

sioner, who shall hear the parties, and make the adjustments and findings required in the opinion filed this day, and on the principles therein set out, and make report thereof, and the said commissioner shall receive, for his only commission, a certified copy of this order and of said opinion; and, on the coming in and confirmation of such report, a final decree shall be entered in accordance with such opinion and this order.

FAHY v. MAYOR, ETC., OF CITY OF NEW YORK.

(Circuit Court of Appeals, Second Circuit. February 20, 1893.)

No. 32.

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

In admiralty. The libel was filed by Michael Fahy against the mayor, aldermen, and commonalty of the city of New York to recover for loss of a canal boat sunk at respondents' wharf. From a decree for the libelant (49 Fed. 389) for one-half the amount of his damage, both parties appeal.

J. A. Hyland, for Fahy.

James M. Ward, for the mayor, etc.

Before WALLACE, LACOMBE, and SHIPMAN, Circuit Judges.

PER CURIAM. We agree with the opinion of the court below in this cause (49 Fed. 389), and affirm the decree, with interest, and without costs in this court to either party.

THE RICHARD PECK.

MYERS EXCURSION & NAV. CO. v. THE RICHARD PECK.

(District Court, E. D. New York. April 26, 1894.)

COLLISION—STEAM VESSELS CROSSING—ATTEMPT TO CROSS BOWS.

Two tugs, towing a bark, came down the East river, bound west, and in the neighborhood of Corlaer's Hook began to pull towards the New York shore. The steamboat R. P., having the tow in full view, attempted to cross its bow, despite opposing signals from the tugs, with which she thereafter collided. *Held*, that such attempt to cross the bows of the tugs was at the risk of the steamboat, and if, as she contended, the length of the tow made it impossible for her to go under its stern, then it was her duty to have stopped, instead of keeping on; and that the steamboat was solely liable for the collision.

Libel by the Myers Excursion & Navigation Company for damages for collision between the steamboat Richard Peck and two tug-boats, Charles Allen and Robert Haddon, owned by the libelant.

Wing, Shoudy & Putnam, for libelant.

William J. Kelly, for claimant.

BENEDICT, District Judge. This is an action to recover damages sustained by the libelant in a collision which occurred in the

East river on January 10, 1893, wherein the tugboat Charles Allen, owned by the libelant, was cut in two by the steamboat Richard Peck, and the bow of the tugboat Robert Haddon, also owned by the libelant, was taken off by the Peck's guards. The collision occurred at about 3 o'clock in the afternoon, in broad daylight and clear weather, at a point below Corlaer's Hook in the East river. The Peck was bound to the eastward; the Allen was bound to the westward, having behind the tugboat Robert Haddon, both towing at the time the bark Hannah Blanchard. The Richard Peck (with this tandem tow in full view, which, at the time, by an exchange of single blasts with the tug Jamestown, going up the river ahead of the Peck, was committed to a course crossing the channel to the New York shore) undertook to cross the bows of the Allen, intending to pass ahead of the tow, in order to round the Hook on the New York side of the river. While the tug Allen was so crossing the river, in accordance with the whistles exchanged between the Allen and the Jamestown, the Peck blew a signal of two whistles to the Allen, "to give her plenty of time," as the captain says; and, although no reply was received to this whistle, the Peck kept on, and gave a second signal of two blasts, to which a signal of one whistle was received in reply, notwithstanding which the Peck persisted in her attempt to cross the Allen's bows, sheering all the time still further to the west, until the vessels came in collision. The fact that the tow had taken a course to cross the river in plain view of the Peck, and before any signals were given by the Peck, is made plain by the testimony of the master of the Jamestown, who was ahead of the Peck, and who says that he blew one whistle to the Allen, and she replied with one whistle, and at that time began to haul towards the New York shore, at which time, as he says, the Peck was coming out of her slip, sounding her alarm whistle.

In my opinion, it was a fault on the part of the Peck to attempt to gain the New York shore by passing ahead of the tow. The tow had the right to take a course to cross the river so as to come down on the New York shore below the Hook, and, when the Peck attempted to cross the bows of the tow while on that course, it was at her own risk. If, as she contends, the length of the tow made it impossible for her to go under the stern of the tow, then it was her duty to stop, instead of which she kept on in a vain and dangerous effort to cross ahead of the tow. I find no fault on the part of the Charles Allen. There must be a decree in favor of the libelant, with an order of reference to ascertain the damages.

THE OCEANIC.

SMITH et al. v. OCCIDENTAL & ORIENTAL STEAMSHIP CO. et al. (two cases).

(District Court, N. D. California. April 10, 1894.)

Nos. 10,732 and 10,733.

1. COLLISION—STEAMERS—FOG—CURRENTS.

The steamship O., entering the Bay of San Francisco, about mid-channel, in a thick fog, heard, about 2½ or 3 points on her starboard bow, the fog signals of the steamer C., coming out. The bearing of the signals continued the same until the C. was seen in that direction, heading directly towards the O., and about half a mile distant. Two blasts were then blown, to indicate an intention to go to port, which was assented to, and the helm immediately put hard a-starboard. It was seen, however, that the C., instead of going to port, was moving to starboard (influenced, doubtless, by the tide rip, which she was just entering); and, after waiting about two minutes, two blasts were again given, and assented to. Almost immediately afterwards, but not until collision appeared inevitable, both ships reversed full speed. In something less than two minutes, however, the O. struck the C. on the port bow, penetrating 10 feet, and causing her to sink in a short time. The officers of the O. testified that she had been running "dead slow," which, going with the flood tide, would give, at most, 7 knots; but the court found, from the distances traversed, and especially the force of the blow, that the speed must have been over 10 knots. *Held*, on a libel for causing the death of certain passengers of the C., that the O. was in fault, for not reversing as soon as it was perceived that the C. was not answering her helm so as to go to port, and that the failure of the O.'s officers to take into consideration the influence of the tide rip, which they knew to exist, in preventing the C. from doing as she had agreed, precluded them from throwing the entire fault upon her.

2. SAME—STEAMERS CROSSING—APPLICATION OF RULE 16.

Article 16 of the rules of navigation (Act March 3, 1885), which provides that, if two ships under steam are crossing, the ship having the other on the starboard hand shall keep out of the way, applies even when the ship approaching the starboard side of the other would not actually cross, but would strike her amidships.

3. DEATH BY WRONGFUL ACT—DAMAGES—ANNUITY TABLES.

The annuity tables should not, alone, control the amount of damages, even in a state where no limit is fixed to the recovery, as in California; and the fact that many other states have fixed a limit may be considered by the court. Therefore, \$10,000 are allowed in the case of a man 32 years old, in good health, and earning \$1,500 a year, although the sum necessary to purchase an annuity of that amount is \$24,882.

4. SAME—DEATH OF CHILD.

One thousand dollars allowed to a mother for the death of a daughter 4½ years old, in good health at the time.

These suits were commenced as actions at law to recover damages for loss of life under the California statutes (Code Civ. Proc. §§ 376, 377). The first one was brought by Henry F. Smith and George C. Smith, infants, by Eliza A. Smith, their guardian, and Eliza A. Smith for herself, and as administratrix of the estate of Henry Smith, deceased, against the Occidental & Oriental Steamship Company and the Pacific Coast Steamship Company, to recover for the death of the husband and father, Henry Smith. The second was by Eliza A. Smith, individually, against the same defendants, to recover for the death of her daughter, Myrta Smith. Afterwards, by stipula-