

other part of the ship, swept out the hold and prepared it for cargo, and they left the ship on the evening of the 19th, with regard to hatches and hatchways, as they found it; that is, the upper-deck hatches on, the between-deck hatches off, and the sliding doors open. On the morning of the 20th, a bright, clear day, about 9 o'clock, the stevedores sent a gang, of which James McGinty was "header" or foreman, to stow cargo, first in hold No. 2. This gang found the hatches in the condition they were left the night previous by the first gang of men. They removed the hatches on the upper deck over hold No. 2, and McGinty and his men were sent down by the stevedore to get ready to stow cargo. When about three bales of cotton were sent down, the men called for "toms," which are short pieces of wood used in stowing cargo, and one of the gang started to go through the sliding door in search of this dunnage, when McGinty said he would get the toms or dunnage for them. He went through the sliding door, and almost immediately either fell or stepped in the coal-bunker hatchway, falling about 16 feet, and receiving such injuries thereby that he died in about six hours. There was no connection between the two stevedore gangs of the nineteenth and twentieth of September, except that each was employed by the same stevedore, under the same general contract, to prepare ship for cargo and to stow cargo.

Third. It is usual and customary for the ship to furnish toms or dunnage for properly stowing cargo, and it is usual for the stevedore's men in loading a ship, when such dunnage is not found to hand, to hunt it up, and to search through the ship therefor. There was sufficient dunnage aboard the ship,—some in hold No. 2, not, however, considered of the proper length and kind,—and there was some dunnage between-decks over the coal bunker, the same being boards which were afterwards used in stowing the cargo.

Fourth. James McGinty was a longshoreman engaged in that business 12 or 13 years. Had often been engaged in loading steam-ships with cotton in the port of Savannah, and his usual earnings were six dollars per day each day that he worked, and he was generally employed. James McGinty left the libelant, his widow, and three minor children, who were dependent upon him for support.

Fifth. The master of the *Gladiolus*, on the nineteenth and twentieth of September, was on board his ship. He knew of the work done by the first gang on the 19th, and he was present when McGinty with his gang came to stow cargo. He had made no previous examination of the condition of the hatches between-decks and of the sliding doors before or at the time McGinty and his gang arrived, and he made no preparations to light the holds for the stevedore's men. He gave no orders to nor exercised any control over them.

Sixth. There was no duty upon the part of the master and crew of the *Gladiolus* to look to the hatches and preparations to receive the the cargo, nor neglect of duty in leaving the doors open and the hatch-

way uncovered, through which McGinty entered and met his injuries.

Seventh. The ship, for preparations to receive cargo, and in receiving cargo, was under the control of the stevedore and his respective gangs of men.

Eighth. McGinty was negligent in entering the between-decks over the coal bunker without first procuring sufficient light, if light was necessary.

Ninth. If there was negligence in not removing the upper-deck hatches over the coal bunker, it was the negligence of the stevedore and his gang when they first came aboard.

And the court doth find, as a conclusion of law, (1) there was no negligence upon the part of the ship, or its master and crew, resulting in the death of McGinty; (2) that the libel ought to be dismissed.

Considering the foregoing findings of law and fact, it is ordered, adjudged, and decreed that the libel in the case of Margaret McGinty against the steam-ship *Gladiolus* be, and the same is hereby, dismissed, with costs of this court. Costs of the district court to remain as taxed by the judge thereof, to-wit, to be paid by claimant.

THE ROYAL ARCH.¹

(*Circuit Court*, U. S. D. New York. June 12, 1884.)

1. COLLISION BETWEEN SAILING VESSELS—LIGHTS—APPEAL—EVIDENCE.

Where, in an action arising out of a collision between two schooners, the district judge, "with some hesitation, arrived at the conclusion that the collision must be attributed to the omission to keep a careful lookout on the N. F., and not to a failure on the part of the R. A., to exhibit the lights required by law;" and in the circuit court the additional proof was put in of the master of a third vessel, who at the time saw no light on the R. A. when she was in such a position that one of her lights ought to have been seen by him, if it had been a proper light,—on this evidence the district court decree was reversed.

2. SAME—CASE STATED.

On the night of February 6, 1884, a collision occurred on the high seas between two schooners, the N. F. and the R. A. The wind was from S. W. to S. S. W. The N. F. had her proper regulation lights set and brightly burning, and was sailing N. by W. The R. A., which was close-hauled on the starboard tack, was seen from the N. F. when about half a mile off, but her green light, which she should have shown, was not visible, and her course could not be then determined. She was watched, however, and as soon as her course could be determined, the helm of the N. F. was put hard up and her mizzen-peak dropped, but the vessels were then so near that a collision ensued. The green light of the R. A. was not properly and brightly burning. She held her course till just before the collision, and then attempted to alter it, but too late. *Held.* That the R. A. was in fault in not having a green light, such as was required by law; that it was the duty of the N. F. to avoid the R. A., but she was relieved from this duty by the failure of the R. A. to exhibit any light which those on the N. F. could see before the collision; and their ignorance

¹Reported by R. D. & Wyllys Benedict, of the New York bar.

of the course of the R. A., until it was too late for the N. F. to do anything to avoid the collision, was excusable, and was produced by such fault of the R. A.; that the R. A. was solely in fault, and must be *held* liable for the collision.

In Admiralty.

In this case, which came before the circuit court by appeal from a decree of the district court, the circuit court found the following facts:

(1) Shortly after 4 o'clock on the morning of the sixth of February, 1884, a collision occurred between the schooner *Nellie Floyd* and the schooner *Royal Arch*, by which both vessels were seriously damaged. The former was bound from Georgetown, South Carolina, to New York; the latter from Wiscasset, Maine, to Baltimore, Maryland. The collision took place on the Atlantic ocean, at a point about S. S. E. from the Navesink Highlands, off the coast of New Jersey.

