THE ELVINE.

(District Court, S. D. New York. February 11, 1884.)

SHIPPING—SEAMEN—SHIPPING ARTICLES—EVIDENCE.

Though shipping articles may be attacked by the seamen, and shown by parol to be incorrect, fraudulent, or void; yet, in case of dispute as to the amount of wages agreed on, the shipping articles will control, the seaman being competent to bind himself thereby, unless the articles are shown to be invalid by a reasonable and satisfactory preponderance of evidence.

In Admiralty.

Beebe & Wilcox, for libelant.

Jas. K. Hill and *Wing & Shoudy*, for claimants.

BROWN, J. I have no doubt that the shipping articles of July 31, 1883, were signed by the libelant; the handwriting is admitted by the libelant to be like his, and a comparison with other signatures of his leaves, I think, no question on that point. These articles fix the rate of wages at $40 per month. Shipping articles are required to be signed under section 4520; and though their correctness may be attacked, and though they may be shown by parol to be incorrect, fraudulent, or void, (*The Cypress*, Blatchf. & H. 83; *Page* v. *Sheffield*, 2 Curt. 377, 381,) unless this be satisfactorily established, the seaman will be held bound by the terms prescribed in them. *The Atlantic*, Abb. Adm. 451; *Slocum* v. *Swift*, 2 Low. 212; *Willard* v. *Dorr*, 3 Mason, 161, 169. The intention of the master to pay but $40 per month is clear, not only from his own testimony, but from that of other witnesses. The testimony of the libelant and of other witnesses who corroborate him, that he declined to ship for less than $45 per month, produces no little embarrassment in the testimony; and in such a case the original articles, as they stand, must control. There is no such clear and satisfactory proof of either fraud or mistake as would justify the court in disregarding them.

The evidence as to the articles signed at Fernandina is equally conflicting. It is unfortunate that the original document is not produced by one of the parties. The certified copy could not furnish any information by inspection as to whether the original articles had been altered from $45 to $40 per month. The certified copy of the articles is made competent evidence by section 4575, and the burden therefore seems to be upon the libelant to prove that it is incorrect. The original articles, however, signed in New York, and bearing no marks of alteration, give the libelant's wages as $40 only; and these articles were designed to cover the whole period of the libelant's services. On the whole, I think this original must be held to be controlling, and that the libelant should be entitled to a decree at the rate of $40 per month only.

THE GARDEN CITY, etc.

(District Court, S. D. New York. January 31, 1884.)

1. COLLISION—RIVER AND HARBOR NAVIGATION—RIGHT OF WAY.
   A steamer meeting another in the fifth situation, and bound to keep out of her way,—if able to do so through stopping and backing,—has no right to go to the left and attempt to cross the bows of the other when there is not sufficient time or space to pass in that manner without a collision, unless the other vessel either stops or changes its course; the latter has the right of way, and the right to proceed on her course without obstruction.
2. SAME—SIGNALS—TIMELY NOTICE.
   In river and harbor navigation, although for good reason a vessel may, under the inspectors' rules, signal that she will go to the left, instead of the right, these rules require early notice of such intention, and such a notice is not early or timely when it would compel the other vessel to stop in order to avoid a collision, unless in a situation where the former vessel has no other alternative.
3. SAME—INSPECTORS' RULES.
   Under the inspectors' rules the vessel signaled is bound to give an answer promptly, either of assent or dissent.
4. SAME—MUTUAL FAULT.
   Where the ferry-boats G. C. and R. were approaching each other in the East river in the fifth situation, and the latter being on the former's starboard hand, and the G. C., instead of stopping and backing, as she might have done, signaled with two whistles, and at the same time starboarded her helm so as to cross the R.'s bows, and the latter made no answering signal, and the G. C., after going about a length under a starboard wheel, again signaled with two whistles, to which there was no response, and she then stopped and backed until the collision, which happened shortly after, and the evidence being contradictory as to the other details of the maneuvering of the two vessels, *held*, that both were in fault; the G. C., for undertaking to pass to the left and cross the R.'s bows without assenting signals, and the latter for not answering as required, and thereby preventing the embarrassment and confusion of the G. C., which in this case plainly contributed to the collision.
5. SAME—EXCUSE—DEPARTURE FROM RULES.
   Though the G. C. ran in connection with railroad trains, and the avoidance of unnecessary stops was desirable, and though the usual course of the R. at this point was to swing to port, *held*, that these facts, though a sufficiently good reason for the signal of two whistles, given by the G. C., regarded merely as a proposition or request to pass to the left, were not a justification for any departure from the rules of navigation, without assenting signals from the R. in reply.

In Admiralty.

Benjamin D. Silliman, for libelant.

Shipman, Barlow, Larocque & Choate, for claimant.

BROWN, J. This action was brought to recover damages for a collision between two ferry-boats—the Republic and the Garden City—about 4:30 o'clock, in the afternoon of August 17, 1878, off Catharine street, in the East river. The day was fair, the wind light, the tide three-quarter ebb. The Republic belonged to the Catherine-street ferry, and was proceeding across the river towards Main street, Brooklyn. The Garden City was coming down the river from Hunter's Point, with the tide, to her slip at James street. At the time of collision the Garden City was heading nearly down the river, but a little