

eastward of the Yale, testifies that when the Louise blew her second signal she was under the Yale's port quarter, and that the collision took place right off the Yale's port bow. Rhuark, the pilot of the Louise, testifies that, when he blew the second signals, the Virginia's bow and her red light had opened clear of the Yale's stern; and Capt. Truitt, the master of the Louise, testifies that when the Louise blew her second signal the Yale was right on the Louise's broadside, abeam, and about 300 yards off. Several of the most observing witnesses from among the excursion passengers on the Louise confirm the nearness of the schooner. Oldfield, being questioned as to the distance of the Yale from the Virginia when the Virginia changed her course to the westward, and gave the danger signals, says: "We had got past the schooner, and the tug was then astern of us." Livingstone, another passenger of the Louise, testifies that they were passing the schooner just as he heard the Louise give the second signals.

It would appear, by a general concurrence of the witnesses from all the vessels, that the Yale, which was luffing and moving very slowly, was, just before the collision, at the very angle or bend of the two channels, and about in the middle of the channel; that both the Virginia and the Louise, although both well off to the westward of the Yale, had approached so near each other before the second signal was given by the Louise as that both appeared to be passing the Yale. Each steamer then saw the other around, either to the westward side or the stern, of the Yale, the Virginia discovering the green light of the Louise, and the Louise seeing the red light of the Virginia, coming out from under the stern of the Yale. It was at this moment that the Louise gave her second signal, and that the Virginia answered with the danger signals. Both were at once aware that there was imminent risk of collision, and both tried to avoid it; the Virginia by backing, and the Louise by continuing her sheer under a starboard helm, and somewhat slackening her speed. The reason why these maneuvers were not successful was that, considering the speed of the steamers, there was not distance enough between them. This, it seems to me, is convincing that the distance between must have been much less than half a mile, and much less than was safe for them to approach each other without an interchange of signals. They were both side-wheel steamers, of shallow draught, not difficult to handle. The master of the Louise says that when she is at full speed she can be stopped in from 600 to 900 feet. The master of the Virginia says she can be stopped and started back in four times her length, which would be about 1,000 feet. Half a mile is 2,640 feet. The engineer of the Virginia says he got the bells to stop and back full speed astern immediately upon hearing the danger signals; that the Virginia can be stopped with about five reversed revolutions of her wheels; and that he had got about two reversed revolutions before the collision. As soon as Capt. Bohannan heard the second signal of the Louise, he exclaimed that it was impossible for her to cross his course. If they were then half a mile apart, it is not easy to understand why he could not have stopped the Virginia before she had gone ahead a quar-

ter of a mile, or 1,320 feet. If, on the other hand, it can be true that when the danger was seen and the signals given the vessels were half a mile apart, then it is evident that the Virginia's speed of 14 miles an hour was dangerous for her to maintain, in the night-time, navigating the channel with a schooner ahead of her and a steamer coming up astern of the schooner, whose course had not been indicated to those on the Virginia by her side lights or her whistle.

There is no question but that there is a great difference between the culpability of the officers navigating the Virginia and those navigating the Louise. The latter were primarily in fault for creating the risk of collision, while those navigating the Virginia did everything to avoid it, and are only in fault for allowing the Louise to get as near as she did without taking the initiative, and giving the proper passing signal; apparently taking for granted that the Louise was coming up on her proper side of the channel, as they supposed the interchange of signals between her and the tug indicated that she would. It is certain, however, that, if the Virginia had signaled before the Louise came out from behind the Yale, the collision would have been avoided. Considering the well-known danger which attends navigating these channels, unless every precaution is taken to avoid misunderstandings, it is the duty of the court to rigidly enforce the regulations. It may be said of the pilot rules for interchange of signals between steamers when navigating these channels, as has been said of the rules governing vessels navigating in a fog, that they are not merely for the purpose of preventing collisions, but of preventing danger of collisions. *The Dordogne*, 10 Prob. Div. 10.