(2) At the time the night was dark, and the weather was somewhat hazy, but lights of vessels could be seen at a considerable distance off, and if of the character required by law, and capable of being seen on a dark night with a clear atmosphere at a distance required by law, could be seen at the time in question, by proper observers, at a sufficient distance off to enable a collision to be avoided by them. The wind was from S. W. to S. S. W., blowing a fresh breeze. Previous to and at the time of the collision, the *Nellie Floyd* had her regulation side lights properly set and brightly burning, and a competent and vigilant lookout properly stationed and faithfully attending to his duties. She was sailing free, on her port tack, at a speed of about six or seven miles an hour. For about an hour before the collision she had been steering by compass N. by W. The *Royal Arch* was sailing close-hauled on her starboard tacks, at a speed of from three to four miles an hour.

(3) The *Royal Arch* was first discovered by the *Nellie Floyd* when distant about half a mile, bearing off the *Nellie Floyd's* port bow. Although the *Royal Arch* had her regulation lights set and burning, her green light on her starboard side, (which was the light which would have been visible to those on the *Nellie Floyd* if it had been of the character required by law, and capable of being seen on a dark night, with a clear atmosphere, at the distance required by law, and which could have been seen at the time by those on board of the *Nellie Floyd* if it had been of the character required by law, and capable of being seen on a dark night, with a clear atmosphere, at the distance required by law,) was not seen by those on board the *Nellie Floyd*, although they were vigilant and attentive to their duty in looking out for vessels and lights, for the reason that such green light of the *Royal Arch* was not of the character required by law, and was not capable of being seen on a dark night, with a clear atmosphere, at the distance required by law, and was not of such a character as to brightness that it could have been seen at the time by those on board of the *Nellie Floyd* in season for them to avoid a collision. Those on the *Nellie Floyd* were vigilant and attentive to their duty; but not seeing any lights on the *Royal Arch*, saw nothing of her till they saw her sails, and then were unable to determine what course the *Royal Arch* was on, and she was reported by the lookout as a sail on the weather bow. From the time she was first discovered and reported to the time of the collision she was continually watched from the *Nellie Floyd*, the master of the latter using his glasses.

(4) As soon as the course of the *Royal Arch* could be determined, the helm of the *Nellie Floyd* was put hard up and her mizzen-peak was dropped, and although she fell off, still the vessels were so close to each other that the *Nellie Floyd* could not avoid the collision.

(5) At no time after the *Royal Arch* was first discovered from the *Nellie Floyd* were any side lights or any other light upon the *Royal Arch* visible to

or capable of being seen by those on board of the *Nellie Floyd*, and the latter were, both prior to that time and during all that time, exercising proper vigilance, watchfulness, and attention in looking for some light upon the *Royal Arch* down to the time of the collision.

(6) The red light of the *Nellie Floyd* was seen from the *Royal Arch* three-quarters of a mile off, about three points off her starboard bow. Nothing was done on board the *Royal Arch* to avoid a collision until it was too late, although the courses of the vessels were such, if continued, as to render a collision inevitable. After the red light of the *Nellie Floyd* was discovered from the *Royal Arch*, there was time enough before the collision for the *Royal Arch* to change her course, and avoid a collision, by putting her helm hard down, provided the *Nellie Floyd* should keep her course. The *Royal Arch* kept her course until just before the collision, when she attempted to alter it so as to avoid a collision, but there was then not sufficient time for her to make a successful change.

And on the foregoing facts the circuit court found the following conclusions of law:

(1) The *Royal Arch* was improperly navigated, in that she did not have her regulation side lights, and especially her green light, properly and brightly burning, and for that reason she was the sole culpable cause of the collision. It was her duty to keep her course, as she did, on seeing the red light of the *Nellie Floyd*. It was the duty of the *Nellie Floyd* to avoid the *Royal Arch*, but she was relieved from such duty by the failure of the *Royal Arch* to exhibit any light which those on the *Nellie Floyd* could see before the collision; and their ignorance of the course of the *Royal Arch*, until it was too late for the *Nellie Floyd* to do anything to avoid the collision, was excusable, and was produced by such fault of the *Royal Arch*. (2) The *Nellie Floyd* was, in every respect, properly and carefully navigated, and in nowise caused, or tended to cause, the collision. (3) The decree of the district court must be reversed, and a decree be entered for libelants, for their damages, with interest, and their costs in the district court and in this court; such damages to be ascertained by a reference in this court.

Owen & Gray, for the *Nellie Floyd*.

Goodrich, Deady & Platt, for the *Royal Arch*.

Accompanying the foregoing findings was the following opinion:

BLATCFORD, Justice. The district judge, in his opinion,¹ states that after a careful examination of the testimony, and with some hesitation, he has arrived at the conclusion that the collision was attributable "to the omission to keep a careful lookout on the *Nellie Floyd*, and not a failure on the part of the *Royal Arch* to exhibit the lights required by law." The testimony was, none of it, taken in court before the judge, but all of it by deposition out of court. In this court there has been added to the proof for the libelants the deposition of the master of a vessel which was sailing on the same course with the *Nellie Floyd* at the time, and just behind her; and who, though using

¹The opinion of the district court was as follows, (filed March 1, 1884):

BENEDICT, J. After a careful examination of the testimony, and with some hesitation, I have arrived at the conclusion that the collision in question must be attributed to the omission to keep a careful lookout on the *Nellie Floyd*, and not to a failure on the part of the *Royal Arch* to exhibit the lights required by law. The libel against the *Royal Arch* must therefore be dismissed, and the libel against the *Nellie Floyd* sustained. The prevailing party must recover his costs.