

open sea does not tend to excuse their existence in the bay, where vessels are encountered, in motion and at anchor, continually. *Second*, in failing to see the schooner's light earlier, and keeping further off. *Third*, in failing to turn further southward when she did see it. *Fourth*, in turning back to her original course while two of the barges were on the other side of the schooner.

The liability of the Oakland is equally clear. She might indeed be condemned on the steamer's testimony alone. As before stated, she was without a proper lookout, and was allowed to drift with the current. With her great length of hawser she could by proper vigilance have so controlled her course as to pass without colliding, notwithstanding the steamer's faults. The testimony from the steamer justifies this view. As, however, the steamer and this barge, I am informed, belong to the same owners, the result must be the same whether one or both be condemned. I have said sufficient to indicate my reasons for the decree about to be entered, and will not therefore pursue the subject further.

THE LOUISE.

BALTIMORE STEAM PACKET CO. v. THE LOUISE.

SAME v. TOLCHESTER STEAMBOAT CO. *et al.*

TOLCHESTER STEAMBOAT CO. v. BALTIMORE STEAM PACKET CO. *et al.*

(Circuit Court of Appeals, Fourth Circuit. October 11, 1892.)

No. 10.

1. COLLISION BETWEEN STEAMERS—SIGNALS—FAILURE TO REVERSE.

A collision happened in the nighttime at the junction of the Ft. McHenry and Brewerton channels of the Patapsco river, between two sidewheel passenger steamers, the Virginia and the Louise. The Louise, the incoming steamer, at a proper distance, signaled to the Virginia by two blasts that she desired to take the southerly side of the channel, being the side which was on her port. The signal was answered by a steam tug, which was between her and the Virginia. Without getting any reply from the Virginia, the Louise put her helm to starboard, and continued, at her full speed of 11 miles an hour, until she was about a quarter of a mile from the Virginia, when she again gave a signal of two blasts. The Virginia, being then over on the southerly edge of the channel with her wheel to starboard, and the channel being obstructed by a schooner, was unable to avoid the Louise, and they collided just at the bend of the channel. *Held*, that the Louise was in fault (1) in putting her helm to starboard, and taking the side of the channel which was on her port, without getting an assenting signal from the Virginia; (2) in not obeying the rule which required her, having the Virginia on her starboard side, to keep out of the Virginia's way; (3) because, when the risk of collision was apparent, the Louise did not stop and reverse her engines, but merely slowed. 49 Fed. Rep. 84, affirmed.

2. SAME—RATE OF SPEED—SIGNALS—MUTUAL FAULT.

The Virginia heard the signal of two blasts given by the Louise, and, when the tug answered, supposed it was intended for the tug. She continued at full speed,

but neither made out the side lights of the Louise nor signaled until the Louise came from behind the schooner and signaled, when the steamers were less than half a mile apart. Then the Virginia blew danger signals, reversed, and did all she could to avoid a collision. Held, that the Virginia was in fault in continuing at full speed in a place of danger in violation of rule 21, and in failing to have a distinct understanding with the Louise by interchange of signals as required by inspectors' rule 8. 49 Fed. Rep. 84, affirmed.

Appeal from the Circuit Court of the United States for the District of Maryland.

In Admiralty. Cross libels for damages by collision between steamers. Judgment in the district court (49 Fed. Rep. 84) that both steamers were in fault. Affirmed by circuit court. All appeal. Affirmed.

Robert H. Smith and *Thomas G. Hayes*, for petitioners.

John H. Thomas, for Baltimore Steam Packet Company.

H. V. D. Johns, for Tolchester Steamboat Company.

Before FULLER, Circuit Justice, GOFF, Circuit Judge, and SIMONTON, District Judge.

SIMONTON, District Judge. These cases grew out of a collision in Patapsco river, not far from the city of Baltimore, on 28th July, 1890, between the excursion steamer Louise, of the Tolchester Steamboat Company, and the steamer Virginia, of the Baltimore Steam Packet Company. The Louise had on board a large number of passengers, of whom some were killed and others more or less injured. Suits were instituted against the owners of both steamers in the state court of Maryland to recover damages for these injuries, and libels were filed in the district court seeking limitation of liability upon the part of these owners. Libels were also filed against each steamer. All the cases were consolidated. Voluminous testimony was taken. The cause was heard in the district court. Both steamers were declared in fault, the damages were divided between them, and the gross amount of their appraised values were apportioned among the parties entitled to bring action for the injuries sustained. The case was carried into the circuit court, and the decision of the district judge was affirmed in every respect. It comes before us on appeal from this decree.

