

KIERNAN *ET AL.* V. THE LEONARD RICHARDS.

*District Court, D. New Jersey.*

April 18, 1889.

COLLISION—CONTINUING AFTER SIGNAL UNANSWERED.

A tug and ship were approaching nearly head on when first discovered. The tug whistled, but the signal was not answered. Soon there was a confusion of signals, and the tug continued her course with no diminution of speed until the collision. *Held*, that the tug was responsible for want of a vigilant lookout, and for continuing her course after her signal was unanswered.

In Admiralty. Libel for damages.

See same case, 36 Fed. Rep. 914.

*Owen & Gray*, for libelant James E. Stafford.

*Sidney Chubb*, for libelant The F. O. Matthiessen and Wiechers Sugar Refining Co.

*Edward D. McCarthy*, for claimants.

BUTLER, J. In this case, as in most others of its kind, there is such conflict of testimony as renders a satisfactory conclusion almost impossible. The witnesses seem to testify as their interests, or those of their vessel, require. The indications found in surrounding circumstances afford a better, if not the only, guide. The bark is admittedly free of blame. The respondent undertook to convey her safely, but did not. She must therefore be held to proof of justification for the failure. She alleges that the steam-ship Leonard Richards is alone responsible for the collision. The allegation is not sustained. The vessels (the tug and ship) were, I believe, approaching nearly head on when first seen. I do not rely on the testimony of Pilot Wood and others, who say the ship was heading eastward,—broadside to the tug. Wood is deeply interested, being responsible for the tug's conduct; and the others are subject to the prejudice usual in such cases. If the steam-ship's course had been such as they assert, there was no occasion whatever for the tug's signal at this time. Why order the ship eastward when she was fully on that course? Why signal at all when the respective courses were safe? Moving as these witnesses testify they were, collision was impossible. The signal shows that the courses were not as stated. They manifestly involved danger; and therefore the whistle was sounded. It is incredible that the ship zigzagged as these witnesses assert. If running eastward when sighted, why should she turn westward, and incur risk? And, thus turning, why should she again change and render collision inevitable? I do not believe she did. In my judgment the tug's lookout was not vigilant, and the vessels were in dangerous proximity when the ship was sighted, and signaled. The signal was not answered, and the tug was in doubt of the ship's course. Soon there was confusion of signals, and collision imminent. The tug should have stopped immediately after her first signal. Instead she continued her course with little variation, and no diminution of speed, until the catastrophe was unavoidable. Whether the ship was in fault I need not consider. The tug certainly was. While I believe a vigilant lookout would have discovered the ship earlier, she was discovered in time to have been avoided if proper measures had been adopted. Respondent virtually did nothing but sound a signal, which was not answered, and keep on her way until collision was inevitable. She must therefore be held responsible for the consequences.