

about a mile and a half south or south-east of the ends of the piers.

The barge had her anchor watch on duty, the mate being officer of the deck, and a proper anchor light hung on the jib-halyards from 12 to 20 feet above the deck, and where it was in plain sight of those approaching her. The proof also shows that there was another light seen upon the after-part of the barge; some of those who saw it concluding that it was a cabin light, and others thinking it was a lantern hung in the aft rigging. The officers and crew of the barge all concur in the statement that no light was intentionally set or displayed as a signal light in the after-part of the barge, and my own conclusion is that the light seen by the tug-men and crew of the life-saving station on the after-part of the vessel was a cabin light. But just a few moments before the Avon struck the barge, and when the collision was imminent, the mate of the barge took from the deck-house a bright lantern, ran along the deck with it, swinging it to attract attention; and this light may have been set down on the top of the cabin, or hung up in some of the after rigging, and thus have been the after light to which the mates of the Avon say the captain called their attention after the collision, and before the barge went down. The Avon had her side lights and her mast-head light duly placed, and all were brightly burning when she came down the harbor, and up to the time of the collision, and the proof is conclusive that her lights were plainly seen from the deck of the barge before she left the ends of the piers, until the collision. Why I say this fact is conclusively shown, is because it is unequivocally testified to by the crew of the barge, and several disinterested witnesses who were on board of tugs out in the bay, in the vicinity of the barge. The Avon had discharged some or all of her freight, so that she was down by the stern from the weight of her engines, and perhaps some freight aft, so that her bow was well out of water, and her lookout was stationed on her upper deck, forward of the wheel-house, and the captain, who was officer of the deck, stood near, and in front of the wheel-house.

As to the point made, that the barge was anchored in an unsafe place, I do not think the position is sustained by the proof. There was ample room for vessels leaving or entering the harbor to avoid her; and, in fact, the Avon, in laying her course for Chicago, after passing the end of the piers, would naturally have gone to the south of the space occupied by the barge. The half-mile intervening after the Avon was clear of the piers gave all the room that was needed to change her course, and go either to the south or north of the barge. For steam-vessels, whose course was not controlled by the wind, the course for the lower lakes and to ports north and north-east of Milwaukee was to the north, and for those bound to Chicago the course was to the south of where the barge lay; and only as to those bound directly across the lake—say to Grand Haven or perhaps Muskegon—could the barge be said to lie directly in their path. So, too, a

steamer leaving the harbor would not have obtained such headway at so short a distance from the ends of the piers as to make it difficult to stop or slow as at a greater distance out, when she had got under a full head of steam. And sail-vessels, which are now invariably towed by steam-tugs into and out of the large harbors of these lakes, like Milwaukee and Chicago, would much more readily avoid a collision with a vessel at anchor within a half-mile of the entrance to the harbor than at a larger distance out, because the tugs, in taking them out, would tow them beyond the point where the barge lay to give them a good offing, and would take hold of those to be towed in at a point outside, because a vessel, as a matter of prudence, would hardly sail so close to the jaws of the pier without putting herself in charge of her tug. As vessels leaving Milwaukee harbor go to the south-east, north-east, or east, as their course to their ports of destination require, any vessel coming to anchor off the mouth of the harbor may be said to be in the pathway of some one. So, also, Milwaukee is one of the most important intermediate ports between Chicago and Milwaukee, the *termini* of the great lake route; and the bay into which the harbor opens affords a safe and convenient anchoring ground for all vessels which have occasion to wait outside the harbor, and hence very many of the vessels engaged in commerce on the lakes have occasion to call at this port on their voyages between the upper and lower lake ports, and a vessel, therefore, can scarcely come to anchor in the bay outside the harbor of Milwaukee without being in the pathway of others arriving and departing, and this fact puts all vessels leaving or entering the harbor upon notice that a vigilant lookout must be kept for vessels at anchor off the mouth of the harbor. Upon the proof, then, I do not find that the Scott was at anchor in an improper or unsafe place, as to other vessels leaving the harbor of Milwaukee.

As to the second point, that the barge displayed tow anchor lights, I have already said it is my conclusion, from the proof, that the barge had only one light set, which was intended as an anchor light, and that this light was hung in her jib-halyards, where it could be and was plainly seen, and that, although two lights may have been seen on her, one was probably a light in her cabin, and the lantern swung by the mate, and afterwards hung over or placed on top of the cabin, may have been the other light mentioned by the witnesses on the Avon, from which they concluded that she had two anchor lights set. But even if she had two bright white lights hung in her rigging, one forward and the other aft, I do not see from the proof how that contributed to bring about the collision. In the first place, it did not confuse or deceive any one else. The tug-men passing in or out of the harbor, and the men at the life station, were not misled by it; while, from the testimony of all the witnesses on the Avon, it is clear that they did not make out either light in time to have avoided the collision. There is no proof showing that the conduct or management

of the Avon was in any degree embarrassed by the fact that they saw two lights, instead of one, on the barge. When they discovered one or both the lights on the barge, and came to the conclusion that such light or lights were on a vessel at anchor, it was too late, by their own showing, to avoid the collision.

It is contended by respondents that a display of two lights by a vessel at anchor is in direct violation of the law, and therefore libellants cannot recover, because rule 2 says: "The lights mentioned in the following rules, and no others, shall be carried in all weathers between sunset and sunrise." And rule 10 says: "All vessels, whether steam-vessels or sail-vessels, when at anchor in roadsteads or fairways, shall, between sunset and sunrise, exhibit *where it can best be seen*, but at a height not exceeding 20 feet above the hull, a white light in a globular lantern of eight inches in diameter, and so constructed as to show a clear, uniform, and unbroken light, visible all around the horizon, and at a distance of at least one mile."

Under the facts in this case, as I find them from the proof, it is not necessary that the court shall decide whether a vessel lying at anchor may not and should not, under circumstances which can readily be imagined, display more than one anchor light, because the proof satisfies me, being that of her crew, who are presumed to have the best information as to what was done on board of her, that this barge set only one anchor light, and that at the proper height above the deck, and in a properly conspicuous place, and of the size and construction required by the rules; but, certainly, the rule does not require that a vessel at anchor shall extinguish or inboard her cabin lights so that no light can possibly be seen from any part of her hull. It seems to me the purpose of the rule was to have at least one bright white light set, so high as to be clearly visible from all directions, and which, from its comparative height, and the fact that it was stationary, would indicate at once that it was upon a vessel at anchor; but other lights, even in the rigging, or upon the hull, or in the cabin windows, would not contradict such indication or mislead an approaching vessel.

The hull of this barge was a trifle over 200 feet long, and if two lights had been displayed, one at each end, I cannot see how it could have misled any one on a vessel approaching her, because rays of light are not bent or deflected laterally in passing through the air so as to change the apparent locality of the source from whence they come. The lookout on the Avon states he saw the lights, and that they seemed to be at least a quarter of a mile apart; and hence it is argued that those in charge of the Avon were misled because they thought they were upon two different vessels, and steered between them. There is proof in the case showing there was a tug just a little to the north and outside of the Scott, which was showing her lights, and it is possible that the lookout of the Avon may have seen the tug light as well as the anchor light on the Scott; and, probably, they