The place of the collision was the Patapsco river. This river has in it dredged channels. Of these the Brewerton channel runs from Chesapeake bay N. W. by W. $\frac{1}{4}$ W. until it meets the Ft. McHenry channel. This Ft. McHenry channel runs from its junction with the Brewerton channel N. W. by N. to the entrance of the harbor of Baltimore. Where the two channels unite is a bend. Although for vessels of the draft of these we are discussing there is plenty of water in the river on each side of these channels, still the channels are generally used by steamers, who, as a rule, keep on that side of the channel to the starboard. On the day of collision, which occurred about 8:11 P. M., the Virginia was coming from Baltimore down the Ft. McHenry channel, at her usual speed of 14 miles an hour, a little, but very little, behind time. She was nearing the bend. Approaching her in the Brewerton channel, beyond

the bend, was the three-mast schooner Yale, proceeding under her own sails towards Baltimore. She was in mid-channel. Still further down the river, and in the Brewerton channel, was the steamer Louise, on her way from Tolchester to Baltimore, with a large excursion party aboard, on time, proceeding at a rate of 11 or 12 miles an hour. Outside of the channel, to the northward and eastward and off the starboard bow of the Yale, was the tug Mamie, apparently going towards the Yale, seeking a tow. All these vessels had the proper lights set. The steamers were on their own sides of the channel. When about a mile and three quarters from the Virginia, the Louise, seeing her lights across the bend, the headlight, and her red light, blew two whistles, intended for the Virginia. This signal was answered by the Mamie, and assented to. No answer whatever came from the Virginia. Without waiting for any reply, the Louise starboarded her wheel, and, when the tug answered, starboarded a little more, and proceeded on her course in the direction of the Yale, porting her helm a little. Her movements were obscured from the Virginia by the interposition of the Yale. Her direction carried her across the wake of the Yale; and getting out behind the port quarter of the schooner, she saw the Virginia coming towards her with both red and green lights showing. The Louise again blew two blasts of her whistle. Her witnesses say that these were answered by the Virginia. This is denied by the witnesses for the Virginia. At all events, immediately after the two whistles from the Louise, the Virginia blew danger signals, and began at once to reverse. In an almost incalculable time the two steamers collided, the Virginia having made only two revolutions of her wheel backward. Five revolutions would reverse her course. The Virginia struck the Louise on her starboard quarter about 20 to 25 feet from her stern. Just before the collision the Louise slackened her speed a little. At the collision, she stopped her engines.

The reasons assigned by the district judge for holding the Louise in fault are so clear and conclusive (49 Fed. Rep. 84) that they need not be repeated. They command our concurrence. We experience, however, as he did also, great difficulty with the question as to the Virginia. She was well appointed, had proper lights and lookout, and every one on duty upon her was at his post, and vigilant. When the first signal of the Louise was heard on the Virginia, she was seen distinctly. But her signal lights were not seen. At that time she was passing behind the Yale, and only her saloon lights could be observed. The master of the Virginia, noting this, and observing the distance opened between her and the Yale, conjectured that it was the intention of the Louise to pass between the Mamie and the Yale to the starboard of the schooner. The reply signal of the Mamie seemed to confirm him in this conjecture, and he paid no special attention to the Louise or her signal, directing all his observation to the schooner, and keeping out of her way. The hull and the sails of the Yale obscured the Louise, and nothing certain was known of her movements, when she appeared unexpectedly from behind the stern of the Yale off her port quarter. Her second signal was heard, recognized, and answered by the Virginia, as her master insists, by the

danger signal. Instantly he reversed, but too late for the collision, which came almost immediately. Up to the second blast of the Louise the Virginia had proceeded at full speed, not anticipating any danger from her. After he heard this blast, her master did all that the exigency required.

When the Virginia heard the first blast of the Louise they were about a mile and three quarters apart, in converging channels, with a vessel under sail between them, and approaching each other at an aggregate speed of 25 or 26 miles an hour,—a very little more than four minutes apart. They all were in a place full of danger, and where there was great liability of collision. *The Kate Irving*, 2 Fed. Rep. 919. This blast of the Louise gave notice to every one hearing it that she was leaving her customary side of the channel, and was coming over to that side of it on which was the Virginia. Her master saw the Louise in the act of this maneuver, that her signal light had disappeared behind the Yale, and that her saloon lights were disappearing in the same way. He knew that the Louise in fact had got behind the Yale, and that her future movements, if not entirely unknown, were at least uncertain. Yet the Virginia was kept at full speed, no precaution whatever being taken for any action on the part of the Louise, the master of the Virginia relying entirely upon the theory that she would pass to the starboard of the Yale. The rules laid down for preventing collisions of vessels, (Rev. St. § 4233,) and the regulations prescribed by the board of supervising inspectors, and given the force of the law under section 4405, provide for every probable contingency. These leave but little room for mere conjecture in controlling the action of the master and pilot. Each of them has in his power the means of ascertaining with approximate certainty the intention and course of an approaching steamer. He must use them. Notwithstanding this, errors committed by one of two vessels approaching each other from opposite directions do not excuse the other from adopting every proper precaution required by the special circumstances of the case to prevent a collision. Rule 24; *The Maria Martin*, 12 Wall. 47; *The Scotia*, 14 Wall. 181. If there be any uncertainty as to the intentions of the approaching vessel, this of itself calls for the closest watch and the highest degree of diligence on the part of the other vessel with reference to her movements, and it behooves those in charge to be prompt in availing themselves of every resource to avoid, not only a collision, but the risk of such a catastrophe. *The Manitoba*, 122 U. S. 108, 7 Sup. Ct. Rep. 1158. In the language of Mr. Justice CLIFFORD in *The America*, 92 U. S. 432:

“The rules of navigation were ordained to prevent collisions, and to preserve life and property embarked in a perilous pursuit, and not to enable those whose duty it is to adopt, if possible, the necessary precautions to avoid such a disaster, to determine how little they can do in that direction without becoming responsible for its consequences in case it occurs.”

