

head-winds and storms, with which, through the Tancarville's lack of proper steering power under sail, she was wholly unable to cope. The case was therefore one of urgent necessity to the Tancarville, while the value of the ship and cargo employed in the service was large. The other elements which are usually regarded in determining the amount of a salvage award, namely, the difficulty or danger attending the enterprise, and the courage, daring, or skill employed in it, exist here in but a minor degree. Having reference to adjudicated cases so far as their analogies extend, and to the objects designed to be secured by salvage compensation, I think that \$8,000, with \$200 for damage to hawser, will in this case be a suitable allowance to the salvors; for which amount, with costs, a decree may be entered.

THE ROANOKE.¹

WARREN *v.* THE ROANOKE.

(District Court, S. D. New York. April 8, 1891.)

COLLISION—STEAM AND SAIL—CHANGE OF COURSE SEVEN POINTS BY SAILING VESSEL.

The steam-ship *Roanoke* was off the Jersey coast, steering S. S. W., $\frac{1}{4}$ W., on a clear moonlight night. She saw nearly ahead the green light of the brig *Hyperion*, which was sailing N. E. by N., with the wind one point free. The green light of the brig soon after shut in, and her red light appeared, nearly ahead of the steamer, whereupon the steamer hard a-ported, and held the port helm until the collision. The vessels at the time the steamer ported were about half a mile apart. When the vessels were very near, the green light of the brig reappeared, whereupon the steamer stopped and backed, but was unable to avoid collision, and the brig was sunk. Held, on the evidence, that the collision was due to the fault of the brig in changing her course when the vessels were very near, and that the steam-ship was not liable for the collision.

In Admiralty. Suit to recover damages caused by collision.

Owen, Gray & Sturges, for claimant.

George A. Black, for libellant.

BROWN, J. On the night of October 20, 1888, the steam-ship *Roanoke*, bound south, came into collision with the brigantine *Hyperion*, bound north, off the Jersey coast, to the eastward of Absecom light. The *Hyperion* sank not long after the collision, and both ship and cargo were lost. This libel was filed to recover for the loss of the cargo. The question is whether the steamer was in any degree in fault. The wind was fresh from the north-west, the night clear, with moonlight, and poor for seeing lights. The previous course of the steamer was S. S. W., by $\frac{1}{4}$ W.; that of the *Hyperion* N. E. by N. The latter was on her port tack, with the wind one point free. In steering she yawed about one point each way from her mean course. The libellant claims that the

¹ Reported by Edward G. Benedict, Esq., of the New York bar.

Hyperion kept her course, subject to this yawing, until a few moments before collision, when she luffed to ease the blow, and changed thereby from two to four points only. The claimants contend that the steamer took timely and sufficient measures to go to windward of the Hyperion, and that the collision was brought about solely by the latter's unjustifiable luff. Repeated examination of the testimony of the chief witness concerning the navigation of each vessel, and the probabilities of the case, satisfy me that the account given by the officers of the steamer is substantially correct; that the steamer's wheel was put hard a-port when she was nearly half a mile from the brig, and had the latter's red light straight ahead, or nearly so, the previous green light having been shut in; that at the time of collision the steamer must have been at least 500 feet to windward of the course on which the Hyperion would have been had she kept the course she was on when she first showed her red light to the steamer, and when the latter ported; that the steamer's porting as soon as the red light was seen was a timely and sufficient maneuver to perform her duty of keeping out of the way, by a reasonable and safe margin; and that this maneuver was thwarted without necessity and without excuse by the Hyperion, either through carelessness or mistake in the handling of her helm, whereby she luffed so as to change her head from seven to nine points to the westward. The angle of collision in this case is of controlling importance, because it proves a great change made in the Hyperion's course. The night was clear and light, and observation of the angle of collision was easy. The chief witnesses on both vessels agree, and their diagrams of the collision show, that the starboard bow of the Hyperion struck the port bow of the steamer near the cat-head of each, and that the angle of collision was only about three points. That the angle was small is confirmed also by the fact that the Hyperion's jib-boom was not touched. As the mean course of the Hyperion was previously crossing that of the steamer by about one point to the eastward, it follows that the combined changes of course made by the two vessels amounted to about fourteen points, or even more, if the Hyperion was previously, as seems probable, on an easterly yaw. At collision the steamer was not heading more than one point north of west; so that, allowing a change of seven points on her part, seven or eight points remain as the change made by the Hyperion. This is as favorable to the Hyperion as the headings at the moment of collision will admit.

