

"In order to excuse an erroneous movement on the part of the sailing vessel, the proximity of the steamboat, and her course and speed, must be such that a mariner of ordinary firmness and competent knowledge and skill would deem it necessary to alter his course to enable the vessel to pass in safety. But, in order to justify this, the dangerous proximity must be produced altogether by the steamboat."

The decree of the circuit court is affirmed, with interest, the costs of the appeal to be paid by the appellant.

THE FULDA.

HARDY v. THE FULDA.

(District Court, S. D. New York. July 29, 1892.)

COLLISION—FOG—SPEED.

In a fog so dense that a vessel cannot be distinguished more than five or six hundred feet distant, 10 knots or upward is not "moderate speed;" and a steamer moving at such rate off the Grand Banks, and which ran down and sank a fishing vessel at anchor, was held solely in fault for the collision on account of her speed, the evidence showing that the fishing vessel was complying with the regulations as to fog horn and bell, although these were not heard by the steamer, probably because of the noise of her own navigation at such speed in a rough sea and strong wind.

In Admiralty. Libel for collision. Decree for libelant.

Coudert Bros., for libelant.

Shipman, Larocque & Choate, for claimants.

BROWN, District Judge. On the 14th of July, 1888, at a few minutes past 9 o'clock in the morning, the steamship Fulda, length 420 feet, while proceeding on a voyage from Bremmerhaven to New York, came in collision, during a dense fog, with the libelant's two-masted schooner *Jeune Edouard*, at anchor on the Grand Banks, in latitude 44 deg. 45 min. north, and longitude 54 deg. 50 min. west. The wind was strong from the southwest, and there was a considerable sea, with a heavy ground swell, so that fishing was suspended. The schooner was first seen by the lookout and by the officers on the bridge at about the same time, estimated about 500 feet distant, and nearly straight ahead, being a little on the starboard bow. The wheel was at once ordered hard astarboard and the steamer swung only about one-eighth of a point to port. Her stem, however, struck and carried away the bowsprit of the schooner, and as she went past, her anchor caught the foreshrouds and dragged the schooner some considerable distance, knocking a hole in her bow and carrying away her foremast and main-topmast. Having got clear in the fog, the steamer steamed around for an hour or more, and not finding the schooner or hearing from her

further, went on her voyage. The schooner continued to fill, despite all efforts to keep her clear, and on the second day after was abandoned by the crew, and shortly afterwards sank.

The Fulda at the time of collision was in charge of the second officer, who with the fourth officer was on the bridge. I do not find that any blame attached to the lookout, or to the other management of the steamer, except as regards her speed. On this subject the evidence shows that her full speed under 62 revolutions, in favorable weather, would be about 17 knots. About a half hour before the collision, in consequence of the increasing sea, and because, as it is said, the ship did not seem to be steering satisfactorily, the master ordered her previous half speed of from 40 to 42 revolutions, to be increased to 50 revolutions a minute. This, in favorable weather, would give a speed of about 13½ knots. The considerable sea, to which all the witnesses testify, would undoubtedly reduce her speed some 2 or 3 knots. The second officer who was in charge of the navigation, estimated her speed at 50 revolutions under the existing conditions to have been 10 knots. It is not, however, material whether her speed was 10 knots, or 1 or 2 knots above that rate. Either was much in excess of what has been held, as respects similar vessels in repeated adjudications, to be the "moderate speed," required by law, during thick fog. *The Nacoochee*, 137 U. S. 330, 11 Sup. Ct. Rep. 122; *Leonard v. Whitwill*, 10 Ben. 638, 646; *The Pennland*, 23 Fed. Rep. 551; *The Britannic*, 39 Fed. Rep. 395; *The Normandie*, 43 Fed. Rep. 151, 155-157. In fog so dense that a vessel cannot be distinguished more than five or six hundred feet distant, a steamer like the Fulda, though keeping her full steam power in reserve, could not expect to be able to stop before running into a schooner at anchor ahead of her, if she was going upwards of six knots an hour. *The Normandie*, *ubi supra*, note 2. *The Britannic*, 39 Fed. Rep. 397. Any greater rate of speed on the Banks where other vessels are likely to be met with was, therefore, at her risk, provided the other vessel performed her statutory duty.

It is argued that the master was justified in increasing her speed enough to make her steer properly. No doubt with increasing speed the ship would go straighter and steadier; but the evidence does not show that the Fulda had become in the smallest degree unmanageable; or that any such speed as was maintained, either before or after the master's order, was necessary to keep the ship under reasonable and sufficient control for practical purposes, although not perfectly steady. It is not intimated that the Fulda was not as manageable at "slow" speed as ordinary vessels of her class; and in common experience such vessels in rough weather often go "slow" without difficulty, which for the Fulda would be about six knots. As respects manageability, see *The Normandie*, *ubi supra*, pp. 155-157.

