

THE SARAH THORP.  
THE AMERICA.  
THAMES TOW-BOAT CO. V. THE SARAH THORP.  
ALLEN *ET AL.* V. THE AMERICA.

*District Court, D. Connecticut.*

January 6, 1891.

COLLISION—BETWEEN STEAMERS—EVIDENCE.

A steamer and a tug collided in Long Island sound on a dark night. Each had proper lights burning. When they first saw each other they were a mile apart, approaching nearly end on, each going at the rate of eight miles an hour. On sighting the steamer the tug ported her wheel one point, and when about half a mile from the steamer ported her wheel another point, and blew one whistle, whereupon the steamer blew two whistles, and shaped her course across the tug's bow, under a starboard wheel. The tug immediately sounded a danger whistle, and backed at full speed, but too late to avoid the collision. Shortly after the steamer saw the tug, the former starboarded her helm to avoid a small sailing vessel. *Held*, that the steamer was responsible for the collision.

In Admiralty.

*Samuel Park*, for the Thames Tow-Boat Company.

*James Parker*, for C. H. and S. D. Allen.

SHIPMAN, J. These cases are a libel and cross-libel arising out of a collision between the steamer Sarah Thorp and the steam-tug America, at about half past 8 o'clock on the evening of August 20, 1890, in Long Island sound, about one and three-fifths miles eastward of Execution light. The America is a large steam-tug, which tows between Norfolk and Boston. On the night in question she was towing the unloaded barge Marvin, a barge without masts or sails, or means of propulsion, from Newport to Weehawken. She entered Long Island sound by Fisher's Island sound, went north of the middle ground, and was about one and one-half miles from Norwalk Island light when she passed it upon a course W. by S.,  $\frac{1}{2}$  S. When Captain's island bore N. W. her course was changed to S. W. by W.,  $\frac{1}{2}$  W., (magnetic.) The wind was light, the sea was smooth, the night was dark, but lights could be seen without difficulty. The America had side lights, and two white vertical lights in front of the foremast, all in good order, and brightly burning, and placed in accordance with the statute of March 3, 1885. The Marvin's two vertical white lights were burning, and in proper order. The Thorp's side lights and foremast light were also in good order, and brightly burning. The lights of both the America and the Thorp were in accordance with said statute, and were the lights required by law. By the collision the America was seriously and the Thorp was slightly injured. Each vessel was sailing at the rate of about eight miles per hour.

The theory of the America, as detailed in the libel, is that when she was about two miles to the eastward of Execution light "both the side

THE SARAH THORP.THE AMERICA.THAMES TOW-BOAT CO. v. THE SARAH THORP.ALLEN et al. v. THE AMERICA.

lights of the steamer Sarah Thorp were discovered by the lookout and master of the America right ahead and about a mile away. Very soon thereafter the wheel of the America was ported, changing the course of the America to the starboard about one point, in order to pass port to port. The starboard or green light of the steamer Sarah, Thorp still showing as well as the red, when about one-half a mile away the America blew one whistle, and again ported her wheel, changing her course still further to the starboard one point. After proceeding a short time on this course, the steamer Sarah Thorp blew two whistles, and shaped her course across the America's bow, under a starboard wheel. Immediately an alarm or danger whistle was sounded by the America, and her engines backed at full speed. The Sarah Thorp made no other signal but the two blasts above mentioned, and kept on her course across the America's bow, without any reduction of speed. The two boats came together, the America striking the guard of the Sarah Thorp on her starboard side about amid-ships."

The theory of the Sarah Thorp, as detailed in the answer and in the cross-libel, is that "shortly after 8 o'clock P. M. she passed close around and to the southward of the light-house on Execution rock, in Long Island sound, and shaped her course true for the buoy on the Cow's shoal, south of Shippan point, Connecticut; that being her usual and proper course. \* \* \* That shortly thereafter, at about twenty minutes past eight o'clock, the lookout and master discovered a green light of a vessel, (which afterwards proved to be the said steamer America with a light barge in tow,) which light, when discovered, bore two points on the starboard bow of said steamer Sarah Thorp; and at or about the same time also discovered two white lights displayed vertically, one over another. That at the time said lookout and master were unable to discover whether these vertical lights were on the vessel showing the green light, or on one of the Sound steamers going east, several of which had passed said steamer Sarah Thorp, but no single white head-light was seen. That shortly after the discovery of said lights it became necessary to starboard the helm of said steamer Sarah Thorp to avoid and pass under the stern of a small sailing vessel (without light set) that was standing on starboard tack, across the bows of said steamer Sarah Thorp, to the S. S. E. That about the time when the said small sailing vessel passed across the bows of said steamer Sarah Thorp the approaching steam-vessel (the America) blew two blasts of her steam-whistle, Which were immediately answered with two blasts of the steam-whistle of the steamer Sarah Thorp, and the helm of the latter was further starboarded, and her course changed more to the northward. That shortly thereafter those in charge of the steamer Sarah Thorp discovered that said steamer America had ported her helm, and was standing across the bows of the Sarah Thorp, and was in such close proximity that a disastrous collision seemed imminent. That upon such discovery two blasts of the Sarah Thorp's steam-whistle were immediately blown, which were

answered by two blasts from the steam-whistle of the America. That at this time the only safe course for the steamer Sarah Thorp to pursue in

THE SARAH THORP.THE AMERICA.THAMES TOW-BOAT CO. v. THE SARAH THORP.ALLEN et al. v. THE AMERICA.

order to avoid or minimize said collision was to keep on at full speed, in the hope that the America would starboard her helm, (as by answering with the two blasts of her steam-whistle she had indicated would be done,) and back in time to permit the Sarah Thorp to pass ahead of said America; and accordingly the speed of said Sarah Thorp was kept up.”

