

torch-light was seen until the steamer's bows had passed the brig's stern; held, without determining the fact as to the time the flash-light was exhibited, that the brig's red light being more than one point in range for more than two miles previous to the collision, the fact that it was not seen by so many persons on the steamer who were on the watch for such lights was sufficient proof that the red light was defective; and the steamer having starboarded when the brig's red light was seen at least three-quarters of a minute before the collision, and kept on at full speed, instead of stopping and backing, as rule 21 requires, it appearing that by backing the collision might have been avoided, that the steamer was also in fault, and the damages should be divided.

Collision.

Owen & Gray, for libelants.

Beebe & Wilcox, for claimants.

BROWN, J. At a little before 10 p. m. on Saturday, the twenty-eighth of May, 1882, the steam-ship Alaska, bound for New York, when off Nantucket, about 20 miles south of the South Shoal light-ship, in passing ahead of the brig Castalia carried away the latter's jib-boom, bowsprit, and head-gear. This action was brought to recover for these damages. The night was clear, dark, and good for seeing lights. The wind was light,—about W. S. W.,—and the sea somewhat rough. The Alaska was 525 feet long by 50 feet beam, and 5,500 tons register. She had been previously sailing upon a course W. by S., (true,) and was making from $17\frac{1}{2}$ to 18 knots, or upwards of 20 statute miles, per hour. The Castalia was a full-rigged bark, 140 feet long, loaded with ice, sailing close-hauled by the wind on her starboard tack, and at the rate of about three or four knots, upon a course, according to her testimony, of S. $\frac{1}{2}$ W. by compass.

The testimony on the part of the brig is to the effect that the steamer's white mast-head light was seen some 15 or 20 minutes before the collision; afterwards her red light, a little forward of abeam on the port side; that at this time no danger of collision was apprehended; but that as she approached nearer and hauled a little further forward she seemed to be bearing for the brig, and that a flash-light was then procured and exhibited at the brig's waist some six or eight minutes before the collision, and kept constantly burning. On the part of the steamer, the testimony of the three officers who were on the bridge, and of one of the men on the lookout, is to the effect that no light from the brig was seen until very shortly before the collision, when her red light was seen from one to two points off the steamer's starboard bow; that the steamer's helm was immediately put hard a-starboard in order to go ahead of the brig; that under this starboard helm the steamer swung only $1\frac{1}{2}$ points to port, so as to be heading S. W. by W. $\frac{1}{2}$ W. at the moment of collision, when her starboard quarter, about 60 feet from her stern, came in contact with the jib-boom of the brig, as above stated. The captain, who was on the bridge in command, was towards the port side when he first saw the brig's red light, and, as he testifies, he instantly gave the order to starboard, and at the same time received the report of the red light from the lookout. He testifies that he at once went to the starboard

side of the bridge and stayed there until the collision, which, as he estimates, was from one to one and a half minutes afterwards, and that no flash-light was seen until the steamer's bows had already passed the bow of the brig, when the latter was in the line of the bridge.

It was the duty of the steamer to keep out of the way of the brig, and the steamer is responsible for not having done so, provided the brig exhibited the proper lights. The duty of the brig to exhibit a torch-light (section 4234) is not denied; and the principal controversy in the case has been whether the torch-light was exhibited in time. The discrepancy in the testimony on this point is so great that there is evidently much distortion of the truth on one side or the other, or on both sides. There are some circumstances which tend to support the narrative of each; and these circumstances, with the testimony so evenly balanced, have rendered it impossible for me to reach any confident judgment on this main question. I find it unnecessary, however, to decide it, since there are other features of the case, resting upon testimony about which there can be little or no doubt, sufficient to show that both vessels were at fault.

1. The courses and speed of the two vessels are very definitely fixed. There was no liability to any material error on the part of either vessel as to her own course, and little temptation to misstate it. The steamer was going W. by S., true; the brig, sailing close-hauled by the wind, and varying not over half a point, was making from S. to S. $\frac{1}{2}$ W. by compass; the variation there is 11 deg. W., so that the brig's true course varied from S. by E. to S. $\frac{1}{2}$ E. The steamer was making from 17 $\frac{1}{2}$ to 18 knots per hour; the brig, according to the mate's testimony, about three knots; the master testifies that she was making not over three or four. I assume the rate of three and one-half knots for the brig, but whether three or four knots is immaterial. A drawing of the courses of each vessel carried backward from the point of collision, will show that during a period of from five to ten minutes preceding the collision the steamer must have borne very nearly due E. from the brig; and, assuming the latter's course to have been as her witnesses testify, and, no doubt, correctly, the brig must have been heading, at the least, half a point E. of S., true, so as to have the steamer's lights from the first, as her witnesses consistently state, a little forward of abeam. The rate of progress of each vessel upon her own course was such as to preserve very nearly the same relative bearings; the steamer hauling very slowly ahead, and having the brig all the time a little on her starboard bow.

Upon these bearings, from the time when the steamer came within two miles of the brig, it is evident that the brig's red light, properly arranged and burning, should have been visible to the steamer. The range of the light, if set according to the regulations, extended nearly two points to the southward of the steamer's course, and should have been clearly seen at least six minutes before the collision. The most