On plotting the necessary courses of the two vessels, in order to reach collision in this manner, their situation from time to time accords so nearly with the testimony of the steamer's officers as strongly to confirm their story; while it is not compatible with the account given by the Hyperion as respects her red light. In turning 7 points to starboard under a port helm, the steamer, a vessel 287 feet long and of 2,354 tons burden, must have made a distance of at least 900 or 1,000 feet abeam of the line of her former course, (see *Naval Mobilization*, June, 1889, p. 462;) and considering that she slowed and backed a part of the time while turning, this change must have occupied at least two minutes. The

vessels must have been, therefore, nearly half a mile apart when the steamer ported, as the mate testifies. All the steamer's witnesses agree in saying that at that time the Hyperion's red light only was visible. There is no reason to doubt this testimony, nor is there any other imaginable reason why the mate should have ported. The mate undoubtedly saw the Hyperion's green light a short time before, and it was a little on his starboard bow. The Hyperion's testimony to this extent confirms the mate. The steamer's green light would naturally be seen much earlier than the Hyperion's. Each then showed green to green, and there was no need of immediate action. Considering the probable destination of the Hyperion, the fact that she was probably on her port tack, and might be making a course to the eastward of the steamer, as she really was, and that in that case she would also probably make an additional half point leeway to the eastward under the fresh wind from the northwest, it was proper for the mate of the steamer to wait a little, and see what change, if any, the brig might show, before he undertook to pass to leeward, rather than to starboard, which, under such circumstances, might be the better course. This delay was soon justified by the fact that the brig presently shut in her green light and showed her red light ahead, when still nearly half a mile distant, indicating that she was going to the eastward of the steamer's course. It was then right for the steamer to port her helm, which she immediately did, thus very speedily bringing the brig's red light considerably upon her own port bow, and the steamer continued her port helm till collision. The steamer had a right to expect that she would thus pass easily port to port, and that the leeway of the Hyperion would assist in giving a good space between them. This maneuver was in abundant season. It would have given the steamer a large margin in passing to windward but for the brig's unexpected luffing afterwards, and it was a complete and timely fulfillment in the first instance of the steamer's obligation. *The Potomac*, 8 Wall. 590. In the case of *The Star of Scotia*, 2 Fed. Rep. 591, the steamer was held liable because she did not sufficiently continue her change, but straightened up too soon. It was the same in the case of *The Beta*, 40 Fed. Rep. 899.

The only question that remains is whether, after the Hyperion's change of course was made known by the reappearance of her green light, the steamer had still sufficient opportunity to avoid collision by an observance of the rules of navigation, and the use of reasonable nautical skill, notwithstanding the Hyperion's fault. *The Gulf Stream*, 43 Fed. Rep. 895. When the green light reappeared, it was evident that their courses were again crossing, and that there was danger of collision. It was therefore the duty of the steamer to reverse, unless the vessels were so near each other that there was no reasonable chance of escaping collision by that means. If there was no such chance, it was a case *in extremis*, and no legal fault would be imputed to the steamer, whether at such a moment she adopted the best maneuver or not, as the danger was brought about by the fault of the Hyperion. *The Elizabeth Jones*, 112 U. S. 514, 5 Sup. Ct. Rep. 468. The mate, who was in charge, testified

that he had already slowed; that he estimated the distance of the brig at that time to be only about 600 feet, and that collision was unavoidable, except by going ahead; that he accordingly rang to go ahead full speed; but that the captain, who about that time came to the wheel-house, ordered the engines reversed, and that order was obeyed. The other witnesses all agree in making the vessels at that time very near each other. From the size and from the speed of the Roanoke (then not less than 8 or 9 knots) she could not stop by reversing full speed in less than 800 or 900 feet, or in less than 1½ minutes' time. *The Normandie*, 43 Fed. Rep. 162. To make that mode of avoiding collision possible, these vessels would therefore have to be more than 1,200 feet apart. The evidence leaves no doubt that their distance apart when the green light reappeared was much less than that; so that there seems no probability that the Roanoke could have avoided collision by instant reversal when the green light reappeared, and the delay in reversing was in fact but short. This is also confirmed by inspecting the probable courses of the two vessels. To have reached the place of collision so far to the westward the Hyperion must, I think, have been yawing to the eastward when she showed her red light; and very soon after have begun to recover herself by swinging to the northward, thus keeping the Roanoke nearly ahead, but not enough to show her green light again, until her final luff, probably nearly a minute before the collision. Prior to that luff, she must have had the Roanoke's red light for at least a minute on her own port bow. In one place the mate of the Hyperion, who was in charge, says that the steamer luffed and showed her red light only when she was three-fourths of a mile distant, which would make the time much longer during which the two vessels showed red to red. Her change of course towards the steamer in such a situation, about a minute before collision, was a gross fault. During the last minute the speed of the steamer was probably much reduced, though not to a stop. This is the only way in which I can account for the collision, according to the best proved facts. It confirms the credit that seems otherwise due to the steamer's witnesses, showing the steamer without fault, and that her maneuvers were thwarted by the fault of the brig in luffing some seven or eight points, and that this luff was not discoverable until too late to avoid collision. *The America*, 87 Fed. Rep. 813. Libel dismissed, with costs.