2. It is urged that the schooner was in fault for not properly sounding her bell, being at anchor. Numerous witnesses, however, for the schooner testify most positively that the bell was rung forward, and a mechanical fog horn blown aft, every minute, and that these had been thus sounded for a considerable period before the collision. An additional reason for keep-

ing up those signals was that two of the schooner's men were adrift in a dory, whose return to the schooner it was desired to assist by signals. Of the 16 persons on board the schooner, 3 I understand are dead; and of the remaining 13, 8 have been produced as witnesses, not, however, including either of the 2 men who were sounding the bell and fog horn. A third seaman, Viel, was upon deck at the time of collision; he had been drawing molasses from a barrel, to take below where the rest of the crew were at breakfast. Viel testifies that while he was on deck the horn and bell were regularly sounded; and he and many others who were below testify to the same thing. That the men who were sounding the signals were upon watch, is shown by the fact that they gave an alarm to the men below, to the effect that the steamer was running upon them. This was done in time to enable nearly all to come on deck before collision. They reached the deck, however, only just before the steamer struck.

Upon all this testimony and the acts of the persons on board, I cannot doubt that the signals were sounded as required. That they were not heard on board the steamer, is not surprising. In the interval between the signals allowed by law, namely, two minutes, the steamer, at the rate she was moving, would pass over about 2,000 feet; and with a strong wind and a considerable sea, such as to cause the Fulda to take considerable water on deck, and at the speed at which she was moving, the noise and commotion attendant on the navigation furnish abundant reason why the schooner's signals, though properly given, might not have been heard on the Fulda, without any resort to possible abnormal conditions of the atmosphere. *The Lepanto*, 21 Fed. Rep. 651, 655-658. The fact, moreover, that after the Fulda's speed was diminished, and while she was steaming about to find the schooner after the accident, her officers did hear various signals in different quarters, although none had been heard before, is a strong indication that the previous failure to hear signals from the schooner, or from any other vessel, was due to the noise and commotion attendant on the speed of her own navigation under such circumstances, rather than to any neglect in the schooner. *The Buffalo*, 50 Fed. Rep. 630.

I must find, therefore, that the schooner was not remiss in sounding signals as required; and that the speed of the steamer, not being the moderate speed required by law under such circumstances, was at her risk; and that she is, therefore, answerable for the damages. Decree may be entered accordingly, with costs.

THE ALEXANDER FOLSOM.

MITCHELL TRANSP. CO. *et al.* v. CHISHOLM *et al.*

(Circuit Court of Appeals, Sixth Circuit. October 3, 1892.)

No. 25.

1. COLLISION—STEAMER AND TOW—SUDDEN SHEER.

The steamer D., passing down the middle channel of Lake George, where it is about 180 feet wide, met the steam barge F., with two schooners in tow. The latter three had their sails set, and a fresh southeast wind was blowing, but the weight of evidence showed that the sails were not drawing to any considerable extent, and that all three were depending on the F.'s engines. The F. signaled a desire to pass on the east side, but the D. replied that she would take that side, and the F. assented. Each proceeded to the proper side, leaving about 60 feet between them, the schooners keeping in the F.'s wake. While passing the F., the D. suddenly sheered two points to starboard. To recover her course, her engines were immediately accelerated, but, collision impending, they were reversed. She struck the first schooner, however, nearly head on, a few feet from its port bow. *Held*, on the evidence, that the schooner did not sheer or luff to windward, in obedience to an alleged tendency created by her sails; that there was little or no tendency to do so; that the claim was an afterthought with the D.'s officers, who voluntarily declined to pass on the port side, and chose to pass to windward of the tow; that the D. passed between the F. and the schooner, and struck the latter while recovering her course; and that the latter was not in fault for failing to anticipate the D.'s sheer, and being in readiness to go further to port. 44 Fed. Rep. 932, reversed.

2. SAME—NARROW CHANNEL—SUCTION.

In view of the established fact that the speed of the F. and the D. was about the same, and that the D. had three times the F.'s displacement and twice her draft, the D.'s sheer could not be attributed to suction caused by an improper speed on the part of the F. at the moment of passing. 44 Fed. Rep. 922, reversed.

3. SAME—SPEED OF VESSELS—EVIDENCE.

The positive and unimpeached testimony of a steamer's officers as to her speed at a given time is entitled to more weight, especially when corroborated by independent facts and circumstances, than the opinions and estimates of witnesses on other boats at a considerable distance ahead or astern of her.

Appeal from the District Court of the United States for the Eastern Division of the Northern District of Ohio.

In Admiralty. Libel by William Chisholm, trustee, and others, against the steam barge Alexander Folsom and the schooner Mary B. Mitchell (the Mitchell Transportation Company being claimant of both) for collision. Decree for libelants. 44 Fed. Rep. 932. Claimants appeal. Reversed.

Frank H. Canfield, *Henry S. Sherman*, and *Henry C. Wisner*, for appellants.

Harvey D. Goulder, for appellees.

Before BROWN, Circuit Justice, and JACKSON and TAFT, Circuit Judges.

JACKSON, Circuit Judge. The collision which gave rise to and forms the subject of inquiry in this suit took place in the natural or middle channel of Lake George, at or about 7:30 o'clock A. M., on August 13, 1890, between the propeller Devereaux and the schooner Mary B. Mitchell, which was the first of two schooners in tow of the steam barge Alex-