

THE PEGASUS.

District Court, D. Connecticut. March 31, 1883.

COLLISION—DANGER SIGNALS—DUTY TO
REPEAT.

Where a tug and her tow were meeting a steamer about head on, and the captain of the tug saw the approaching steamer and blew two whistles to indicate his intention to go to the left, but the signal was not answered by the steamer, it was his duty not to go forward upon his proposed course without either renewing his whistles or making an effort to get out of the way of the steamer, when he had good reason to know that it was a steam-boat which was upon her regular route, and was taking the ordinary way to make her usual landing.

In Admiralty.

Franklin A. Wilcox, for libelant.

William S. Macfarlane, for claimants.

SHIPMAN, J. This is a libel *in rem* to recover damages for a collision. About half past 10 o'clock on the evening of July 21, 1882, the steam-tug H. B. Whipple left the long dock at Jersey City, having in tow the barge Allendale, fastened to her starboard side, and bound for pier 8, East river. The tug and barge were owned by the libelant. The night was dark and lights were easily seen. The tide was running flood. The tug and tow had all their regulation lights properly set and brightly burning. The course of tug and tow, before and at the time of passing pier 1, on the North river, was about S., and their speed was about three knots an hour. As the vessels passed pier 1, and were about 100 yards out in the river from the 922 line of the outer ends of the piers on the New York side, the officers of the tug and tow saw an approaching steam-boat, which proved to be the Pegasus and owned by the claimants, about abreast of Castle William, and saw both her colored lights, and

that she was approaching about head and head. This steam-boat was one of seven boats of about the same size which, during the summer of 1882, made regular daily trips from Twenty-third street, New York city, to pier 1, North river, thence to Coney island, and thence returning, stopping at pier 1. A boat left Coney island and also Twenty-third street every half hour during the day and evening, till about 10 o'clock, with the exception of two trips, which were three-quarters of an hour apart. These boats were well known by means of the electric lights which they carried and which were a distinctive feature, and their general route and method of approaching pier 1 were well known to the navigators about New York harbor. Three or four times a week one of these boats went off this regular route to take an excursion party to Coney island from some other point, and in two instances during that summer one of the boats had taken an excursion party from the East river. The captain of the Whipple had good reason to know that the approaching steam-boat was an "iron steam-boat," and to believe that she was going to pier 1.

As the Pegasus passed Castle William the Whipple lost her green light and saw only her red or port light. The Whipple and her tow commenced at this time to swing under her starboard wheel so as to enter the East river, and blew two whistles to tell the Pegasus that she was bound to the East river and was going to keep to port. These whistles were not heard and therefore were not answered by the Pegasus. The Whipple blew no more whistles. The Pegasus, as was the uniform custom of the iron steam-boats in making their landing at the south side of pier 1 upon a flood-tide, sheered after passing Castle William, so that her course was about N. E., and so continued till she was between an eighth and a fourth of a mile from pier 1. At this point the captain of the Pegasus blew one whistle for the landing, and slowed his boat to four or five miles

an hour, put his helm to starboard, and swung to the westward. This was the usual and proper course of navigation in order to land on the south side of the pier. The Pegasus struck the barge on her starboard bow when she was about 300 yards S. W. of the upper or private bath-house on the battery. The barge was seriously damaged by the blow. The Pegasus did not see the lights of the tug or tow, although they were properly burning. There was a lookout on the steamer, and her officers 923 in the pilot-house were also on the watch. I cannot tell why the two vertical white lights on the flag-staff of the tug, and the barge lights were not visible. The Pegasus saw the lights on the steamer Maryland, which was behind the Whipple. The Whipple's red and green lights were not seen, because they were hidden from the Pegasus by the barge which was higher and longer than the tug, and whose bow was beyond the tug's bow. The distance from the water to the upper deck of the Allendale is 12 or 14 feet, according as; she is, loaded or light. It is 8 feet from the upper deck of the Allendale to the pilot-house. It is 19 feet and 8 inches from the top of the pilot-house of the Whipple, where the signal lights were, to the water. From some cause not attributable to the electric lights of the Pegasus, and without fault or negligence on the part of her officers, they did not see the Whipple or the Allendale until they saw a dark object about 100 yards away, bearing about one point on their port bow. The captain of the Pegasus ported in order to throw his bow clear, and then reversed to throw his stern out. The Whipple stopped and backed. The action of her captain is criticised, and it is said that if he had ported hard he would have avoided the collision. There was no negligence on the part of either captain at this time.

There seems to have been a mutual inability on the part of each boat to hear the whistles of the other. The Pegasus did not hear the two whistles of the

Whipple, neither did the latter hear the one whistle of the former. The Maryland heard the Pegasus' whistle and answered it. The theory of the Whipple is that as she was turning to go into the East river she had good reason to suppose that the Pegasus was turning also for the same purpose; that the Whipple gave two whistles to indicate that she was going to keep to the left, and she rightfully supposed, especially as no answer was given to the whistles, that the Pegasus was also going up the East river on a parallel course, when, suddenly, she sheered to the westward, and, without warning, struck the barge.

It is manifest that if the Pegasus had seen, or ought to have seen, the lights of the tug and barge, her management was negligent and she was in fault. I have already said that I do not find her blameworthy in not seeing these lights. On the other hand, I think that the captain of the Whipple, who was on the deck of the barge and was watching the Pegasus all the way from Castle William, had good reason to know that she was probably trying to land at pier 1, and that, having good reason to know this, although she seemed to him to be willful in not answering his whistles, it was his 924 duty not to go forward upon his course without either renewing his whistles or making an effort to get out of her way. There was willfulness on the part of the Whipple's captain in neglecting to whistle again or to avoid the steamer, when he had good reason to know that she was an "iron steam-boat," and was probably going to pier 1, and was taking the ordinary way to make her landing.

I do not find that the collision was the result of negligence on the part of the Pegasus, and therefore the libel is dismissed.

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

through a contribution from [Jonathan L. Zittrain](#). 