THE JOSEPHINE B.¹

THE ARROW.

WOODBURY v. THE JOSEPHINE B. AND THE ARROW.

MCALLISTER v. THE ARROW AND THE MAUD.

(District Court, S. D. New York. April 7, 1891.)

COLLISION—VESSELS MEETING IN HELL GATE—SIGNALS—SUPERVISORS' RULE 3.

A schooner in tow of the tug A. was going east through Hell Gate. As the tow rounded Hallett's point, it was gradually overtaken and passed by a large Sound steamer, which was near the south shore. Another tug was also in the neighborhood, near the north shore. In the vicinity of Negro point, the steam lighter J. B. was met. As the Sound steamer passed the A., she gave one whistle, to indicate to the A. that she was passing. This signal was answered by the A., and then by the lighter. No other signals were given by any of the vessels. The A. expected the lighter to go to the right. Instead, she attempted to pass between the tow and the Sound steamer, which she claimed was the only thing she could do under the circumstances. The lighter collided with the tow of the A. *Held*, that in that part of the river, dangerous from its windings, sunken rocks, and cross-currents, vessels must reasonably comply with the supervisors' rule which requires them to signal when approaching within half a mile of each other, to insure a common understanding. For their failure to so signal, both the lighter and the A. were held in fault.

In Admiralty. Cross-suits for damages caused by collision.

Goodrich, Deady & Goodrich, for the Maud.

Hyland & Zabriskie, for the Josephine B.

Wilcox, Adams & Macklin, for the Arrow.

BROWN, J. Between 3 and 4 o'clock in the afternoon of June 12, 1890, as the steam lighter Josephine B. was going westward past Negro point against a strong flood-tide, she came in collision with the schooner Maud, bound eastward in tow of the steam-tug Arrow upon a hawser about 225 feet long. The schooner and lighter both sustained damages, for which the above cross-litigations are filed.

There is considerable difference in the testimony as to the precise point of collision. This is, perhaps, not to be wondered at, considering that all agree that the tide was running flood at the rate of from 5 to 7 knots, and that in such a current the boats in a very few moments after collision, when attention to the precise spot would be first given by most of the witnesses, would have been considerably changed. For this reason I think it probable that the place of collision was somewhat more to the westward than the witnesses for the Arrow suppose,—probably between Negro point and Pot cove. The Arrow went up with her tow between Hallett's point and Flood rock, going probably from 4 to 5 knots through the water, in addition to the speed of the current. As she was rounding Hallett's point to the eastward, a large Sound steamer, (the Northam,)

¹Reported by Edward G. Benedict, Esq., of the New York bar.

about 350 feet long, overtook her, and gradually passed her on the starboard side at a distance variously estimated at from 75 to 150 feet. The lighter claims that, when she found the Arrow and the Northam ahead of her, she had no alternative but to attempt to pass between the two, which she did, clearing the Arrow and the Northam, but running into the schooner behind, which had sagged somewhat to starboard of the Arrow's course. When the lighter passed between the Arrow and the Northam, the stern of the latter was about abreast of the stern of the tug. The lighter passed very near the quarter of the steamer, and, after doing so, starboarded her wheel, in order to clear the schooner; but the latter at that time, as the lighter claims, sheered towards her, and thwarted her endeavor to keep away. The master of the Northam testified that when coming up nearly abreast of the Arrow he gave her a signal of one whistle to indicate that he was passing, and that the Arrow should not crowd upon him; that the Arrow, and then the lighter, each answered with one whistle, and that no other signals were given by any of the vessels. The witnesses for the lighter confirm this statement, while the witnesses for the Arrow state that they heard no whistle from the other two vessels, but only one whistle from the Arrow, given when she was at a considerable distance from the lighter. The master of the Northam also testifies that when the whistle of the Arrow was given the lighter was to starboard of the course of the Arrow, and that it was impossible for her to cross the course of the Arrow to the northward, and that she had no alternative but to pass between them, as she did. The various witnesses for the Arrow contend that there was abundant room for the lighter to have kept to her right, *i. e.*, to the northward of the Arrow, in accordance with the ordinary rule of the road; and that her course was so directed till shortly before the collision, when she sheered to the southward, crossing the Arrow's course in that direction without necessity, and attempting the dangerous passage between the Arrow and the Northam. The pilot of the Arrow admits that he could have shaped his course, when a considerable distance off, so as to go to the right along Hog's Back, but that he did not do so, because it was customary and necessary for tugs like the Arrow, when they had a tow on such a hawser, to go well over towards Hog's Back on the northerly side, to prevent the strong tide that sweeps over from that point towards Pot cove on the opposite shore from carrying such a tow upon the rocks on the Long Island side. Such a direction of the flood-current is admitted, as well as the necessity of going well across towards Hog's Back to avoid that danger. But it is nevertheless contended that this has not led to any change of the rule of going to the right as respects vessels meeting and passing in that vicinity, and that the lighter, in accordance with the general rule, ought to have gone to the right on the Ward's island side, as the tug Willie did, which was bound westward, only a few hundred feet astern of her.

