

THE PIERREPONT.*
THE MARY MORGAN.*

District Court, E. D. Pennsylvania. March 31, 1882.

ADMIRALTY—COLLISION—MUTUAL FAULT.

A steam-barge and a steam-boat collided on the Delaware river. The testimony as to the circumstances under which the collision occurred was in direct and irreconcilable conflict. It appeared, however, that the lamps of the barge were partially obscured by smoke, and that she did not signal until too late to prevent a collision, and that on the other hand the steam-boat had seen only the white light of the barge, and supposing it to belong to a vessel at anchor, had steered accordingly, until the signal of the barge was heard. *Held*, that the barge was negligent in not having her lights in proper condition, and in not signaling in time; that the steam-boat was also negligent in not discovering earlier that the barge was in motion; and that the damages should, therefore, be equally divided,

Cross-libels—one by the owners of the steam-barge *Pierrepont* against the steam-boat *Mary Morgan*, and the other by the owners of the *Morgan* against the *Pierrepont*—to recover damages caused by a collision. The evidence was as follows: On August 8, 1879, at about 10 o'clock P. M., the *Pierrepont*, bound up the Delaware river, collided with the *Morgan*, which was coming down. The night was cloudy, but not stormy. The testimony, as to the circumstances

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under which the collision occurred, was in direct and irreconcilable conflict. On behalf of the libellants it was testified that the *Pierrepont* was on the eastern side of the channel; that the red light of the *Morgan* was first discovered about one point off the port bow; that the *Pierrepont* held her course, but that when about half a mile distant the *Morgan* changed her course, showing both her side lights; that when within hailing distance the *Pierrepont* blew one whistle, which was answered by the *Mary Morgan*, with one

whistle; that the Pierrepont's wheel was then ported; that the Morgan again changed her course, showing only her red light, but almost immediately thereafter changed her course again and showed her green light, and then almost immediately shut out her green light and opened her red; that the Morgan was then about 100 yards distant, and at least two points off the Pierrepont's port bow, with no danger of collision, when suddenly, without any necessity, she again changed her course by starboarding her wheel, and ran into the Pierrepont, striking her on the port bow. On behalf of the respondents it was testified that the Morgan was running in mid-channel on the course of the Hamburg range lights; that the white light of the Pierrepont was seen on the starboard bow of the Morgan, and was believed to be the light of a vessel at anchor; that while steering to pass, keeping that light on the right, a whistle from the Pierrepont showed it to be a steamer in motion; that the signal was immediately responded to by the Morgan, the helm of the latter thrown hard a-port, and her engines reversed, but that the vessels came together immediately, the Morgan striking the port side of the Pierrepont. It appeared that the bell-wire of the Pierrepont had been broken prior to the collision, and hence her pilot was unable to signal to the engineer to reverse her engine. With regard to the condition of the Pierrepont's lights the testimony was also in direct conflict, the libellant's witnesses testifying that the lights were properly burning, and respondent's witnesses testifying that she had no side lights burning at the time of the collision. There was some evidence that the Pierrepont's lamps were encrusted with smoke, and that her awnings were torn, and might possibly have obscured her lights by flapping.

Alfred Driver and *J. Warren Coulston*, for the Pierrepont.

Henry G. Ward and Morton P. Henry, for the Mary Morgan.

BUTLER, D. J. These cases exhibit a large amount of conflicting evidence,—much of it being irreconcilable. A careful examination however has satisfied me that both vessels were in fault. The course of each was near the center of the channel, and they were consequently 793 approaching, virtually, “head on.” What the several witnesses say respecting the position of range lights, and the situation of the vessels, before danger was apprehended, is not entitled to much weight. There was nothing to call attention to the subject, or calculated to impress the mind respecting it. The probability is that each vessel was steering by the lights, on a course near the center of the channel; and this is strengthened by the circumstances of the case.

The fault of the Morgan consisted in failing to discover that the Pierrepont was in motion, until close upon her. She had seen the latter’s mast-head light at a considerable distance, and discovering no other, supposed her to be at anchor. Resting too confidently upon this, she failed in the observance of proper care to ascertain its correctness. Such care would have discovered other lights, and revealed the fact that she was in motion. It is quite probable that these lights could not be seen when the mast light first came into view,—either on account of their situation, or their imperfect condition. That they were in imperfect condition, I have no doubt. Proper vigilance, however, would have discovered them; for it is reasonable to believe that they could have been seen at a considerable distance, notwithstanding the partial smoking of the glass. The officers and lookout appear to have been careless. When the conclusion was reached, on discovering the mast-head light, that the Morgan was stationary, it was resolved to pass to the eastward, and no pains whatever were taken, as they

approached, to ascertain whether the conclusion was correct or not.

The fault of the *Pierrepoint* consisted—*First*, in failing to have her side lights in proper condition. I cannot doubt that they were burning; but I think it reasonably certain they were obscured by smoke. *Second*, in failing to signal the *Morgan* as early as should have been done. She saw this vessel when distant; and while she was coming almost, if not quite, directly in front, no signal was given until she had approached so near that collision was probably inevitable. I am satisfied the signal was immediately obeyed by porting the *Morgan's* helm, and reversing the engine. Nothing more was possible, and yet the vessels came together before the *Morgan's* head could be turned.

The testimony of the *Pierrepoint*, that the *Morgan* was at a safe distance when signaled, and changed her course several times *afterwards*, turning to the east immediately before the collision, and thus causing it, is not only in conflict with the testimony of the *Morgan*, but is so 794 opposed to all reasonable inferences as to be incredible. Aware of the danger, and porting her wheel to avoid it, why would she change her course at the critical moment, and thus imperil herself as well as the *Pierrepoint*? Whether the collision might still have been avoided at the time of signaling, if the *Pierrepoint* had reversed her engine as the *Morgan* did, is open to doubt. The experiment should have been tried. The condition of her bell-wire, however, rendered this impracticable. Whether fault should be attributed to her on this account need not be considered.

The foregoing is a statement of conclusions merely; and I shall attempt nothing more. An analysis of the mass of conflicting testimony would be of little value, while its preparation would require more time than I have to spare.

A decree for half damages will be entered.

See *The Leversons*, 10 FED. REP. 753.

* Reported by Frank P. Prichard, Esq., of the Philadelphia bar.

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