

tows is so explicit that I am not warranted in discrediting their statements. It is in the highest degree improbable that three out of four white lights would go out between the Battery and the bridge. I am inclined to think that the glare of the bridge electric lights had something to do with the nonobservance of the lights of the tug and tow, (*The A. Demerest*, 25 Fed. Rep. 921,) and that the collision arose from the lack of a sufficient and competent lookout on deck, and from the fact that the master and quartermaster in the pilot house were preoccupied with the duties of navigation and the attention given to other vessels, which is confirmed by the failure to notice the *Skidmore's* three whistles.

I think the lower of the two vertical lights on the *Skidmore* was put out by the shock of collision, and that they were of the usual brightness, though doubtless dim compared with the electric lights of the bridge, or of the *Express*. The *Express* rubbed along the stern of the *Skidmore*, which projected some 25 feet behind her tows. But this is not, perhaps, material; because even a single red light, properly burning, was sufficient warning to the *Express*, as an overtaking vessel, not to go so near as to run into the *Emma*, whether the latter had a light, also, or not. The statute forbids passing nearer than 20 yards; and also forbids a speed of more than 8 miles an hour between the Battery and Corlear's Hook, (*Consolidation Act*, 1882, § 757;) and those are but reasonable precautions, especially at night. Had she been going at the rate of only 8 miles, she might possibly have avoided collision. I do not find the *Skidmore* in fault. Decree dismissing the libel as to the latter, and awarding damages against the *Express*.

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#### THE PEERLESS.

BYERS et al. v. THE PEERLESS.

(Circuit Court of Appeals, Second Circuit. April 18, 1893.)

#### COLLISION—HELL GATE—EAST CHANNEL—SIGNALS—RULE 19.

A tug with two small schooners in tow on a hawser was going up the east channel of Hell Gate with the first of the flood tide, and was about in the middle of the channel. A steam yacht, bound west, took the east channel to avoid meeting two sailing vessels directly in front of her. On seeing the tug the yacht gave one whistle, and ported her helm. The tug immediately responded with one whistle, but did not alter her wheel. As soon as the yacht saw that the tug did not change her course, she reversed, but too late to avoid the tug, which was sunk. *Held*, that the yacht had the right to take the east channel, and her navigation was without fault; that the cause of the collision was the failure of the tug to alter her course in accordance with the whistle, which there was nothing to prevent her from doing, and she was consequently solely liable for the collision. 48 Fed. Rep. 844, affirmed.

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

In Admiralty. Suit to recover damages caused by collision. The court below dismissed the libel. See 48 Fed. Rep. 844, where the

case will be found stated in full in the opinion of BROWN, district judge. Affirmed.

J. F. Mosher, for appellants.  
Harrington Putnam, for appellee.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We agree with the opinion of Judge BROWN, who decided this cause in the court below. 48 Fed. Rep. 844. The decree is affirmed, with costs of the appeal.

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THE MARY AUGUSTA.

LOW v. THE MARY AUGUSTA.

HIGGINS et al. v. LOW et al.

(District Court, D. Connecticut. April 17, 1893.)

1. COLLISION—SAILING VESSELS—RIGHT OF WAY.

The schooner A. was sailing free before the wind at night, on a course about E. by S., while the schooner T. was sailing closehauled upon her port tack on a course about W.  $\frac{1}{2}$  N. Each vessel kept her course until they were close together, when the A. put her helm up and kept off. The T. did the same almost immediately. Then the A. put her helm hard down and struck the T. on her port quarter. *Held*, that the A. was in fault, being bound to keep out of the way, and that the T.'s change of course, if an error, was an error in extremis.

2. SAME—CREDIBILITY OF WITNESSES.

The principal defense of the A. was the absence of a red light on the T., to establish which the evidence of the captain of the A. and one of his seamen that they did not see the light was offered, and the testimony of a seaman on the T. that, after the collision occurred, the captain of the T. said to him and his fellow seamen, "Boys, we musn't allow but what these lights were burning all right." This testimony was contradicted by the captain, lookout, steward, and mate of the T., and the wheelsman of the A., and there were circumstances to discredit the testimony of the T. seaman. The captain and seaman of the A. admitted that they did not look, after the collision, to see if lights were burning on the T. *Held*, that the evidence was insufficient to show a want of a red light on the T.

3. SAME.

The assertion of the captain of the A. that the T., though sailing closehauled, having the right of way, and bound to hold her course, swung seven or eight points in twice her length and ran under the bows of the A., was so manifestly improbable and impossible as to discredit his whole testimony.

In Admiralty. Libel by Warren Low against the schooner Mary Augusta, her tackle, etc., and cross libel by Joseph M. Higgins and another against Warren Low. Decree for libelant, Warren Low.

Walter C. Noyes and Frank B. Brandegee, for libelant.

Samuel Park and Edward S. Dodge, for claimants and cross libelants.

TOWNSEND, District Judge. On June 24, 1892, at 11 o'clock at night, near Race rock in Long Island sound, the schooner Mary