There is a conflict of testimony, also, as respects the custom of taking vessels through Hell Gate in a strong flood upon a hawser. Several experts testify that such a method is unsafe, while an equal number tes-

tify that for a single large schooner it is quite as safe as towing alongside, and that the former is the practice in the majority of cases. As respects the rule of the road, the burden of proving any variation from the usual rule is upon those who assert it. I cannot say that they have sustained this burden by any preponderance of proof in their favor; and the absence in the supervising inspectors' rules of any provision changing the mode of meeting and passing, considering the fact that the inspectors have made special provisions in regard to overtaking vessels in that vicinity, is negative evidence of some weight against them. What seems remarkable, however, in the present case is that, though four vessels were navigating in the most difficult and dangerous waters in this whole vicinity, where a narrow channel, a swift tide, sunken rocks, a winding and cross-current, and rocky shores all combined to make navigation most difficult, and safe only by trained experts, not one of them complied with the rule that required them to give signals when approaching within a half mile of each other, to insure a common understanding for their common safety. In the pleadings, none of the parties have alleged this fault, perhaps because all were alike remiss. The pilot of the Willie (not a party) says he gave no whistle, because he was near the north shore, and intended to keep there, so that it was unnecessary. The Northam (also not a party) claimed to have been as near the south shore as was safe. But as respects the lighter and the Arrow, who, with reference to the other two boats, were towards the middle of the narrow channel, no possible excuse can be admitted for not giving timely signals, as required. A signal from the Arrow as soon as she had passed Hallett's point was specially important to the lighter, because the Arrow was expected to go over towards Hog's Back, and from there to swing unavoidably back again across the river, more or less, with the set of the current. For the same reason, a timely signal from the lighter was important to the Arrow. By their directions they were crossing, and it was of the utmost importance that a common understanding should be had as to the mode of passing. That the Arrow did not give any signal while approaching Hog's Back, nor till she had rounded to starboard, is certain from the fact that at the time when she gave her only whistle she says the lighter was on her port bow; and while approaching Hog's Back she certainly had the lighter on her starboard hand; and the signal given by the Arrow, heard by the pilot of the Northam and of the lighter, was when the vessels were within 500 feet of each other, and was too late to be of any use. The change of the lighter's position and heading, as testified to by the witnesses for the Arrow, whatever it may have been, was probably caused by the current alone. It is not credible that the lighter, when within 500 or 700 feet of the Arrow, and knowing the necessary set of the Arrow towards the southerly shore, would have voluntarily crossed the Arrow's bows, in order to run in between her and the Northam, if at that time the Arrow had already passed Hog's Back, and had the lighter on her port bow, with plenty of space to the northward.

In such a conflict of testimony the court is not called on to decide what, under such difficult circumstances, might or might not have been possibly done within the last few moments, or to treat any speculations of that kind as a substitute for the rule requiring timely signals, or as an excuse for not complying with that rule. If vessels are not to be held to an observance of that rule in situations like this, it might better be dropped altogether. It is a rule, however, of the highest utility. Had timely signals been given by either, and repeated, under rule 3, until a common understanding was had, no doubt this collision would have been avoided. The lighter and the Arrow were equally in fault in this respect, and they must therefore both be held liable.

As regards the propriety of taking a single schooner through Hell Gate by a hawser, the conflict between the experts is so great that, in the absence of any special regulations on the subject, I express no opinion. I have considerable doubt whether the schooner was managed in the best manner in the last few moments; but the appearance of the lighter coming through the narrow passage, not 400 feet distant, was so sudden and unexpected, the time, practically, was so brief, (probably not over 15 seconds,) and the danger was so obvious, that the schooner can hardly be held responsible. It was a case *in extremis*. Some sagging by her to starboard was unavoidable. This and the lighter's starboard wheel would explain the blow, even without any material sheer. I do not hold the schooner in fault.

Decrees may be entered in accordance herewith.