

fault has been that of passive acquiescence in following the movements of the tug. These expressions were addressed to the case in hand, and ought not to be misconceived. In that case the tug, instead of observing a local law which required vessels to be navigated along the middle of the river, had taken the tow on one side of the channel. The cause of the collision, however, was a rank sheer, culpably made by the tug just as she brought the tow nearly opposite another vessel proceeding in a contrary direction. The tow ported her helm, and did all in her power to counteract the fault of the tug, but without avail; and in the opinion, this circumstance is commented on as controlling. What the judgment really decides is that the tow was not responsible, wholly or in part, for the consequences of a remote fault, committed by steering after the tug outside the midchannel of the river.

The officers and crew of the Niagara were none the less the agents and servants of that vessel, because in performing their duties in navigating her they took their orders from the master of the Charm. Consequently, the Niagara, because of their participation in the fault by which the Express was injured, is jointly liable with the tugs for the injuries done to the Express. Both tugs are liable, because they were engaged in a joint undertaking, were the property of the same owner, and the collision was caused by the concurrent negligence of the master of each.

The decrees below properly apportioned the damages for the injuries of the Express between the Niagara and the tugs, and divided the damages sustained by the Niagara between that vessel and the two tugs. The decrees are affirmed, with the costs of this court to the owner of the Express. As between the other parties, no costs in this court are allowed.

THE ICE KING.

McCALDIN *et al.* v. THE ICE KING.

In re KNICKERBOCKER STEAM TOWAGE CO.

(District Court, S. D. New York. December 1, 1892.)

COLLISION — STEAM VESSELS MEETING — INSPECTORS' RULES — NECESSITY FOR TIMELY SIGNALING.

The steam tug McCaldin Brothers, going up the Hudson without a tow, met nearly head and head the steam tug Ice King, with a tow on a hawser, just below Anthony's Nose. It was flood tide, on which tide it is the custom for boats going up in that neighborhood to take the middle of the river. The captain and pilot of the McCaldin Brothers were under the influence of liquor, and that boat sheered to the east side of the river, on which side the Ice King was coming down. Neither of the boats blew whistles, in accordance with the inspectors' rules, though each was visible to the other when half a mile away. The McCaldin Brothers was struck on her port bow, and sunk. *Held*, that the chief fault for the collision lay with the McCaldin Brothers; but that, as it was impossible to find that the giving of a timely signal by the Ice King might not have been of use in preventing the collision, *held*, that both vessels were liable.

In Admiralty. Libel by James McCaldin and another against the steam tug Ice King to recover damages suffered by the steam tug McCaldin Brothers in a collision between the two boats. The Knickerbocker Steam Towing Company, as owner of the Ice King, filed a petition for limitation of liability. Limitation allowed, and decree for libellant for one half the damages.

Carpenter & Mosher, for libellant.

McCarthy & Berier, for claimants and petitioners.

BROWN, District Judge. A little after 11 o'clock on the night of October 6, 1891, the steam tug Ice King, having a barge in tow on a hawser of about 80 fathoms, in coming down the North river, after rounding Anthony's Nose, where the river is not over 600 yards wide, came in collision with the steam tug McCaldin Brothers, which was going up the North river and was looking for a boat which she was to take out of a tow coming down. The stem of the Ice King, pointing nearly straight down river, struck the port bow of the McCaldin Brothers, which was heading probably some three or four points towards the east shore, from the effects of which the McCaldin Brothers sank before she was able to reach the western shore of the river, and two of the crew were drowned. The first above libel was filed to recover the damages to the tug, and the owners of the Ice King subsequently filed their petition for limitation of liability, and at the same time denied that the collision was by any negligence of their tug.

Upon the conflicting testimony, I find the following facts: (1) That the tide at the time of collision was running at least two hours flood; (2) that by the understood practice of boatmen, the proper course for the McCaldin Brothers on the flood tide was near the middle of the river, leaving the easterly shore for the benefit of tugs, with tows, coming down around Anthony's Nose; (3) that the place of collision was not more than 300 feet from the easterly shore, and not more than an eighth of a mile below Anthony's Nose, as must be inferred not merely from the direct testimony, but from the place where the wreck was sunk on crossing the river, to wit, considerably above Anthony's Nose; (4) that no signals were given by either boat to the other until they were within 200 or 250 yards of each other; (5) that the McCaldin's captain and pilot were under the influence of liquor; (6) that both tugs were in a position to show each other their colored lights when over a half mile distant from each other, the McCaldin Brothers being then towards the westerly side of mid river, but working over gradually towards the easterly shore, along which the Ice King was proceeding; (7) that the McCaldin Brothers showed her green light to the red light of the Ice King, before the Ice King had got around Anthony's Nose, but afterwards showed her green light to the green light of the Ice King, until the McCaldin Brothers, by working over to starboard and porting, showed her red light, when near the Ice King; (8) that the McCaldin Brothers was in fault for going over to the east side of the river on the flood tide, so as to interfere with the usual course of the Ice King; she

probably went there to see if the boat she was in search of was in tow of the Ice King, and she was also in fault for not signaling at a proper distance; (9) that at no time when the boats were within a quarter of a mile of each other, and probably upwards of a quarter of a mile, was the green light of the McCaldin Brothers as much as a point on the starboard bow of the Ice King, as is apparent from consulting a chart of the channel of the river; and the omission of any timely signal by the McCaldin Brothers was also a violation of the inspectors' rules.

Considering that the McCaldin Brothers is chiefly to blame for this collision, I have hesitated much in determining whether the nonobservance of the inspectors' rules ought to be deemed a proximate cause of the collision in the present case. But I find it impossible to hold that the giving of the required signal by the Ice King would not probably have been of any use; still less, to say that it could not possibly have been of use. *The Pennsylvania*, 19 Wall. 125, 136; *The Dentz*, 29 Fed. Rep. 528.

It is clear from the testimony that the pilot of the McCaldin Brothers was navigating under a misapprehension as to the state of the tide; and that he was going over to the east shore, conceiving the tide to be ebb, where he says he would not have gone had he known the tide to be flood. A timely whistle from the Ice King, whether of one blast, or of two blasts, would have made known her intention to the McCaldin Brothers, and would naturally have tended to correct her pilot's mistake. It cannot be said that the rules as to giving signals are not designed to correct gross mistakes, or even stupid blunders. They are prescribed for the very purpose of coming to a common understanding and of preventing mistakes, whether slight or gross. *The Connecticut*, 103 U. S. 710, 713; *The Clara* and *The Reliance*, 49 Fed. Rep. 765, 767, 768; *The T. B. Van Houten*, 50 Fed. Rep. 590; *The Amos C. Barstow*, Id. 623. The course of the two boats was so nearly head and head that they cannot be exempted from the operation of the rules. Even the pilot of the Ice King estimates that the distance they would have passed and cleared each other, had not the McCaldin Brothers made her shear to starboard, as he alleges she did, would only have been some 75 to 100 feet. For some time, therefore, they must have been very nearly head and head, and the obligation to give timely signals was equally obligatory on each. I do not find that any of the cases cited by the claimants would excuse the Ice King's omission of the signal.

I am obliged, therefore, to hold both vessels responsible, and to allow the McCaldin Brothers to recover one half her damages, not exceeding, however, the stipulated value of the Ice King and her freight in limitation of her liability, to which I find the owners entitled, or if other claims appear, her pro rata of such value.