

Wind, a schooner of about 90 tons, and 100 feet long, was sailing on a W. by S. course, with her booms to starboard. The wind was about E., or E. by N., and the night dark and overcast, with occasional rain squalls. The district judge has discussed the evidence at some length, and held the schooner responsible on the ground that she did not hold her course, and we see no reason to reverse his decision. The testimony is very conflicting, and no theory will reconcile the statements of the witnesses from both sides. The schooner's bowsprit brought up on the port bow of the steamer, and the angle at which the vessels came together is the material point in the case. If they came together at right angles, the conclusion reached by the district judge—namely, that, to get into such relative positions from their former headings, the schooner must have luffed—is fair and reasonable. His finding that they struck at right angles controlled his decision of the case, and the libellant has sought, by new proofs taken in this court, to secure a reversal of that finding. Such new proofs comprise a photograph and a drawing of the schooner's broken bowsprit, made long after the collision, and the opinion of a ship carpenter as to the indications which its appearance affords. The libellant has sought to meet this by calling a witness who surveyed the hole stove in the steamer's bow, to describe it and give his opinion as to the angle of the blow which made it. Such evidence, however, is hardly of a character to warrant a reversal of the findings of the district judge, when several of the eyewitnesses of the collision, including the mate of the schooner, testify that the vessels came together substantially at right angles, and no witness from either vessel testifies to the contrary. Although the night was dark and rainy, the atmospheric conditions were not such as to require the steamer, navigating in the wide water where she was, to reduce speed, under the rules as they then stood. She was running $8\frac{1}{2}$ knots an hour. Lights were not visible as far as they might be on a clear night, but still, so far as the proof shows, they could be seen at sufficient distance to avoid them when running at that rate of speed. The decree of the district court is affirmed, with interest and costs.

THE WALLEDA.

THE HELENA.

AYER v. THE WALLEDA.

ELDERKIN et al. v. THE HELENA.

(District Court, S. D. New York. December 18, 1894.)

COLLISION—SAIL VESSELS—NEGLIGENT LOOKOUT ON BOTH—WIND FREE—CONFLICT—WRONGFUL LUFF BY EACH.

The schooner W., sailing W., and the H., sailing E. by N. $\frac{1}{2}$ N., came in collision about 10 p. m. in Long Island Sound in a fresh breeze, the wind being not far from N., and the night clear. The evidence showed that the lookout on the W. was very inattentive, and that the H. was not seen until a few lengths away on the W.'s port bow, whereupon the

W. luffed. The lookout of the H. testified to seeing the W.'s green light a mile distant, from one and a half to two points on his starboard bow, which continued until near, when the W. luffed, and brought about collision. The W.'s witnesses claim that the wind was W. of N.; the H.'s witnesses, that it was N. N. E., and that the H. was sailing close to the wind: *Held*: (1) That though, considering the negligent lookout on the W., the H.'s account of the collision would have been adopted, if credible; yet that story not being credible, nor giving a possible account of the collision, no superior credit could be given to the H.'s story; (2) that the wind was nearly as given by the nearest weather bureau, viz. N.; (3) that both had the wind free, that both were negligent in lookout, and both wrongfully luffed, and damages were divided.

These were cross libels filed, respectively, by Frederick W. Ayer and Hubert W. Elderkin and others to recover damages for a collision between the schooner Walleda and the schooner Helena.

Wing, Shoudy & Putnam and C. C. Burlingham, for the Walleda. Benedict & Benedict, for the Helena.

BROWN, District Judge. At about 10 p. m. in the evening of September 25, 1894, the schooner Walleda, sailing west, and the Helena, going east on the port tack, came in collision in Long Island Sound not far from Bridgeport. The Helena's stem struck the port side of the Walleda abaft the fore rigging, and both were damaged, for which the above libel and cross-libel were filed.

The evidence shows so clearly that the lookout on the Walleda was grossly negligent, that I should have no hesitation in accepting the Helena's account of the collision, and holding the Walleda alone responsible, if the Helena's story had been consistent and probable, and furnished a reasonably satisfactory account of the collision. But the positive testimony of the Helena's witnesses that the light seen on the Walleda a mile distant was the green light, a point and a half or two points on the Helena's starboard bow, and that that green light continued in view all the time until the Walleda luffed, a few lengths before collision, is wholly incompatible with the other testimony and circumstances, and leaves the collision unexplained. It could not possibly have occurred in that way. Upon the courses the vessels were on, had the green light of the Walleda been exposed even two-thirds of a mile distant, one and a half to two points on the Helena's starboard bow (and it must, from her course, have been on that bearing) the Helena, instead of colliding, would have passed the Walleda from 400 to 500 feet, at least, to the northward. No supposable luff by the Walleda can explain such a discrepancy; nor in such a position of the Helena is any luff by the Walleda conceivable. The necessary conclusion is, that no green light could have been seen at any considerable distance; but, if at all, only just as the Helena was passing the line of the Walleda's course only a few lengths off, and just before the Walleda luffed; that the Walleda's red light was visible for a considerable time before that, and was not noticed, because no proper lookout was kept up on the Helena. This, and the gross misrepresentation as to the lights, is sufficient to deprive her witnesses of

any special confidence as to the disputed question of the direction of the wind. The Walleda's witnesses say the wind was N. by W.; the Helena's, that it was about N. N. E. At the nearest weather bureau station, namely, at New Haven, the wind up to midnight did not go E. of N.; and in the difference of testimony, I shall adopt that as the course of the wind during the hour prior to collision. This would make the Helena have the wind from one to two points free on the port side. I am confirmed in this finding, by the fact that at collision her sails were full; and as the wheelman left the wheel some moments before collision, and as he testifies that she did luff, and as the mate ran to the wheel after the wheelman had left it and put it down before collision, I have no doubt the Helena did luff at least one to two points, and still had her sails full. Having the wind on her port side and free, the Helena was bound to keep out of the way of the Walleda, which had a free wind on the starboard side. The real faults were the same in each, viz., the total want of proper watch, or any seasonable notice of the other, in consequence of which each wrongfully luffed. The schooners were not heavily incumbered, and could be easily and quickly handled in so fine a breeze; and had either paid any timely heed to the other, the collision would have been easily avoided. The damages must, therefore, be divided. Decrees accordingly; with orders of reference, if the damages are not agreed upon.

THE GULF STREAM.

NEW YORK & W. STEAMSHIP CO. v. INLAND & SEABOARD COASTING CO.

(Circuit Court of Appeals, Second Circuit. December 3, 1894.)

No. 12.

COLLISION—DIVISION OF DAMAGES — PURCHASE BY PARTY OF DAMAGE CLAIMS.

On a libel for the loss of a vessel and cargo by collision, if a division of damages is decreed on the ground of mutual fault, the parties stand in the position of sureties towards each other as respects claims of owners of cargo lost by the collision; and where, pending suit, one of the parties has purchased claims of such cargo owners at less than the value of the goods lost, the other is responsible only for his proportion of the amount paid, with interest. 58 Fed. 604, affirmed.

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

This was a libel by the Inland & Seaboard Coasting Company against the steamship Gulf Stream (the New York & Wilmington Steamship Company, claimant) for damages for the loss of libellant's steamship E. C. Knight and her cargo, by collision with the Gulf Stream. The district court found both vessels in fault, and rendered a decree for a division of the damages and costs. 43 Fed. 895. On a reference to compute the damages, exceptions to the commissioner's report were filed by the owner of the Gulf Stream, but were