There is another point to which it is proper to advert. It is alleged in the Virginia's libel, and testified to by her master and pilot and lookout, that, although they saw the general saloon lights of the Louise when she gave her first signal, they never made out either of her side lights until her green light came out upon them from under the stern of the Yale. They suggest, as the possible reason for this, that they were too far off at first, and that afterwards the lights were hid by the Yale. But the Louise's side lights could have been seen, especially with the glasses, at two miles off; and, if they remained hid by the Yale for any considerable time that, of itself indicated that the Louise was starboarding, or, at least, it was a case of such uncertainty that it was a fault in the Virginia to keep on at full speed without signaling. Those in charge of the Virginia were looking at the Louise's lights across the interior angle formed by the two channels. She was astern of the Yale, and they say she appeared to them to be well on the starboard or northern side of the Yale's course, because, looking to the starboard of the Yale, they saw a long space between her and the Yale. But this was an unreliable inference. They were looking across the bend, and could not well determine how the Louise bore to the Yale; and the fact is that, if they had made out the Louise's side light after she blew her first signal, they would have seen her green light, and might have discovered that she was starboarding. I think, in fact, they were watching the Yale, and were relying on the Louise keeping to her proper side of the channel,

and did not give that attention to her lights which those maintaining such speed, under such circumstances, should have given. *The Mari-toba*, 122 U. S. 97, 7 Sup. Ct. Rep. 1158, is an instructive case as to the high degree of diligence and watchfulness required by both approaching steam-vessels when there is uncertainty as to the intention of either. The case was one in which, as in this, the collision was mainly the fault of one of the steamers; but the other was also condemned solely because, having no certain indication of the intention of the approaching steamer, she allowed her to get so near as to produce the risk of collision before signaling or slackening speed. This court had occasion, in 1880, in the case of *The Kate Irving*, 2 Fed. Rep. 919, to call attention to the high degree of caution required to enable steam-vessels to safely pass each other in the Ft. McHenry, Brewerton, and Craighill channels; and the great number of lamentable collisions which have since occurred, resulting in loss of life and destruction of property, demonstrates that, with vessels approaching each other in these channels, risk of collision is liable to arise unexpectedly, at any moment, and that safety can only be secured by the strictest observance of every precaution prescribed by statute regulations and by good seamanship. I find that both the *Louise* and the *Virginia* are in fault.

THE E. A. PACKER.

NEW JERSEY LIGHTERAGE CO. v. THE E. A. PACKER.

(Circuit Court, S. D. New York. January 8, 1892.)

COLLISION—TUGS WITH TOWS—ERROR IN EXTREMIS—FINDINGS OF FACTS.

The tug W. was towing a barge by a hawser from Roberts' store, on East river, to Jersey City, going with the tide about seven miles an hour. The tug P., with a tow lashed on her port side, projecting beyond the bow of the tug, rounded the Battery, from the North river into the East river, going about two miles an hour. The vessels discovered each other when about 500 yards apart, on crossing courses, the P. having the W. on her starboard bow. The P. immediately blew two whistles to indicate that she desired to pass to port and across the bows of the W. The W. made no reply, but kept on her course, without abating speed, until within about 200 feet of the P. The P. then reversed her engines and came to a stand-still, being then almost directly in the path of the W., but somewhat on her port bow; and the W. ported her wheel, thereby changing her course to starboard four or five points. The W. escaped collision with the P., but her tow struck the bow of the P.'s tow. In a suit brought by the owners of the tow of the W. against the P., held: (1) If the P. was in fault the libelant should recover, even though the W. had also been in fault. (2) That, inasmuch as the P. had the W. on her starboard bow when the vessels discovered each other, it was the duty of the P. to avoid the W. and her tow, and the duty of the W. to keep her course; and that, there being no special circumstances rendering a departure necessary from the ordinary rules at the time when the vessels were 500 yards apart, the P. was in fault for attempting to cross the bows of the W., it being apparent that doing so was likely to involve risk of collision. (3) If it was an error for the W. to port at the time she did, instead of reversing her engines, the error was committed under stress of a sudden peril brought about by the original fault of the P., and the P. should be held altogether responsible for the collision. (4) The supreme court having reversed the former decree of this court because of a refusal of the judge to find a certain fact as requested by the defeated party, this court now makes a finding upon the fact, although it is not necessary to do so since the act of March 3, 1891, establishing the circuit courts of appeals.