propeller entered the cut at too great speed. This increased the danger. It brought her to the place of greatest difficulty at the most unfavorable time for passing it, besides making her unmanageable." In my judgment the Charlotte is solely to blame for this collision.

The Robert Healey.

The Silver Star.

Thomas *et al. v.* The Robert Healey.

Brooks *v.* The Silver Star.

(*District Court, D. Maryland.* June 9, 1892.)

1. Collision—Sailing Vessels—Lookout.
   In a collision between two sailing vessels meeting nearly head on, one having the wind free and the other being closehauled, *held*, that the vessel which had the wind free, and which was bound to keep out of the way, had failed to do so in consequence of a negligent lookout, who did not see the other vessel's lights until close upon her; and *held, also*, that she had misled the other vessel by her unsteady course.
2. Same—Change in Extremis.
   Held, that the vessel which was closehauled was not in fault, although, being misled by the other's unsteady course, she made two slight changes of course, and then *in extremis* made a change which contributed to the collision, the proof showing that she was carefully navigated by competent and vigilant men, attentive to their duties, and there being no ground for supposing that greater attention or skill would have avoided the error.

(*Syllabus by the Court.*)

In Admiralty. Cross libels for a collision between the schooners Silver Star and Robert Healey. Decree against the Healey.

B. W. Mister, for complainant.

Robert H. Smith, for respondent.

Morris, District Judge. I find that the two schooners for some time before the collision were approaching each other nearly head on, and on very nearly opposite courses; the course of the Silver Star being from S. by E. to S., and the course of the Robert Healey about N. by E. I find no way of accounting for the varying lights of the Healey as seen from the Star except that she did not hold a steady course. She was deeply loaded with lumber, with a deck load seven feet above her deck, and she had the wind free. She showed to the Star first her red light, then her green light and then her red light again, and all the time was very nearly in the same position ahead of the Star, and I can only account for these changes by the unsteadiness of her course. I find that the master of the Healey, who was her lookout, did not see the Star's light until he was quite close upon her and made no effort to avoid her until

quite close, when he gave the order to his wheelman to hard astarboard his helm. The wheelman testifies that the Healey kept her course N. by E. ½ E., until he got an order from the master to keep her hard off, and he then put his wheel hard astarboard and jumped up on the tiller, and saw the Star's lights one or two lengths off. I find that if the master had seen any lights ahead, until just before he ordered the wheel hard astarboard, they were not the lights of the Star. I find, as is conceded, that the Healey had the wind free, and the Star was closehauled, and that, under article 14 of the international rules, the Healey was bound to keep out of the way. I find that there was not a good lookout kept on the Healey, and that the position of the master abaft the foremast, and standing on the deck load of lumber, the top of which was seven feet above the deck, and several feet higher than the lower edges of the foresail and jib, was not well placed for a lookout, and did not see the lights of the Star until very close upon her. I find that the Healey did not take timely precautions to keep out of the way of the Star, and by changing her lights misled and confused those on the Star, and ran so close to her as to bring about the collision. I find the Healey to have been in fault.

With respect to the Star, I find that she had a lookout properly placed, and saw the lights of the Healey at considerable distance off. She first made out the Healey's red light dead ahead, and ported her helm a little, and fell off from the wind about a half a point, sufficient for the wheelsman to see the red light on his port bow, and to show the Star's red light to the Healey. Presently the Healey showed her green light a little on the Star's starboard bow, and the Star luffed a little, to show her green light more distinctly, but in a short time the Healey again opened her red light and showed both her lights, and was apparently coming directly for the Star on her starboard bow, and about 50 yards off. Then the master of the Star, thinking he would be struck amidship, put his wheel hard aport and slacked off his main sheet, and went off quickly to westward. As the Healey just at the same moment discovered the position of the Star, and hard astarboarded his helm, the two vessels came together. The Star, by the averments in her libel, and by the testimony of her master, made three changes in her course. The first two were very slight. The first was when she went off about one half a point to westward to show her red light to the Healey's red; the second was when she luffed back a half point to eastward to show her green light to the Healey's green, and the third the decided change to the westward in the attempt to avoid the collision. As to the first two, although slight, they were contrary to the rule which requires the vessel closehauled to keep her course. They would have been proper changes if the Star had been called upon to assist the Healey in keeping out of the way. They both, if the change in the Healey's lights had indicated a corresponding change in her navigation, would have assisted her. But as I have found that the Healey had not discovered the Star, and that the changes in the Healey's lights resulted from want of steadiness in her

course, these slight changes of the Star had no effect at all upon the situation. The result was that after the Star had made the second change she was back on her original course closehauled on the wind, and, as the master of the Healey had not been observing her at all, he had not been baffled or misled.