The initial and the important point of difference between the parties is the position of the America when the vessels were first seen by each other, they being, at that time, at least a mile apart. The Thorp says that the America was then two points off her starboard bow. The America says that the two vessels were approaching each other, nearly head on. If the Thorp is right, her red light could not have been seen by the America; each vessel was showing a green light to the other; there was no necessity for the America's going to the starboard, and her persistence in so doing caused the collision. If the America is right, her determination to go to the starboard, so that each vessel might pass on the port Side of the other, was correct, and the conduct of the Thorp can only be explained upon the theory that, after her lookout first saw the America's light, the sailing vessel crossed the Thorp's bows, and her lookout became forgetful of or inattentive to the America's position. The oral testimony introduced by the respective parties is, as usual, contradictory, but the circumstances and the probabilities resulting therefrom which surround the case satisfy my mind that the theory of the America is correct. The Thorp was bound from New York to Westport, Conn., and, at 23 minutes after 8, passed around the light-house at Execution rock, at a distance of 500 feet therefrom, and thence took her ordinary course directly towards the Cow's shoal, N. E. by E.,  $\frac{1}{4}$  E., (magnetic.) The America was going almost directly to Execution rock, and her proper course, after leaving Captain's Island light, would be the one which her captain testified she took,—S. W. by W.,  $\frac{1}{2}$  W., (magnetic,) if she was no further from the Connecticut shore than she naturally would be. She was in the ordinary route of the Sound steamers which had passed both vessels a few minutes before. On the other hand, her position, if in accordance with the theory of the Thorp, would have been an unnatural and improbable one. The two vessels must have been, when about a mile apart, meeting each other nearly head on, each vessel going at the rate of about eight miles an hour; and thus the testimony of the officers and sailors of the America, as to subsequent events, becomes consistent with the pre-existing facts. The Thorp's red light first appeared to the lookout upon the America, who then saw both lights. The America's captain, who was at the wheel, saw both lights, and immediately ported his wheel, for the purpose of going to the northward. He still saw the Thorp's green light, blew one whistle, and ported his wheel still more. The Thorp did not immediately answer the single whistle, but in about one minute blew two whistles. The vessels were now very near each other. The America's captain gave signals to his engineer to stop and back, which were obeyed, and blew four short whistles. The Thorp's speed was

YesWeScan: The FEDERAL REPORTER

not diminished, and she was struck about amid-ships. Meanwhile the lookout upon the Thorp had seen the green light of a

THE SARAH THORP.THE AMERICA.THAMES TOW-BOAT CO. v. THE SARAH  
THORP.ALLEN et al. v. THE AMERICA.

small sailing vessel, and, to avoid her, the helm was starboarded, and the course of the Thorp turned more towards the northward. This was the reason why she continually showed her green light to the America. The America gave but two signals,—one of one blast, and the danger signal of four short whistles. The Thorp's theory that the America's captain gave two whistles, and continually ported his wheel, is not a probable one. I have queried whether the green light which the owners of the Thorp say that they saw two points off her starboard bow was the light of the America, and whether, therefore, they saw the America at all until after they had avoided the small sailing vessel. The captains of the America and of the tow say that they saw no vessels in that locality except the Thorp, and I can find no evidence of the presence of a third steamer. The light which the Thorp's lookout saw must have been the America's. The mistake which he and the master then made, or now make, is as to the relative position of the two vessels. The probability is that when the Thorp turned her course to the northward to avoid the sailing vessel, and thus placed herself more and more in danger of a collision with the America, the Thorp's lookout became forgetful of or inattentive to the fact that he had seen the steam-tug, and that, if her single whistle was heard, it was misunderstood. It must be observed that the two vessels were approaching each other with rapidity, and that the entire time which elapsed between the America's first sight of the Thorp and the collision was between four and five minutes, and that when the America heard the two whistles from the Thorp the vessels were very near together, and collision was imminent. The shortness of time which intervened between the America's whistle and the collision answers the argument of the Thorp that the America's captain, seeing continuously the Thorp's green light, should have avoided the danger by turning his own vessel to the southward. If holding her course was an error of judgment, "it was not a fault, being an act resolved upon *in extremis*, a compliance with the statute, and a maneuver produced by the fault of the steamer." *Nacoochee v. Moseley*, 11 Sup. Ct. Rep. 122, (October term, 1890.) The theory of the Thorp, as contained in its answer and cross-libel, is, when examined by the light of circumstances, which are tolerably clear, an improbable one, whereas the America's theory is both probable and is sustained by the evidence. Upon the libel of the Thames Tow-Boat Company let there be a decree for the libelants, with an order of reference to a commissioner upon the question of damages. The libel of Charles H. and Sereno D. Allen is dismissed, without costs.