

in her own course, it is evident that the change of her course by the schooner was the immediate cause that brought about collision.

If there had been no previous fault or neglect of the rules on the part of the schooner, this change of course, having been ordered when the two vessels were probably not much, if any, over a quarter of a mile apart, and therefore in the apprehension of immediate collision, might have been treated as committed in extremis, and as not involving the schooner in fault; and the same observation applies to the irregular exhibition of the torch light. But the schooner is precluded from urging this defense in the present case, because the occasion for the torch light, and the supposed necessity of her change of course, were brought about, as I find, not by any fault of the steamer, but from the fault of the schooner herself, in the obscuration of her green light. In consequence of this fault, the steamer was in no way to blame for not seeing the schooner earlier, or for not sooner taking measures to keep out of the way, and to avoid causing the alarm under which the schooner acted in exhibiting the torch light and in changing her course. And as these acts were merely the results of the schooner's previous fault, she cannot be exonerated therefor. *The Elizabeth Jones*, 112 U. S. 514, 5 Sup. Ct. Rep. 468; *The Blue Jacket*, 144 U. S. 371, 391, 12 Sup. Ct. Rep. 711.

From the time the green light was visible, I find that the management of the steamer was without fault. It was apparently essential that her heading should be changed to port. She made this change by stopping her engine, and putting her wheel hard a-starboard. Had she also reversed at once, no such change of heading could have been made; because her starboard helm on reversal would have been inoperative; and a worse collision would undoubtedly have followed. The situation was critical from the moment the green light was seen; and critical, as I must find, by the schooner's fault. It follows that the libel against the schooner must be sustained, and that against the steamship must be dismissed.

As respects the libel of Forster, for damages through the delay in delivery of the cargo of apples, there seems to be sufficient evidence of some damage. I must, therefore, allow a decree in his favor as against the Daylight, but with a dismissal as respects the *Circassia*.

Decrees may be entered accordingly.

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#### THE TRAVE.<sup>1</sup>

LAW et al. v. THE TRAVE.

(District Court, S. D. New York. April 7, 1893.)

#### 1. COLLISION—FOG—SPEED—ENTERING FOG BANK.

A steamship entered a fog bank, and thereupon reduced her engines a half a dozen revolutions, bringing her speed down from 16 to about 15

<sup>1</sup>Reported by E. G. Benedict, Esq., of the New York bar.

knots. The fog suddenly became dense, and within a few minutes a sailing vessel was seen about a length ahead, with which the steamship collided. *Held*, that the steamship was in fault for not reducing her speed at once, on entering the fog bank, to the moderate speed required by statute.

2. SAME—MECHANICAL FOG HORN—NECESSITY FOR SPARE HORN.

A vessel is not properly equipped at sea which has no spare mechanical fog horn. Hence, where a sailing vessel's mechanical fog horn had become out of order, and the vessel was run down in a fog while using an ordinary mouth horn as a substitute, and the evidence indicated that a mechanical fog horn might have given seasonable warning, *held*, that she was in fault for improper fog signals.

In Admiralty. Libel by William Law and others against the steamship *Trave* for collision. Decree for divided damages.

Carver & Blodgett and Mr. Putnam, for libelants.  
Shipman, Larocque & Choate, for claimants.

BROWN, District Judge. The above libel was filed by the owners of the British ship *Fred. B. Taylor* to recover their damages arising from collision with the North German Lloyd steamship *Trave*, in a dense fog some 240 miles to the eastward of Sandy Hook at about half past 6 in the morning, steamer's time, June 22, 1892, whereby the ship was cut in two and sunk.

The steamer was outward bound, and on her usual course, going about due east. The ship was bound from Havre to New York. The wind was moderate from the W. S. W., and the ship was sailing upon her port tack, heading about N. W. She had been sailing for several days in fog, so as to be unable to take observations. The steamer, until about five minutes before collision, had clear weather, and was going at about full speed. A few minutes before the collision the sky began to grow hazy; fog was evidently apprehended; two of the lookout were called down from the crow's nest and stationed at the bow, as required in thick weather. Orders were given to close the compartments, and to the engineer to stand by, and a reduction of half a dozen revolutions of the engine was made, bringing the speed of the *Trave* to about 15 knots. The sun, from an hour and a half to two hours high, was still visible. The fog suddenly became dense; within two or three minutes afterwards the loom of the ship's sails was seen by the starboard lookout a couple of points on the starboard bow, and he immediately reported to the officer on the bridge, who answered the lookout's report with a wave of the hand, and a little afterwards the ship's horn was heard. The steamer's engines were reversed as soon as possible and her helm was put hard aport, but without avail. Her stem struck the port side of the ship at an angle of about 80 degrees between the main and mizzen chains, cut her in two and passed between the two parts of the wreck, and disappeared in the fog. Some of the ship's crew were drowned; but most, including the master, were recovered from the wreck.

