

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

would have been a quarter of a mile apart. But the idea that if there were two lights on the Scott, they would appear, under any circumstances, to have been further apart than they actually were, is absurd, from any point of view it is considered. Rays of light do not bend laterally. If they did so, you could see around a hill, and it would be impossible to run a straight line with a compass or transit. It is true that light, in passing through *media* of different densities, is refracted virtically in a slight degree; but the apparent position of an object in a lateral direction is subject to no change from this cause. If it were otherwise, you could not steer in a straight line to a light at all. So I conclude, from the fact the lookout on the Avon says he saw these two lights so far apart, as an excuse for not giving the alarm in time to avoid running into the Scott, shows that he either saw the light on the tug or else that he has fabricated an attempted excuse for his want of vigilance and intelligence. No prudent seaman, even if he saw what seemed to be two anchor lights 200 or 250 feet apart, would attempt to pass between them, on the supposition that they were on two different vessels; because the anchor light may be on the forward or after part of the vessel,—where, according to the judgment of those in charge of the vessel at anchor, it can be best seen,—and therefore a man in charge of an approaching vessel, when he sees an anchor light, and while the distance or the darkness prevents his seeing the exact situation of the hull, must take promptly the requisite steps to give the light so wide a berth as to pass clear of the vessel it is on. Not knowing which end of the vessel the light is displayed from, his only safety is in going far enough away to avoid a collision with even the largest and longest vessel; and the same may be said if two lights are seen within a possible vessel's length apart,—he must go so far away as to clear both, if he shall conclude they are on different vessels.

The proof also shows that it is quite common for vessels at anchor in Milwaukee bay to display two anchor lights, so that those in charge of vessels in motion in that locality, and acquainted with the usages in that regard, are bound to anticipate that a vessel at anchor may show two lights, even if such showing is contrary to law. But I do not think it can be deemed a violation of the rule to show two anchor lights, because it is possible a vessel lying at anchor may find it necessary to partly raise a sail so as to be ready to get under way in case of a change of wind, or the sudden rising of a storm, which would obscure one light, and make two lights absolutely necessary. It was not necessary on this occasion, it is true; but it is hardly possible that if a vessel situated in this manner should show two anchor lights, it could be brought as a charge against her in case of a collision.

I now come to consider briefly the proposition that the Scott should have shown a torch in time to have notified the Avon of her position; and that her failure to do so is such contributory negligence as excuses the Avon or mitigates the consequences of the collision. I have

only to say that I do not understand that it is necessary for a vessel at anchor to show a torch when it is clear that the approaching vessel, by a vigilant and proper lookout, could have seen her without a torch. Vessels at anchor in the night, with their own light properly set and burning, have a right to assume that an approaching vessel is obeying the law; that it has a proper lookout, and is taking the proper precautions to avoid a collision; and hence, when the watch on a vessel at anchor sees another vessel approaching at a distance of about three-quarters of a mile, and sees all her lights clearly and distinctly, he has the right to assume that the lookout on the approaching vessel sees his lights, and will in due time adopt the proper maneuver to pass clear of him. It is said, however, in behalf of the Avon, that the air was filled with smoke from the rolling-mills, so as to prevent the lookout on the Avon from seeing the barge's lights; but it hardly needs argument to demonstrate that, if a man standing on the deck of the barge could see all the lights of the Avon as she approached him, it was equally feasible for the lookout on the Avon to have seen the lights on the barge. If the rays of light from the green, red, and white lanterns of the Avon were clearly seen on the barge from the time she headed down the harbor, as is most abundantly proven, then there is absolutely no reason why a competent and vigilant lookout on the Avon should not have seen the barge's lights. That there was some smoke on the bay must from the proof be taken as an established fact, but it is evident that this smoke did not materially obscure the lights on the Avon nor the barge; for men on tugs out in the bay in the vicinity of the barge saw the Avon's lights and the city lights from the time she headed down the harbor, while the life-saving station men from the station at the end of the piers, and the men on the tug inside the piers, plainly saw the lights on the barge. Indeed, I can hardly conceive that smoke from these rolling-mills, after drifting a mile and a half over the water, could have retained enough of its soot and body to have obstructed the view of lights opposite the mouth of the harbor; but, if it ever did so, I feel sure from the proof that it did not do so on this occasion, because if there was not smoke enough to obscure the lights of the Avon and prevent them from being seen from the barge and the tugs in the vicinity of the barge, then there was none to prevent the lookout from seeing the lights of the barge from the forward end of the upper deck of the Avon. And if the watch upon the barge had no difficulty in seeing the Avon's lights, he had the right to assume that the lookout on the Avon could and did see his light, and that a torch was not called for.

My own conclusion from the testimony of the respondent is that the lookout and perhaps the captain of the Avon were most culpably negligent, and that the collision arose from this neglect. It must be borne in mind that the Avon had touched at Milwaukee, on her way to Chicago, to land all or a portion of her freight. Her men and officers had all been hard at work for many hours putting off this freight.