

at the rate of about 15 miles per hour, and the sky overcast. Storm signals were set on the government station three times during the day, indicating that a blow of above 25 miles an hour was to be expected. The captain of the scow did all he could to prevent being left there; he had no means of moving the scow, and, as I find, was in no way negligent or lacking in due care. At 11 o'clock p. m. the wind had hauled more to the westward, and from 10 to 12 o'clock, midnight, it increased from 19 to 33 miles per hour, and subsequently, during the night, became still more violent from the northwest. At half past 11 p. m. the boat rolled and pounded so that nothing aboard, as the captain testifies, would remain in place, and he and his wife were forced to leave her. The following morning she was found more or less broken and half full of water.

Upon the above facts, I am obliged to hold the defendant responsible for the damages. There was no usage between the parties that authorized the defendant to leave the scow at the sea fence, at the libelant's risk, without previous notice and arrangement. The libelant was reasonably entitled to have opportunity, through previous notice, to remove the boat from the place where it might be left, before it could be charged with the risk of allowing her to remain. The fact that the libelant authorized two scows previously to be left at the same place under an arrangement which gave it the opportunity to remove them at once, or to leave them at its own option, until there was need of removal, was no authority and no justification for the defendant to leave the subsequent scow without notice, and with no such opportunity. The reason why the usual arrangement was not made probably was, that the defendant's officers did not receive timely notice on Saturday from its working superintendent that the scow would be discharged on Sunday so as to be able to communicate with the libelant by telephone on Saturday, in accordance with the usual custom. This, however, was not at the libelant's risk. Until the scow was properly delivered, she remained under the responsibility of the defendants. Due notice was necessary for such a proper delivery; and in the absence of this, the defendant remains responsible.

Decree for the libelant, with costs.

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#### THE DAKOTA.

#### WALSH v. THE DAKOTA.

(District Court, S. D. New York. March 26, 1894.)

#### COLLISION—STEAM VESSELS CROSSING—STARBOARD HAND RULE.

The ferryboat D., while crossing the East river from Brooklyn to New York, collided with the tug O. B., at the time going up stream near the New York shore, and having the D. on her starboard hand. On conflicting evidence the court found that the tide was nearly slack, and the D. making nearly a direct course across the river to her slip; that as soon as she saw the tug threatening to go between her and her slip, she blew one whistle, slowed down, and stopped and backed as soon as danger became

apparent. *Held*, that the ferryboat had done all that was required of her, and that the collision was due to the failure of the tug to keep out of the way.

Goodrich, Deady & Goodrich, for libellant.  
Wilcox, Adams & Green, for respondent.

BROWN, District Judge. The ferryboat Dakota, while crossing from her slip at Broadway, Brooklyn, to Grand street, New York, came in collision with the libellant's tugboat Olive Baker, at about half past 6 in the morning of August 15, 1893. The starboard bow of the ferryboat struck the starboard side of the tug about amidships, at an angle of from  $2\frac{1}{2}$  to 3 points. The time was about an hour and a half after low water at Governor's Island; and as the current in the East river continues to run down for about an hour and a half after low water, although there is a little upward current along the shores somewhat earlier, it is certain that there could not have been much flood tide to cause the ferryboat to deviate very greatly from a straight course across the river.

Beyond the fact that the Dakota gave a signal of one whistle, almost every other circumstance in the case is a subject of most flagrant contradiction. The general theory of the libellant, to the effect that after the Dakota had given one whistle, and the Olive Baker had passed to the right, so that the boats were really out of all danger of collision, the Dakota, when pointing astern of the tug, and nearly straight down river towards the navy yard, gave two whistles and swung still more to port towards the Brooklyn shore until she ran upon the Baker far on the Brooklyn side of the river, is not only improbable in the highest degree, but is contradicted throughout by the respondent's witnesses. Such navigation by the ferryboat is inconceivable and cannot be credited. The burden of proof is upon the libellant. I cannot regard any part of his case as established. The Dakota gave no signal of two whistles; but after her first single whistle, she gave only an alarm signal of three whistles. The collision was near the New York shore. I find that the ferryboat pursued her customary course towards the Grand street slip; that there was but a slight flood current, and that she did not head down river, or towards the navy yard at any time, nor towards the southwest, though the pilot's mistake and confusion in testifying, or some error in his compass, gives a slight color to the libellant's contention in that regard. As soon as the Olive Baker was seen coming up near the New York side, threatening to go between the Dakota and her slip, the Dakota properly gave a signal of one whistle, slowed down, and afterwards stopped and backed as soon as danger from the Baker became apparent. This was in accordance with the rules of navigation. When her whistle was given, the Olive Baker had the Dakota on her own starboard hand, and was bound to keep out of the way. She could easily have done so, either by going to the right, as was her duty to do, or by stopping and backing; neither of which she did.

I find that the Dakota did all that was required of her, by stop-

ping and backing as soon as such action on her part was apparently needful to avoid collision; and that the collision arose from the failure of the Olive Baker to take proper and timely steps to keep out of the way.

The libel is dismissed, with costs.

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THE JOHN T. PRATT.

THE A. R. KEENE.

NATIONAL STORAGE CO. v. THE JOHN T. PRATT et al.

ROGERS v. THE JOHN T. PRATT.

(District Court, S. D. New York. March 24, 1894.)

**COLLISION—STEAM AND SAIL MEETING—FAULTY LOOKOUT—CHANGE OF COURSE.**

A tug, going down New York bay at night, incumbered with scows in tow on a hawser, saw ahead the lights of a sailing vessel, and took measures to avoid her by blowing one whistle and sheering to the right, after which she continued her original course. Owing to a faulty lookout on the schooner, the latter changed her course when near the tow, either by reason of taking in sails preparatory to anchoring, or by an intentional change of course towards her anchorage ground, and ran in between the tug and the tow, and collided with one of the scows. *Held*, that the sole liability was with the schooner, for negligent lookout and unwarranted change of course when approaching a steam vessel.

Goodrich, Deady & Goodrich, for National Storage Co.

Stewart & Macklin, for the John T. Pratt.

Wing, Shoudy & Putnam, for the A. R. Keene.

**BROWN**, District Judge. At about 10 o'clock in the evening of July 13, 1893, as the steam tug Pratt was hauling three mud scows out to sea by a hawser from 40 to 50 fathoms in length, the schooner Keene, coming up the bay, with a moderate southwest wind, came in collision with the forward scow, by which both were badly damaged, to recover for which, the above libels were filed.

The collision was about one-third of the distance from Bedloe's Island to Robin's Reef. The night was mild and clear starlight. The tug and the schooner being at first nearly head and head, and the colored lights of each being visible to the other, the tug, when at a considerable distance, gave a signal of one whistle, indicating that she would go to the right, ported her wheel, hauled off to the right for a few minutes, and then continued down on her course. The schooner was intending to anchor upon the anchorage ground off and below the Statue of Liberty. Before the collision, her topsails, jibs, spanker, and foresail were all taken in; and the concurrent testimony is that she struck the forward end of the scow at a considerable angle, having run in between the forward part of the scow and the tug, after having passed the tug at a considerable distance to the eastward of her.

The clear preponderance of evidence and probability satisfies me