1. I find it impossible, under decisions binding on this court, to acquit the steamer of the charge of legal fault in running at nearly full speed in thick fog. No doubt the coming on of the fog was very

sudden; but it was not so sudden but that her speed could have become "moderate" had her officers chosen to give prompt orders to reduce it to the moderate rate allowed by the regulations. The steamer, doubtless, had no notice of the ship's near presence, as she was invisible in the dense fog ahead; and no sound of the ship's horn was heard until after her sails were seen. The chances that she would meet a vessel so speedily near the very edge of the fog were no doubt small; but in not bringing her speed down at once on entering the fog, the steamer took all the risk, and the attendant responsibility. A similar question was presented in this court in the case of *The City of Alexandria*, 31 Fed. Rep. 427, 431, in which it was held that the steamer running into a fog bank was bound, at her own risk, to have moderate speed as soon as she got into the fog, and to regulate her approach to a fog bank accordingly. Had this steamer slowed as soon as she got into the thick fog, there is no doubt that she would have cleared the ship, as she lacked only 100 feet of doing so, as it was. The question of what constitutes a moderate speed in a fog has been so often considered and adjudicated by the supreme court, that further discussion on that point here would be inappropriate. *The Nacoochee*, 22 Fed. Rep. 855; *Id.*, 137 U. S. 330, 11 Sup. Ct. 122; *The Normandie*, 43 Fed. Rep. 151, 157; *The Bolivia*, 49 Fed. Rep. 169, 1 C. C. A. 221.

2. The ship, however, must also be held in fault for not complying with article 12 of the new international regulations, which required that she should be provided with an efficient "fog horn to be sounded by a bellows or other mechanical means." The ship, on leaving Havre, had such a horn, provided with a piston for blowing it by mechanical means; but there was considerable fog on the voyage, and a few days before this collision the apparatus had got out of order by the derangement of some valve, and a horn blown by the mouth was thereafter used instead.

The object of the new rule, which is as obligatory on sailing vessels as on steamers, (*The Wyanoke*, 40 Fed. Rep. 702; *The Catalonia*, 43 Fed. Rep. 396; *The Bolivia*, 49 Fed. Rep. 169, 1 C. C. A. 221,) is manifestly for the purpose of securing louder and more penetrating blasts than can be given by the mouth, in order that the presence of vessels in fog may be made known at a greater distance, and a better opportunity thereby be given to avoid collision. If, therefore, there is any obligation at all upon a ship to make provision for the possible giving out of a single fog horn on the voyage, this obligation is not satisfied by supplying a spare horn substantially different from what the statute requires. I cannot doubt that the obligations of reasonable prudence do require in a matter so essential to safe navigation upon the Atlantic, as a fog horn for use during fog, that a spare horn should be provided to meet the liability to loss or derangement that may happen from various causes during the voyage. A ship that started across the Atlantic with no spare compass, chain, or tackle, would surely not be deemed reasonably equipped for the voyage; and she could not plead her lack of equipment in any of these respects as an excuse for noncompliance with the rules of navigation. It is the same with so important an article as a fog horn;

and no substitute can be lawfully supplied substantially different from what the statute requires. I cannot follow *The Chilian*, 4 Asp. 473.

It is impossible to say that the lack of a mechanical fog horn in this case would have made no difference. On the contrary, there is every probability that it might have made a difference sufficient to have avoided collision; for the last blast given happened to come after the sails of the ship had been seen. At the previous blast, given probably a minute before, the steamer was too far away to hear it; whereas the blast of a mechanical fog horn, given at the same time, might very probably have been heard; and the slowing of the steamer, which would naturally have been thereupon ordered a minute earlier, would certainly have avoided this collision. It is not incumbent, however, on the steamer to show that the use of a mechanical fog horn would have certainly prevented collision. The burden, upon noncompliance with the statute, is upon the faulty ship. She remains in fault unless she can prove certainly that a compliance with the statute could not possibly have made any difference; and this, as in the case of *The Pennsylvania*, 19 Wall. 125, 137, 138, is impossible. *The Bolivia*, supra.

The damages and costs must, therefore, be divided. A decree may be entered accordingly, with an order of reference to compute the damage, if not agreed upon.

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#### THE HERCULES.

HUBBELL et al. v. THE HERCULES.

(Circuit Court, E. D. Michigan. April 8, 1893.)

1. TOWAGE—NEGLIGENCE OF TOW—DREDGE.

A tug with two scows and a dredge in tow left Au Sable, Mich., at 9 P. M., to cross Saginaw bay, there about 30 miles wide. At the time there was little or no breeze. At 11.30, when about halfway over, the captain of the dredge hailed the tug, and asked if it would not be better to turn back, but the tug's captain thought it as well to go on. At this time there was a little sea on, but not of such a character as to indicate danger to the dredge. Between 1 and 2 o'clock the heavy crane and dipper of the dredge broke their chain fastenings, and rolled from side to side. The tug hauled up into the wind, and in about an hour the crane was secured. At 3 o'clock the dredge suddenly sank. She was not well shaped to withstand any sea at all, and the weight of evidence tended to show that her sinking resulted from the straining of her bottom caused by the swinging of the crane. The chains holding the crane were three sixteenths of an inch in size. Neither sea nor wind was heavy at any time during the night. *Held*, that the sinking of the dredge was due to her unseaworthy condition, and the insecure fastening of the crane, and that the tug was not at fault in not turning back at the first hail.

2. SAME—BURDEN OF PROOF.

The burden was on the owners of the dredge to show that the sinking was due to the negligence of the tug.

In Admiralty. Libel by Thomas M. Hubbell and George W. Skelton against the tug Hercules, her engines, etc., for negligence causing the loss of libellant's dredge while in tow of the Hercules. The