I cannot see, therefore, how these slight changes can be said to have contributed in any way to the collision. They were not the result of inattention or want of skill, but rather of an anxiety to co-operate with the Healey in avoiding danger. The last change made by the Star is a more serious one, and it is true of that change also that if it had been connected with any want of attention or neglect, so that the court could presume that more care and skill would have prevented the error, the Star might have been placed in the wrong by it. It is quite clear, however, that when it was made the lights of the Healey indicated that she was coming directly into the starboard side of the Star, and her previous changes had indicated that she had not observed the Star's lights.

There were three men on the Star's deck, all alert and attending to their respective duties. She was a small pungy, quickly handled, but easily sunk by a larger vessel. Her master was an experienced mariner, and for 40 years accustomed to the navigation of Chesapeake bay. He claims that when he had ported his helm and eased off his main sheet he had no doubt about its being the proper thing for him to do to ease the blow and prevent his vessel being sunk. Under the circumstances the master of the Star is entitled to a strong presumption that what he did in the situation in which he found himself was the right thing to do, and, if it was an error, the Healey had brought about the impending danger, and cannot allege the error as a fault. I find the schooner Robert Healey solely to blame for the collision.

OREGON SHORT LINE & U. N. RY. CO. *v.* NORTHERN PAC. R. CO.

(*Circuit Court, D. Oregon.* June 15, 1892.)

1. CUSTOM AND USAGE—PROOF OF CUSTOM.
   The testimony as to an alleged custom of railroad companies operating connecting lines, to receive from each other and transport freight in the cars in which it was tendered, established that, except where the cars of the receiving company were all in use, or where the freight would suffer by being transferred, the question whether the freight should be so received or should be transferred to the cars of the receiving company was, as a general rule, dependent upon contracts between the companies, or upon circumstances, such as the condition and equipment of the cars and the road over which they were to be transported, the determination resting with the receiving company, and the amount received in one way or the other constantly varying. *Held*, that no controlling custom was shown.
2. CARRIERS OF GOODS—CONNECTING LINES—PREPAYMENT OF FREIGHT.
   In the absence of any regulation by law or custom, a railway company receiving freight from a connecting line is not required to advance or assume payment of the charges due thereon for transportation from the point of origin to the point of connection.
3. CARRIERS OF PASSENGERS—CONNECTING LINES—PASSENGER TICKETS.
   In the absence of any arrangement between connecting railway companies, there is no obligation on the part of either to honor passenger tickets issued by the other.
4. CARRIERS — INTERSTATE COMMERCE ACT — DISCRIMINATION BETWEEN CONNECTING LINES.
   Section 3 of the interstate commerce act, (24 St. p. 380,) making it unlawful for any common carrier, subject to the provisions of the act, to give "any undue or unreasonable preference" to any person, company, etc., or locality, or particular description of traffic, and providing that such carriers shall "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for receiving, forwarding, and delivering passengers and property to and from their several lines and those connecting therewith, and shall not discriminate in their rates and charges between such connecting lines, but this shall not be construed as requiring any such common carrier to give the use of its tracks or terminal facilities to another carrier engaged in like business," does not require a railroad company to receive freight in the cars in which it is tendered by a connecting line, and transport it in such cars, paying car mileage therefor, when it has cars of its own available, and the freight would not be injured by transfer. DEADY, J., dissenting.
5. SAME—RUNNING CONNECTIONS.
   The provision in the charter of the Northern Pacific Railroad Company (Act Cong. July 2, 1864) requiring the company to permit other companies to form "running connections" with it, includes only such arrangements as to the arrival and departure of freight and passenger trains, and as to stations, platforms, and other facilities, as will enable companies desiring to make connections to do so without serious inconvenience, and does not impose any obligation upon the company to carry freight in the cars in which it may be tendered by a connecting line when its own cars are not in use, and the freight would not be injured by transfer to another car. DEADY, J., dissenting.

In Equity. Action by Oregon Short Line & Utah Northern Railway Company against the Northern Pacific Railroad Company. Judgment for defendant.

Statement by FIELD, Circuit Justice:

The complainant is a corporation formed under the act of congress of August 2, 1882, entitled "An act creating the Oregon Short Line Railway Company, a corporation in the territories of Utah, Idaho, and Wyoming, and for other purposes," (22 St. p. 185, c. 372,) and by the consolidation with it, under the authority of the general incorporation acts of those territories and of the state of Nevada, in force on the 27th of July, 1889, of the following corporations, namely: The Oregon Short