent, starboarding by the Bermuda, without stopping and backing, might have enabled the A. T. Nichols to get by, because the stopping and backing kept the bow of the Bermuda from going to port, it is not clear such would have been the result; and, if it would, the failure to adopt the maneuver was, at most, an error of judgment in the peril caused by the negligent action of the A. T. Nichols, and not a fault. The Bermuda was not going at an improper rate of speed.

The libel must be dismissed, with costs in both courts.

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

through a contribution from [Joseph Gratz](#). ■