

er as to seaworthiness, adequacy for the work, or the time of starting, it is a practical question of reasonable prudence and judgment. And as regards seaworthiness in general, or the adequacy of the tug for the work undertaken, there is no other final criterion than the judgment of practical men versed in the business and the customs and usages of the time and place, viewed as representing the judgment and knowledge of the time. To show this, the custom and practice of nautical men is admissible. See *The Titania*, 19 Fed. 101, 105-109, and cases there cited. The exercise of reasonable prudence and judgment, measured by this standard, does not exclude some remaining maritime risks. Against these risks it is the province of insurers to provide; otherwise the shipper is his own insurer."

The question of reasonable judgment and skill as affected by the general custom and practice of the time and place, is similar, whether it regards towage or unseaworthiness, or stowage, or navigation. See *The Wilhelm*, 47 Fed. 89; *The Dan*, 40 Fed. 691; *The Titania*, et supra; *The Frederick E. Ives*, 25 Fed. 447, affirmed on appeal.

Chief Justice Waite also in the case of *The W. E. Gladwish*, 17 Blatchf. 84, Fed. Cas. No. 17,355, in referring to the question whether the master should seek an opportunity to go on when overtaken by bad weather, says:

"This involved the exercise of judgment as to what ought to be done under the circumstances. A mere mistake is not enough to charge the tugs with any loss which followed. To make them liable, the error must be one which a careful and prudent navigator, surrounded by like circumstances, would not have made. \* \* \* I cannot believe that ordinary prudence required an abandonment of the voyage, for the time being, by lying up or seeking a harbor. The tug was commanded by a competent master, and the captain of the barge was an experienced boatman. No objection was made by any one to going on, and it is evident that no person connected with the tow considered it necessary to stop." See also, *The Clematis*, Brown, Adm. 499, 502, Fed. Cas. No. 2,876; *The Allie*, 24 Fed. 745, 749, and cases there cited.

The above rules seem to me so far applicable to this case as to absolve the tug from the charge of negligence, and the libel is, therefore, dismissed.

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## THE FLYER.

### REDDING v. THE FLYER.

(District Court, D. Washington, N. D. June 18, 1894.)

No. 575.

#### COLLISION—FOG—STEAMERS PASSING—RATE OF SPEED.

Two steamers, on regular runs in opposite directions, in a fog so dense that the exact position and course of one could not be known to the officers of the other in time to pass safely at full speed, should have passed starboard to starboard, as their courses did not cross, and the master of each knew the route and direction of the other; but the master of one, hearing the other's whistle, assumed that they were coming together on opposite courses, gave the signal to pass port to port, and set his helm hard a-port, thereby swinging his vessel across the other's bow. The other pursued her proper course, and gave the proper signals for passing, but continued her full speed of 18 to 20 miles an hour until the vessels came in sight of

each other, and, before her speed was perceptibly checked, struck the timbers supporting the stern wheel of the first vessel. *Held*, that both were in fault.

This was a libel by Thomas Redding, owner of the steamer Mary F. Perley, against the steamer Flyer, for damages caused by a collision between said vessels.

E. C. Hughes, for libellant.  
L. C. Gilman, for claimant.

HANFORD, District Judge. The collision complained of in this case occurred on a foggy morning in October, 1892, about one mile and a half south of Battery Point (locally known as Alki Point). The Mary F. Perley was at the time on her regular run from Tacoma via Vashon's Island to Seattle, and should have been at the time on a direct course from Beal's Point to Battery Point. The Flyer was making her regular run from Seattle to Tacoma, and had rounded Battery Point, and taken her course from that point towards Point Pulley. On these courses the vessels should have passed each other starboard to starboard, as their tracks do not cross each other, the master of each vessel knew the route and schedule time of the other, and each should have known that in case of meeting south of Battery Point they should pass starboard to starboard. The master of the Flyer so understood and acted. But the libellant, who was in command of the Mary F. Perley, after hearing the Flyer's whistle, erroneously assumed that the vessels were coming together on opposite courses, and thereupon gave the signal to pass to port, and set his helm hard a-port, thereby swinging his vessel to a position across the bow of the Flyer. This, in my opinion, was an inexcusable mistake, and a contributing cause to the collision. The Flyer pursued her proper course, and gave the proper signals for passing, but on account of the density of the fog the exact position and course of one could not be known to the officers of the other vessel in time to pass safely, running at full speed. It was the duty of the Flyer, therefore, to proceed cautiously after hearing the whistle of the Mary F. Perley, and stop immediately after her failure to make the proper response to the Flyer's signal. The Flyer's master testified that within one minute and a half after giving his first signal her engines were stopped and reversed, and in this he is corroborated by the testimony of other officers of the Flyer; but upon a decided preponderance of the evidence I find the facts to be that from the time of leaving Seattle until the vessels came in sight of each other the Flyer was running at her full speed of 18 to 20 miles per hour. Her engine-room bell was rung to stop and reverse as quickly as it could be after the first slow bell. Passengers, who knew from the bells that something unusual was about to happen, had scarcely time to move from their seats in time to see the steamers come together. The Flyer's stem struck the timbers supporting the stern wheel of the Mary F. Perley with such great momentum as to cut away entirely the wheel and said supporting timbers, and tear out her eccentrics and one of

her pistons. At the time of striking the Flyer's speed had not been perceptibly checked. The duty of steam vessels to stop when there is known danger of colliding in a fog is imperative, and, if the rule on this subject had been observed by the master of the Flyer, this collision could have been avoided. I find, therefore, that there was fault on the part of both vessels contributing to produce the injury to the libellant's vessel.

The case will proceed in the usual way to ascertain the amount of damages, and, when ascertained, one-half the amount thereof will be decreed in favor of the libellant. The costs will be divided equally.

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CITY OF PHILADELPHIA v. GAVAGNIN.

(Circuit Court of Appeals, Third Circuit. July 9, 1894.)

No. 20.

1. COLLISION—TUG AND TOW—VESSEL AT ANCHOR.

A tug which, owing to lack of a proper lookout, takes her tow so near to an anchored vessel that, on the hawser breaking by reason of the tug suddenly changing her course, the tow is unable to avoid the anchored vessel, renders her owner liable to such vessel, it being without fault, for damages from the collision. *The Giovanni v. City of Philadelphia*, 59 Fed. 303, affirmed.

2. SAME—LOOKOUT.

The duty of keeping a lookout is not complied with by the officer in charge of the navigation of a tug with a tow keeping a lookout from the pilot house. *The Giovanni v. City of Philadelphia*, 59 Fed. 303, affirmed.

3. MUNICIPAL CORPORATIONS—LIABILITY FOR TORTS.

A city which, pursuant to its charter powers, engages in the business of towing vessels for profit, is liable for a collision caused by the fault of its tug. *The Giovanni v. City of Philadelphia*, 59 Fed. 303, affirmed.

Appeal from the District Court of the United States for the Eastern District of Pennsylvania.

This was a libel by Dominico Gavagnin, master of the bark *Giovanni*, against the city of Philadelphia, for damages for a collision alleged to have been caused by negligence of a tug owned by the city. The district court rendered a decree for libellant. The city appealed.

Howard A. Davis (Charles F. Warwick, on the brief), for appellant.

Henry R. Edmunds, for appellee.

Before ACHESON and DALLAS, Circuit Judges, and GREEN, District Judge.

GREEN, District Judge. This is an appeal from the decree of the district court of the United States for the eastern district of Pennsylvania. It appears from the record that the Italian bark *Giovanni* was anchored near the breakwater in the Delaware river on the 7th of February, 1893, in the proper place for the anchorage