

Judgment should, therefore, be against the Volunteer only, against which a decree for the libelant may be taken, with costs; and as respects the Syracuse, the libel is dismissed, with costs.

THE TITAN.

SANBORN v. THE TITAN.

(Circuit Court of Appeals, Second Circuit. January 18, 1892.)

COLLISION—TOW AND STEAMER.

The tug T., moving slowly, with two car-floats along-side, came round the Battery, into the East river, near the New York shore. The steam-boat F. was coming down the East river, with the tide, at a speed of 12 knots. The boats being about end on, the T. ported her wheel, and was about to signal to pass port to port, in accordance with the eighteenth rule of navigation, when the F. signaled her to pass to starboard, and shaped her own course to port. The T. immediately assented, put her wheel hard a-starboard, and stopped; but owing to her previous action, and the effect of the tide on her port bow, she continued to swing to starboard. The F. proceeded on her course to port until within 200 or 300 feet, when she repeated the signal, and altered her course still more to port, but could not do so sufficiently, and collided with the starboard tow of the T. *Held*, that in departing from the statutory rule the F. took the responsibility of passing safely to starboard, and, as the T. did all she could to comply with the signals, she was not in fault. 44 Fed. Rep. 510, affirmed.

Appeal from the Circuit Court of the United States for the Southern District of New York.

In Admiralty. Libel by Albert W. Sanborn against the steam-tug Titan and Car-Float No. 6, Starin's City, River & Harbor Transportation Company, claimant. Libel dismissed. 44 Fed. Rep. 510. Libelant appeals. Affirmed.

Sidney Chubb, for appellant.

Wm. W. Goodrich, for appellee.

Before WALLACE and LACOMBE, Circuit Judges.

WALLACE, Circuit Judge. This is an appeal from a decree dismissing the libel. The libelant seeks to recover for the injuries received by the steam-boat Frances in a collision with a car-float then in tow of the steam-tug Titan, which took place August 11, 1889, in the day-time, in the East river, off pier 3 a distance of 300 or 400 feet. The Titan, having two car-floats in tow,—one lashed on either side,—had rounded the Battery from the North river, and was proceeding to Forty-Fifth street, in the East river. She was proceeding slowly, at a distance of between 200 and 300 feet from the piers, and was about opposite pier 2, when she discovered the Frances. The Frances was bound for pier 26, North river. She had been making for the New York side of the river, and was, when about opposite pier 9 or 10, a little further out from the piers than the Titan, intending to round the Battery at a distance of about two or three hundred feet away. She was going at a speed, with the tide, of about 12 knots. Just before the collision the

Titan struck the ebb-tide of the East river, which was running strong. In rounding the Battery from the North river into the East river, after a vessel has proceeded through the eddy between the tides of the two rivers at that point, upon encountering the ebb-tide of the East river on her port bow, it swings her off to starboard, unless such a movement is counteracted by putting the vessel's wheel to starboard. When the vessels were three or four hundred yards apart the Titan had passed through the eddy, and was heading against the tide on a course about parallel with the ends of the piers; and the Frances had approached, in the mean time, somewhat nearer to the New York shore. At that time the vessels were approaching each other end on, or nearly so, and the Titan put her wheel to port. She was about to signal the Frances with one whistle, when the Frances signaled the Titan with two whistles, indicating her intention to pass the Titan and her tows starboard to starboard, and shaped her course to port. The Titan promptly answered the Frances' signal with two whistles, and hard a-starboarded her wheel, and stopped. She had swung somewhat to starboard under the influence of her port wheel, and, owing to the force of the tide on the port tow, did not recover under her starboard wheel, but kept swinging to port. The Frances proceeded on her course to port until she was within two or three hundred feet of the Titan, when it was apparent that the sheer of the Titan was so serious that a collision was imminent, whereupon the Frances signaled again with two whistles, and altered her course still more to port, but apparently could not do so sufficiently within that distance, against the ebb-tide on her port bow, to avoid collision; and the car-float, which was on the starboard side of the Titan, came in contact with the starboard side of the Frances just aft of the forward gangway.

We think there was no fault on the part of the Titan. When her wheel was put to port the vessels were approaching each other end on, or nearly so; and, under the eighteenth rule of navigation, it was the duty of the vessels to pass each other port to port. The Frances, however, desired to pass starboard to starboard. At the time her proposition to do so was made, and assented to on the part of the Titan, the vessels were sufficiently far apart to permit of their passing starboard to starboard if each of them had governed her own movements properly. The Titan did all that she could to co-operate; but the Frances, not anticipating the sheer of the Titan, did not at first alter her course sufficiently to port to make allowance for it, and, when she altered her course still more to port, it was too late. We think the Frances, in attempting to depart from the statutory rule, took the risk of her ability to pass safely on the starboard hand of the Titan. Of course, by assenting to the proposition of the Frances for a departure, the Titan undertook, on her part, to do nothing unnecessarily to embarrass the maneuver of the Frances. She fulfilled her obligation; and although, had it not been for her sheer to starboard, there would not have been a collision, she was not in fault for the sheer, because she did everything in her power to counteract it. The decree is affirmed.