When the Louise disappeared behind the Yale under a starboard wheel, as her blasts declared, coming in the direction of the Virginia,

the master of the Virginia could and should have ascertained her intention; and while doing so he should have diminished his speed. Rule 21.¹ The collision occurred almost immediately after the appearance of the Louise from behind the port quarter of the Yale. Their aggregate speed was at least 25 miles an hour, at which rate a half mile would be traversed in 1 minute and 12 seconds. She then was certainly less than a half mile from the Virginia,—a fact not known to the latter vessel, but which could have been known to her. This want of knowledge caused the nonobservance of rule 3 of the board of supervising inspectors for lakes and seaboard, (page 25,) to which the treasury department had called special attention by circular, 25th February, 1878.² The sailing vessel interposed between these steamers increased the responsibility of each. Both of them had special duties as to her. Her action might have at any time compelled either of them to a sudden movement to keep out of her way. It was a situation demanding the greatest vigilance. The full speed of the Virginia, as the event showed, prevented her from adopting such measures as would have avoided collision. If she had not been going at this rate of speed, her course could have been checked, and the Louise would have cleared her. This speed contributed to the collision, and was a fault. The decree of the circuit court is affirmed, with interest; the costs of the appeal to be paid by the appellants.

¹“Every steam vessel, when approaching another vessel so as to involve risk of collision, shall slacken her speed, and, if necessary, stop and reverse. * * *”

²Rule 3. “If, when steamers are approaching each other, the pilot of either vessel fails to understand the course or intention of the other, whether from signals being given or answered erroneously, or from other causes, the pilot so in doubt shall immediately signify the same by giving several short and rapid blasts of the steam whistle; and, if the vessels shall have approached within a half mile of each other, both shall be immediately slowed to a speed barely sufficient for steerage way until the proper signals are given, answered, and understood, or until the vessels shall have passed each other.”

THE EXPRESS.**THE N. B. STARBUCK.****THE CHARM.****THE NIAGARA.**

NEW YORK & CUBA MAIL STEAMSHIP CO. v. THE EXPRESS, THE N. B. STARBUCK, and THE CHARM.

NEW ENGLAND TERMINAL CO. v. THE NIAGARA, THE N. B. STARBUCK, and THE CHARM.

(Circuit Court of Appeals, Second Circuit. October 4, 1892.)

Nos. 38, 39.

1. COLLISION—STEAMER WITH SHIP AND TUGS—PROXIMATE CAUSE.

In a suit for collision occurring in New York harbor between a steamer and a steamship in charge of two tugs, the latter three at no time moving more than two knots an hour, exclusive of the current, it appeared that the steamer might have so shaped her course when half a mile away as to easily avoid danger of collision, but the district court found that the vessels would have safely passed starboard to starboard had not one of the tugs, owing to inattention to the steamer's movements, hauled off strongly to starboard and been followed by the ship; that there was no proper lookout on either of the tugs or the ship; and that those in charge were inattentive to the signals of the steamer. *Held*, that on the facts found the steamer must be acquitted of fault, for, if negligent in the beginning, her negligence was not a proximate cause of the collision.

2. SAME—SHIP PARTICIPATING IN TUG'S FAULT.

A steamship was taken in tow by two tugs under an agreement that the tugs should have practical command of her, and the master of one tug stood upon the ship's deck beside the ship's master and delivered orders, which were communicated by the latter to the ship's crew. A fault was committed by the other tug, wherein it was followed by the ship through orders thus delivered, resulting in a collision with a steamer. *Held*, that while the tug was not the mere agent of the ship so as to render the latter liable under the rule of *respondet superior*, yet the ship was a participant in the fault, and on that ground was liable with the tugs. *The Doris Eckhoff*, 1 C. C. A. 494, 50 Fed. Rep. 154, 1 U. S. App. 129, distinguished.

3. SAME.

Both tugs were liable because they were engaged in a joint undertaking and belonged to the same person, and the collision was caused by the concurring negligence of the masters of both.

4. SAME—APPORTIONMENT OF DAMAGES.

Under these circumstances, the decree properly apportioned the damages of the steamer between the ship and the two tugs, and divided the damages received by the ship between herself and the tugs.

5. SAME—APPEAL—REVIEW—CONCLUSIONS OF FACT.

In a collision case the district court's conclusions of fact will not be disturbed when they involve doubtful questions of fact depending upon testimony which is quite conflicting, and upon the credibility of the witnesses examined in the presence of the court.

Appeals from the District Court of the United States for the Southern District of New York. Affirmed.

For opinions delivered by the court below, see 44 Fed. Rep. 392, and 46 Fed. Rep. 860, where the facts are fully stated.

F. Bronson Winthrop and Lewis Cass Ledyard, for the Niagara.