

## THE ANNIE J. PARDEE.

*Circuit Court, D. Massachusetts.* September 30, 1885.

## COLLISION—FAULT—CONFLICTING EVIDENCE.

On examination of the facts as disclosed by the evidence, *held*, that the collision between the schooners Mary B. Wellington and Annie J. Pardee, off Cape Cod on October 8, 1884, about 7 P. M., was due to the fault of the Pardee.

In Admiralty.

*John C. Dodge & Sons*, for libelant and appellant.

*John Lathrop*, for claimant.

Before Gray, Justice, and COLT, J.

COLT, J. On October 8, 1884, about 7o'clock in the evening, the three-masted schooners Mary B. Wellington and Annie J. Pardee came into collision off Cape Cod, somewhere between Race Point light and Highland or Cape Cod light. The Wellington was bound outward from Boston to New York, without cargo. The Pardee was bound inward to Boston from Baltimore with a cargo of coal. The Pardee struck the Wellington on the starboard side just forward of the mizzen rigging. The sea was smooth. The night was dark, but good for seeing lights. The exact direction of the wind is in dispute. The libelant contends that it was S. S. W., and the claimant that it was S. W. The Wellington was sailing close-hauled on her starboard tack, and her speed was about six knots an hour. The Pardee was on the port tack under all sails, with the wind abaft her beam, and her speed was eight knots an hour. The Wellington had a crew of seven, five of whom are called as witnesses: the master, mate, lookout, man at the wheel, and steward. The Pardee had a crew of nine, six of whom are called as witnesses: the master, two mates, the lookout, man at the wheel, and steward.

The Wellington contends that she first saw the green light of the Pardee about a point on her starboard bow; that if the Pardee had kept her course, as she was bound to do, having the wind free, she would have gone clear; but, instead of doing this, she suddenly altered her course, showed both lights, and headed directly for the Wellington's starboard side; that then the Wellington's helm was put hard-up for the purpose of avoiding the blow.

The Pardee, on the contrary, contends that she first saw the red light of the Wellington about two miles off, a point and a half to two points on her port bow; that then the Pardee put her helm to port and kept off about a point, giving the other vessel plenty of room to pass; that the Wellington, instead of keeping on her course, suddenly showed both lights, and then her green light, indicating that she had starboarded; that the Pardee, seeing a collision inevitable, and to prevent being run down and sunk by the Wellington, ordered the wheel put hard down, and the vessels came together.

It is evident that one of the vessels was at fault. The whole question turns upon their relative positions as they approached each other before the collision. The witnesses on board the Wellington testify that they first saw the green light of the Pardee, which would make the Pardee to the windward of her; while the witnesses on board the Pardee testify that they first saw the red light of the Wellington, which would bring the Wellington to the windward of the Pardee. If we believe the Wellington's account as to the light first observed, the Pardee is at fault; and, on the other hand, if the Pardee's account as to the Wellington's light is true, the Wellington is to blame.

The evidence from the two vessels upon this question is in direct conflict. We do not deem it necessary to discuss it here, further than 157 to state that, upon the argument and upon careful examination

since, the testimony of Capt. Robbins of the Wellington has impressed us favorably, and from his position on the vessel, we think he was less likely to be mistaken than the witnesses on board the Pardee. Further, the evidence of disinterested witnesses supports, on the whole, the position of the libellant. The mate of the steamer Alleghany, bound out from Boston, testifies that, about 7 o'clock in the evening of October 8th, he passed a vessel to the leeward going in the same direction as the Alleghany; that just after this he met an inward bound vessel which showed her green light about a point on his starboard bow; that the approaching vessel then showed both lights on his starboard bow, whereupon the steamer was kept off to port until she headed N. E. This evidence is confirmed in material points by the lookout on board the Alleghany, called by the claimant. The witnesses from the Wellington and Pardee saw the steamer pass, and we have little doubt that the two vessels referred to by the mate of the Alleghany were the Wellington and Pardee, and, from his evidence, it seems clear that the Pardee must have been to the windward of the Wellington before the collision, and consequently at fault. To meet this the claimant seeks to show that the green light seen by the steamer and by the Wellington must have been the schooner Alice Montgomery, which sailed from Baltimore with the Pardee, and at dark was one-half to three-quarters of a mile astern of her. The proof, however, on this point is not clear or satisfactory. It also involves the improbable conclusion that the Alleghany did not see the Pardee when passing her. No one on the steamer saw anything of any other vessel than the one she turned out for, until some time after. Now, if the light the steamer saw was the Montgomery, it follows that she passed the Pardee without seeing her, though the steamer had a lookout on her bow, and both captain and mate in the pilothouse.

We deem the present case a close one, and not free from difficulty; but, in view of the testimony from the Alleghany confirming, as it seems to us, the account given by Capt. Robbins and those on board the Wellington, we think the libelant has made out his case by a preponderance of evidence.

Decree of the district court dismissing the libel reversed.

See the *Mary B. Wellington*, *ante*, 153.

This volume of American Law was transcribed for use  
on the Internet

through a contribution from [Google](#). 