

examination of the ship or inquiries addressed to her master and crew will in almost every instance reveal her liabilities. But what method of investigation would enable a proposed purchaser or charterer to discover, for instance, that a lien existed in favor of a foreign insurance company for a policy issued to a former part owner?

The interests of the underwriters can be fully protected without the lien, and it is thought that no sound reasoning, drawn from the law maritime, can be invoked in its favor, but, on the contrary, its establishment will lead to confusion and often to injustice, without corresponding advantage. The exceptions of respondent are sustained.

THE GEORGE MURRAY.

(District Court, N. D. Illinois. May Term, 1884.)

1. COLLISION — FAULT—STEAMER AND SCHOONER — NIGHT—SPEED—CHANGE OF COURSE.

Upon examination of the evidence, *held*, that the steam-propeller Canisteo was alone responsible for the collision with the schooner George Murray, because of her negligence in not giving the schooner so wide a berth as not to have embarrassed or alarmed her, and in using too great speed for some moments before the collision, and after the danger of collision should have been apparent to her officers. *Held, further*, that the only change of course on the part of the schooner was made at the moment of extreme peril, and when allowable as an act *in extremis*, even when, if it had not been made, perhaps there might have been no collision.

2. SAME—LOOKOUT.

The precaution of a lookout is not indispensable when, from the circumstances, a lookout could not be of service, or when the officer of the deck is in full possession of all the information a lookout could possibly give.

Damages for Collision.

Schuyler & Kremer, for Wiley M. Egan, Petitioner.

Robert Rae, for Phenix Insurance Company.

BLODGETT, J. On the morning of October 14, 1880, a collision occurred in the waters of Lake Michigan, a short distance off Point Waugoschance, between the schooner George Murray and the steam-propeller Canisteo, in which the Canisteo was so badly damaged that she was beached within a short time after the collision. Wiley M. Egan, as owner of the schooner, filed a petition for limitation of liability, and the usual monition against all persons having any claims against the schooner was issued. The Canisteo was bound on a voyage from Chicago to Buffalo, with a cargo consisting in part of 15,000 bushels of corn on which the Phenix Insurance Company had issued a policy of insurance. The cargo of the Canisteo being a total loss by reason of the collision, the insurance company paid the loss, to the amount of \$7,200, under the policy, and presented its claim for the amount in its own behalf, asking to be subrogated to all the rights

of the owner of the cargo, and claimed to be paid its proportion out of the appraised value of the Murray, on the ground that the collision in question occurred by reason of the negligent navigation of the Murray and neglect of duty by her officers and crew. The allowance of this claim was resisted by Egan on the ground that the collision was brought about wholly by the negligence of those in charge of the Canisteo. On the issue thus made as to negligence proofs were taken, and the commissioner has reported that the collision was occasioned by the fault of those in charge of the Canisteo, and not by reason of any fault on the part of the Murray. To this finding by the commissioner the insurance company has filed exceptions which have been fully discussed by counsel.

The faults charged by the insurance company against the Murray, as a ground of recovery, are: (1) That the schooner, after she was sighted by the steamer, and when they were approaching each other, changed her course, and thereby caused the collision; (2) that the schooner had no lookout; (3) that the officer of the deck of the schooner neglected his proper duty at a time when his active vigilance and attention to the navigation of the vessel was demanded, to attend to other work belonging to his subordinates. The testimony is voluminous and, as is usual in collision cases, contradictory in many important particulars. It is, however, conceded on both sides that the collision occurred between half past 3 and 4 o'clock in the morning; that the night was clear and the wind about south-east,—a six to eight knot breeze; that the steamer, when she first sighted the schooner, was to the south and west of Waugoschance light, running about north-east, in the usual track of steamers approaching the entrance to the straits of Mackinaw; and that the schooner was to the north of the light, having just passed through the straits on her way to Chicago. It must also, I think, be assumed as true, from the proof, that at the time the schooner was first seen on the steamer she had changed her course from about west, which she had been running while in the straits, to a south-westerly course, for the reason that the master of the steamer says he first saw the green light of the schooner, which would indicate that the schooner had passed sufficiently west to round point Waugoschance, and shaped her course for the Manitowish. This was about 20 minutes before the collision, and the vessels were then four or five miles apart, the steamer running about nine miles an hour, and the schooner about six miles an hour, making the united speed about fifteen miles an hour.

The mate of the Canisteo, who was the officer of her deck at the time of the collision, and is the principal witness relied upon by the insurance company, to show that the course of the schooner was so changed as to cause the collision, says that he first saw the schooner's green light, and that it bore about half a point on his starboard bow; that she kept her green light in view eight or ten minutes, and then showed a red light; that he then put the wheel of the steamer

to port, so as to keep her to windward of the schooner and show her his red light. Then the course of the schooner was changed, and she showed him her green light, whereupon he put his wheel to starboard so as to show his green light to the schooner. Soon after the schooner showed her red light again; whereupon the wheel of the steamer was put hard to port, and then the collision occurred the steamer striking the schooner just forward of her mizzen rigging, staving in the bows of the steamer, but doing comparatively slight damage to the schooner. Four witnesses, Greenwood, Rock, Jackson, and Mrs. Givens, who were on the schooner, are also called by the insurance company. At the time the steamer was sighted on the schooner the mate of the Murray was officer of her deck, and Greenwood and Rock were in his watch. When the course of the schooner was changed from that sailed while passing through the straits to the course for the Manitous, it became necessary to haul in her sails so that she would run closer to the wind. Rock had been acting as lookout, but was called by the mate to help him, the mate, and Greenwood, the other seaman of the watch, haul aft the main and mizzen-sheets. Rock states that he had seen the lights of the steamer and reported her to the mate before he went aft to help haul in the sheets. Greenwood says that while the mate, Rock, and himself were at work at the sheets, the captain came on deck; that he, the captain, looked over the lee side, which was the starboard side of the schooner, and said to the mate, "What light is that?" that they all looked and saw the green light and masthead light of the steamer, and that the steamer was then from one to two points on the schooner's starboard bow; that soon after the captain ordered Rock to show a torch, and while he was showing the torch, the captain shouted to the man at the wheel, "Hard up!" and the wheelman answered, "Hard up, sir;" that they immediately saw the steamer's lights first ahead, and then her red light on the port bow of the schooner, and then the collision occurred.

This witness' statements as to time are quite loose and uncertain, but his statement of the sequence of events is fairly clear. He was engaged in helping haul in the sheets, heard the captain ask what light that was, and the mate's reply; looked himself and saw the steamer's green light; then, and while witness was still at work at the sheets, the captain ordered a torch to be shown, and while the torch was being shown he ordered the wheel hard up; then the steamer crossed the bows of the schooner and showed her red light on the schooner's port side, and then came the collision. Rock states that while he was helping to haul aft the sheets, the captain came on deck, looked out, and asked, "What light is that to leeward?" The mate replied, "Some steamer bound down." The witness looked and saw the steamer's green light, then thought he saw her red light, but does not state how much time passed between the time he saw the green and the time he thought he saw the red light. The captain then ordered